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Declaration of Mark James / Christopher Rossi

Part 1 of 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
VIRGIN ENTERPRISES LIMITED,
:

Opposer,
:

Opposition No. 91-161535
:

- v -
:

ROSENUIST - GESTAO E SERVICOS SOCIEDADE
UNIPessoal LDA,
:

Applicant.
:
-----X

**MEMORANDUM IN SUPPORT OF
OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

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Date: April 18, 2005

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INTRODUCTION

Rosenruist – Gestao E Servicos Sociedade Unipessoal LDA (“Applicant”) filed Application No. 76/479620 (the “Application”) on December 30, 2002, on an intent-to-use basis, seeking registration of VIRGIN GORDA (the “Opposed Mark”) on the principal register as a purported designation for “bags, namely, all-purpose athletic bags, beach bags, carry-on bags, gym bags, leather shopping bags, overnight bags, shoulder bags, tote bags and cosmetic bags sold empty; purses, coin-purses, pocket wallets, traveling bags, trunks, make-up bags sold empty, empty vanity cases, briefcases, umbrellas, and handbags” and “coats, skirts, trousers, jackets, overcoats, sweaters and pullovers, bomber jackets, hats, scarves, headscarves, stockings, gloves, belts, shoes, boots, sandals, clogs, slippers; waterproof clothing, namely shirts, rain coats and rain jackets.” The Application was published for opposition on June 1, 2004. Opposer, Virgin Enterprises Limited (“VEL”), timely filed a Notice of Opposition. Discovery concluded on March 22, 2005.

Opposer now moves for summary judgment declaring the Opposed Mark unregistrable under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), in view of Opposer’s prior use and registration of VIRGIN and VIRGIN-formative marks as applied to a broad range of goods and services, including goods that are identical to goods recited in the Application.

SUMMARY OF THE ARGUMENT

The record evidence of this case establishes that the following facts are beyond genuine dispute, and entitle Opposer to summary judgment:

- VEL is the owner of thirty-three (33) registrations of VIRGIN and VIRGIN-formative marks, including registrations encompassing goods identical to those recited in the Application;

- VEL has made prior use of numerous composite VIRGIN-formative marks including VIRGIN ATLANTIC, VIRGIN MEGASTORE, VIRGIN MOBILE, VIRGIN VIE, VIRGIN DIGITAL, VIRGIN WARE, and others, on and in connection with a broad range of goods and services offered in United States commerce;
- The record evidence in this case confirms what federal courts and this Board have repeatedly held, namely, that as used by Opposer, VIRGIN is a “famous, arbitrary, and distinctive mark” entitled to a broad scope of protection. *Virgin Enters. Ltd. v. Nawab*, 335 F.3d 141, 146, 67 U.S.P.Q.2d 1420, 1424 (2d Cir. 2003); *see also Virgin Enters. Ltd. v. Virgin Petroleum, Inc.* No. CV-99-12826, 2000 U.S. Dist. LEXIS 8100, at *8 and *37 (C.D. Cal. Jan. 19, 2000) (“the VIRGIN mark is arbitrary, strong, and entitled to broad protection” and “has been recognized as a famous brand”); *Virgin Enters. Ltd. v. DeFeis*, Opp. No. 108,967 (Oct. 26, 2000) (“opposer’s VIRGIN mark is a strong mark which is entitled to a relatively broad latitude of protection”);
- As a purported designation for the goods specified in the Application, VIRGIN GORDA is deceptively similar to Opposer’s previously used and registered VIRGIN and VIRGIN-formative marks and falsely suggests a connection between Opposer and “Gorda,” the latter word being a surname;
- The Application encompasses goods that are identical to goods recited in registrations of VIRGIN and VIRGIN-formative marks owned by Opposer;
- Applicant proposes to offer deceptively labeled, spurious “VIRGIN GORDA” bags and clothing to the same class of retail consumers who already have genuine VIRGIN bags, who wear genuine VIRGIN and VIRGIN WARE clothing, who shop at VIRGINMEGA.COM and in genuine VIRGIN MEGASTORE retail stores, who play genuine VIRGIN CDs on genuine VIRGIN audio equipment, who travel on genuine VIRGIN ATLANTIC airline flights, who make and receive calls on genuine VIRGIN MOBILE phones, who listen to genuine VIRGIN DIGITAL music, who use genuine VIRGIN VIE cosmetics, who read genuine VIRGIN books, who serve genuine VIRGIN VODKA, VIRGIN COLA, and other VIRGIN-branded beverages, and who see countless references to Virgin Group companies and their founder, Sir Richard Branson, in news media; and
- Opposer has extensive rights to exclude others from use of the VIRGIN mark, and has consistently and successfully asserted those rights in previous opposition, cancellation, and litigation proceedings.

On the undisputed facts of record, Opposer respectfully submits that the Opposed Mark, VIRGIN GORDA, so resembles VEL's previously used and registered VIRGIN and VIRGIN-formative marks "as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1052(d). Registration of the Opposed Mark to Applicant should thus be refused.

I. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Opposer's Long-Standing Use of VIRGIN to Identify Diverse Goods and Services Including, But Not Limited to, Clothing, Bags, and Retail Store Services Covering Those Goods

Opposer and related companies (collectively, the "Virgin Group") operate numerous worldwide businesses under the trade name, trademark, and service mark VIRGIN (Declaration of Mark James dated April 13, 2005, hereinafter "James Decl." ¶ 2). A description of Virgin Group businesses appears at the web site associated with the Internet domain name www.virgin.com (James Decl. ¶ 2 & Ex. 1 attached thereto). VIRGIN-branded clothing, bags, and related merchandise are among the goods offered to United States consumers at VIRGIN and VIRGIN MEGASTORE retail stores and on VIRGIN and VIRGIN ATLANTIC airline flights (Declaration of Marc Block dated April 12, 2005, hereinafter "Block Decl." ¶ 4 & Ex. 2 attached thereto; Declaration of Christopher Rossi dated April 14, 2005, hereinafter "Rossi Decl." ¶ 8 & Exs. 4 & 5 attached thereto).

Opposer is the owner of thirty-three (33) U.S. registrations for VIRGIN and VIRGIN-formative trademarks (James Decl. ¶ 3 & Ex. 2 attached thereto; Exhibits 1-33 attached hereto), ten (10) of which are incontestable, including the following registrations, which cover

goods and services relevant to this action (Exhibits 1-9; James Decl. ¶ 3 & Ex. 2 attached thereto):

Registration

<u>(* Incontestable Registration)</u>	<u>Mark</u>	<u>Goods/Services</u>
1,591,952*	VIRGIN (stylized)	Articles of outer clothing, namely, shirts, t-shirts, sweat shirts, jackets, hats, clothing caps, clothing belts.
1,597,386*	VIRGIN	Belts, articles of outer clothing, namely, shirts, t-shirts, sweat shirts, jackets, hats, clothing caps, clothing belts.
2,798,130	VIRGIN (stylized)	Leisurewear, namely, fleece tops and shirts; articles of outer clothing, namely t-shirts, sweat shirts, jackets, hats, clothing caps . . . retail store services in the fields of . . . luggage and leather goods, clothing
2,675,758	VIRGIN	Articles of luggage, namely, garment bags; trunks; bags, namely, beach bags, hunters' game bags, handbags; mesh shopping bags and leather or leather imitation shopping bags, sling bags for carrying infants; briefcases; purses; walking sticks . . . gloves.
2,586,162	VIRGIN	Articles of luggage, namely, suitcases; bags; namely, back packs, rucksacks, school bags, school satchels, traveling bags, sports bags, all purpose sports bags for campers and climbers, textile shopping bags; wallets; umbrellas and parasols.
1,851,817*	VIRGIN	. . . retail store services in the fields of . . . handbags, purses, luggage and leather goods, clothing
1,852,776*	VIRGIN (stylized)	. . . retail store services in the fields of . . . handbags, purses, luggage and leather goods; clothing
1,863,353*	VIRGIN MEGASTORE	Retail department store services.
2,625,455	VIRGIN	Providing an on-line shopping mall via a global computer network

Opposer's licensee, Virgin Entertainment Group, Inc. ("VEG"), operates a chain of nineteen (19) VIRGIN and VIRGIN MEGASTORE retail stores located throughout the United

States, including in Arizona, California, Colorado, Florida, Illinois, Louisiana, Massachusetts, New York, and Utah (Block Decl. ¶ 2 & Ex. 1 attached thereto). A description of VIRGIN MEGASTORE retail store locations and operations are featured at the web site associated with the Internet domain name www.virginmegamagazine.com, which is visited by approximately 30,000 to 50,000 Internet users each month (*id.*). VIRGIN retail stores sell and distribute a wide variety of VIRGIN-branded goods such as t-shirts, tank tops, sweatshirts, sweat pants, rain jackets, undergarments, hats, backpacks, tote bags, blankets, bathrobes, candles, clocks, playing cards, mugs, glasses, jewelry, CDs, personal electronic products, and mobile telephones and accessories therefore, which are delivered in VIRGIN-branded shopping bags and accompanied by sales receipts bearing the VIRGIN mark (Block Decl. ¶¶ 4-5 & Exs. 2-4 attached thereto; James Decl. ¶ 4). VEG also provides VIRGIN-branded retail store services via a web site associated with the domain name www.virginmega.com (Block Decl. ¶ 6 & Ex. 5 attached thereto).

Opposer's licensees, The Virgin Clothing Company ("VCC") and Unique Commerce Ltd., also provide VIRGIN-branded clothing in United States commerce (James Decl. ¶ 5). A description of VIRGIN WARE brand clothing offered in United States commerce appears at the web sites associated with the Internet domain names www.virgincosmetics.com/Victory/Public/index.asp and www.figleaves.com (James Decl. ¶ 5; Declaration of Carrie B. Kingsley dated April 18, 2005, hereinafter "Kingsley Decl." ¶¶ 2-3 & Exs. 1-2 attached thereto).

Opposer's licensee, Virgin Atlantic Airways Ltd. ("VAA"), operates a fleet of Boeing 747 and Airbus A340 aircraft providing daily departures to and from major United States cities including New York, Boston, Washington, D.C., Orlando, Miami, Las Vegas, Los Angeles,

and San Francisco (Rossi Decl. ¶¶ 2-4 & Exs. 1-2 attached thereto). A description of VAA activities in United States commerce appears at the web site associated with the Internet domain name www.virginatlantic.com (Rossi Decl. ¶ 2 & Ex. 1 attached thereto). In the 2003 fiscal year, approximately passengers flew on VIRGIN flights either originating or landing in U.S. cities (Rossi Decl. ¶ 6). VAA earned approximately \$ in revenue from its activities under the VIRGIN mark in the U.S. (Rossi Decl. ¶ 5). As of February 2004, approximately U.S. residents were enrolled in the VIRGIN frequent flyer club program (Rossi Decl. ¶ 7). The mark VIRGIN is predominantly displayed across the tail of each VAA airplane (Rossi Decl. ¶ 4 & Ex. 3 attached thereto). VAA is licensed to distribute a range of VIRGIN-branded merchandise including bags, t-shirts, sweat shirts, hats, cosmetics, vodka, toys, and writing instruments (James Decl. ¶ 8). Passengers on board VIRGIN airline flights receive diverse VIRGIN-branded items and may purchase, duty-free, diverse VIRGIN-branded merchandise including VIRGIN-branded clothing (Rossi Decl. ¶ 8 & Exs. 4-5 attached thereto).

Opposer's licensee, Virgin Mobile USA, LLC ("VMU"), provides VIRGIN-branded wireless telephone services and related goods and services in United States commerce (James Decl. ¶. 9) A description of VMU business activity in United States commerce appears at the web site associated with the Internet domain name www.virginmobileusa.com (Declaration of Robert Stohrer dated April 14, 2005, hereinafter "Stohrer Decl." ¶ 3 & Ex. 2 attached thereto). VIRGIN MOBILE services are currently provided to approximately subscribers throughout the United States (Stohrer Decl. ¶ 2). VIRGIN MOBILE wireless phone handsets and accessories are sold at thousands of retail locations in the United States, including at VIRGIN retail stores and Target, Best Buy, and Wal-Mart retail stores (Stohrer Decl. ¶ 4). Virgin Group companies operate Internet websites featuring information about the VIRGIN-branded businesses

and offering products and services of VEL licensees (James Decl. ¶ 2; Rossi Decl. ¶ 2; Block Decl. ¶¶ 2 & 6; Stohrer Decl. ¶ 3; Kingsley Decl. ¶¶ 2-7 & Exs. 1-6 attached thereto).

Opposer's licensee, Virgin Books Limited ("VBL"), provides VIRGIN-branded online bookselling services in United States commerce (James Decl. ¶ 6). A description of VBL's business activity in United States commerce appears at the Internet web site associated with the domain name www.virginbooks.com (*id.*; Kingsley Decl. ¶ 4 & Ex. 3 attached thereto).

Opposer's licensee, The Virgin Drinks Group Ltd. ("VDL"), provides a range of VIRGIN-branded soft drinks in United States commerce (James Decl. ¶ 7). A description of VDL's business activity in United States commerce appears at the Internet web site associated with the domain name www.virgincolas.com (*id.*; Kingsley Decl. ¶ 5 & Ex. 4 attached thereto).

Opposer's licensee, Virgin Audio Holdings LLC ("VAH"), provides VIRGIN-branded digital music services in United States commerce (James Decl. ¶ 10). A description of VAH's business activity in United States commerce appears at the Internet web sites associated with the domain names www.virgindigital.com and www.radiofreevirgin.com (*id.*; Kingsley Decl. ¶¶ 6-7 & Exs. 5-6 attached thereto).

B. The Strength and Fame of the VIRGIN Mark

By reason of more than thirty years of continuous and substantially exclusive use on a broad range of goods and services, as well as Virgin Group companies' expenditure of _____ of dollars in advertising and promotion, Opposer's VIRGIN mark has come to be recognized as a famous mark. Interbrand in 1997 identified VIRGIN as one of The World's Top 100 Brands, ranking it in a tie with CANON, and just below KLEENEX. (*The World's Greatest Brands: An International Review by Interbrand*, relevant excerpts of which are attached hereto as Exhibit 34). VIRGIN has similarly been the subject of various published books dealing with

famous and successful brands, and Sir Richard Branson has written forwards for books relating to branding (Declaration of Lori Levin-Hyams dated April 14, 2005, hereinafter "Levin-Hyams Decl." ¶¶ 3-4 & Exs. 2-7 attached thereto). A Google Internet search likewise returned a tremendous number of references to "Virgin" and its founder, Sir Richard Branson (Levin-Hyams ¶ 9 & Ex. 11 attached thereto).

VEL licensees expend _____ of dollars annually on advertising and marketing of VIRGIN-branded goods and services (Block Decl. ¶ 7; Rossi Decl. ¶ 9; Stohrer Decl. ¶ 5). VIRGIN-branded goods and services have been promoted through television advertisements broadcast on popular television networks including CBS, ABC, NBC, Fox, and MTV (Rossi Decl. ¶ 9 & Ex. 7 attached thereto; Stohrer Decl. ¶¶ 5 & 7 & Exs. 3-4, 6 attached thereto; Levin-Hyams Decl. ¶ 2 & Ex. 1 attached thereto). VIRGIN-branded goods and services have also been promoted through radio advertising in over thirty major markets (Block Decl. ¶ 7 & Exs. 6-7 attached thereto; Stohrer Decl. ¶¶ 5 & 8 & Exs. 3-4, 7 attached thereto), on various third-party websites, including MTV (Stohrer Decl. ¶ 9 & Exs. 3, 4, 8 attached thereto), and on outdoor billboards (Stohrer Decl. ¶ 11 & Ex. 11 attached thereto).

VIRGIN-branded goods and services are currently advertised in well-known magazines such as *Rolling Stone* and *Teen People* (Exhibits 35-36 attached hereto). VEL licensees also place advertisements in a number of daily and weekly periodicals throughout the country, including the *New York Times*, the *Los Angeles Times*, the *Dallas Observer*, and the *San Francisco Chronicle* (Block Decl. ¶ 7 & Exs. 6-7 attached thereto; Rossi Decl. ¶ 9 & Ex. 6 attached thereto; Stohrer Decl. ¶¶ 5-6 & Exs. 3-5 attached thereto). VEL licensees also promote VIRGIN goods and services by direct mailings to consumers (Rossi Decl. ¶ 9 & Ex. 6 attached thereto; Stohrer Decl. ¶ 5 & Exs. 3-4 attached thereto), and advertise VIRGIN goods and services

in brochures distributed by their retail partners including VIRGIN retail stores and Best Buy, Target, and Wal-Mart retail stores (Stohrer Decl. ¶ 10 & Exs. 9-10 attached thereto).

VEL licensees have also received national television coverage for highly publicized launches of products and services, including the opening of VIRGIN MEGASTORE retail stores, the launch of VIRGIN MOBILE services, and the offering of commercial flights to space under the mark VIRGIN GALACTIC (Levin-Hyams Decl. ¶¶ 5-7 & Exs. 8-9 attached thereto). The VIRGIN brand also received significant media attention in connection with the Fox reality television series, "The Rebel Billionaire: Branson's Quest for the Best," television advertisements for which were nationally broadcast during the 2004 Major League Baseball playoffs and World Series and National Football League games (Levin-Hyams Decl. ¶ 8 & Ex. 10 attached thereto).

VIRGIN MEGASTORE retail stores prominently feature the VIRGIN mark on the outside façade of the buildings in which they operate, and many are located in high-visibility areas of top United States markets, such as Times Square in New York City (Block Decl. ¶ 3). VIRGIN retail stores organize in-store events that include live performances by popular musical groups and book signings by famous personalities, which often receive widespread media attention (Block Decl. ¶ 9 & Ex. 9 attached thereto). In 2003, nearly 32,000,000 people visited the VIRGIN MEGASTORE retail stores in the United States, accounting for over \$ in sales (Block Decl. ¶ 10 & Ex. 10 attached thereto).

Opposer has undertaken, and continues to undertake, considerable efforts to police unauthorized and infringing uses of the VIRGIN mark by third parties (James. Decl. ¶¶ 11-12 & Exs. 3-4 attached thereto). Opposer has successfully opposed registration of VIRGIN and VIRGIN-formative marks by third parties in numerous cases before this Board involving such

diverse goods and services as clothing, textiles used in the manufacture of clothing, pre-recorded music, wigs, dairy products, cosmetics, soap, films, and shampoo (TTAB judgments attached hereto as Exhibit 37). Since November 1996, Opposer has been awarded at least thirty-three (33) favorable judgments in TTAB proceedings against marks incorporating the term VIRGIN (*id.*; James Decl. ¶ 12 & Ex. 4 attached thereto)

Between December 2, 1997 and April 13, 2005, thirty-four (34) federal U.S. litigations brought by Opposer to protect its VIRGIN mark were resolved through Court judgments favoring Opposer or through settlement agreements, and Opposer obtained injunctions against at least fifteen of these defendants (James Decl. ¶ 11 & Ex. 3 attached thereto). Among these actions are *Virgin Enters. Ltd. v. Nawab*, 335 F.3d 141, 67 U.S.P.Q.2d 1420 (2d Cir. 2003), in which the Court of Appeals for the Second Circuit held that VIRGIN was a “famous, arbitrary, and distinctive mark.” *Id.* at 146, 67 U.S.P.Q. 2d at 1424. Similarly, in *Virgin Enters. Ltd. v. Virgin Petroleum, Inc.*, No. CV 99-12826, 2000 U.S. Dist. LEXIS 8100 (C.D. Cal. Jan. 19, 2000) (attached hereto as Exhibit 38), Opposer was awarded a preliminary injunction against defendant’s infringing use of the mark VIRGIN in connection with a gasoline station.

C. Applicant’s Proposed VIRGIN GORDA Word Mark

Applicant filed the intent-to-use Application for the Opposed Mark on December 30, 2002. The record does not contain any evidence of Applicant’s use of the Opposed Mark. Because, however, the goods recited in the Application encompass goods that are identical to goods listed in registrations owned by Opposer, or previously distributed in United States commerce under VIRGIN and VIRGIN-formative marks owned by Opposer, the Application is deemed by law to target the same class of retail consumers who already have genuine VIRGIN bags, who wear genuine VIRGIN and VIRGIN WARE clothing, who shop at

VIRGINMEGA.COM and in genuine VIRGIN MEGASTORE retail stores, who play genuine VIRGIN CDs on genuine VIRGIN audio equipment, who travel on genuine VIRGIN ATLANTIC airline flights, who make and receive calls on genuine VIRGIN MOBILE phones, who listen to genuine VIRGIN DIGITAL music, who use genuine VIRGIN VIE cosmetics, who read genuine VIRGIN books, who serve genuine VIRGIN VODKA, VIRGIN COLA, and other VIRGIN-branded beverages, and who see countless references to Virgin Group companies and their founder, Sir Richard Branson, in news media.

II. ARGUMENT

Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), provides that a mark “shall be refused registration” if the mark “[c]onsists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake or to deceive”

Summary judgment is encouraged in opposition proceedings, and should be granted where there exist no genuine issues of material fact and the movant is entitled to judgment as a matter of law.

Sweats Fashion, Inc. v. Pannill Knitting Co., Inc., 833 F.2d 1560, 1562, 4 U.S.P.Q.2d 1793, 1795 (Fed. Cir. 1987).

Under Section 2(d) of the Trademark Act, the Board must weigh a number of factors to determine likelihood of confusion, several of which are relevant here:

- “the fame of the prior mark (sales, advertising, length of use)”;
- “[t]he similarity or dissimilarity and nature of the goods or services as described in an application or registration or in connection with which a prior mark is in use”;
- “[t]he similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation and commercial impression”;

- “[t]he similarity or dissimilarity of established, likely to continue trade channels”; and
- “[t] the extent to which applicant has a right to exclude others from use of its mark on its goods.”

In re E.I. DuPont DeNemours & Co., 476 F.2d 1357, 1361, 177 U.S.P.Q. 563, 567 (C.C.P.A. 1973). “A determination of likelihood of confusion is a legal conclusion based on underlying facts.” *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 945, 55 U.S.P.Q.2d 1842, 1843-44 (Fed. Cir. 2000).

The strength and fame of an Opposer’s mark “is a dominant factor in the likelihood of confusion analysis . . . independent of the consideration of the relatedness of goods.” *Recot, Inc. v. M.C. Becton*, 214 F.3d 1322, 1328, 54 U.S.P.Q.2d 1894, 1898 (Fed. Cir. 2000). Any doubt as to likelihood of confusion should be resolved against a junior user in favor of the senior user, here VEL. *See San Fernando Elec. Mfg. Co. v. JFD Elecs. Components Corp.*, 565 F.2d 683, 684, 196 U.S.P.Q. 1, 2 (C.C.P.A. 1977) (“It is too well settled as an axiom of trademark law to require citation of precedent that on the statutory issue [of likelihood of confusion under §2(d)] involved here doubts are to be resolved against the newcomer and in favor of the prior user”); *see also Lone Star Mfg. Co., Inc. v. Bill Beasley, Inc.*, 498 F.2d 906, 909, 182 U.S.P.Q. 368, 370 (C.C.P.A. 1974); *Bulova Watch Co. v. Waltham Watch Co.*, 408 F.2d 1062, 1064, 161 U.S.P.Q. 286, 287-88 (C.C.P.A. 1969). This rule applies “especially where the established mark is one which is famous.” *Nina Ricci, S.A.R.L. v. ETF Enters. Inc.*, 889 F.2d 1070, 1074, 12 U.S.P.Q.2d 1901, 1904 (Fed. Cir. 1989) (internal citation and quotation omitted).

Here, the undisputed record establishes a likelihood of confusion under the *DuPont* analysis: (1) Opposer’s previously used and registered VIRGIN and VIRGIN-formative marks are strong and famous; (2) the Opposed Mark is deceptively similar to Opposer’s

previously used and registered marks; (3) Opposer's registrations, all of which predate the Application for the Opposed Mark, encompass goods and services that are identical to Applicant's claimed goods; (4) the goods recited in the Application are presumed to travel in the same channels of trade and be sold to the same classes of consumers; and (5) Opposer has extensive rights to exclude others from use of its famous VIRGIN mark, and has vigorously and successfully asserted those rights. Accordingly, summary judgment in favor of Opposer is appropriate in this case, and Applicant's proposed mark should be refused registration.

A. Opposer's VIRGIN and VIRGIN-Formative Marks Are Famous, Arbitrary, and Distinctive

Opposer is the undisputed owner of ten (10) incontestable U.S. registrations for marks consisting solely or primarily of the word VIRGIN (James Decl. ¶ 3 & Ex. 2 attached thereto), several of which cover goods and services relevant to this action. *See* Section I.A, *supra*. These registrations constitute conclusive evidence of the validity of Opposer's family of VIRGIN marks, and of Opposer's exclusive right to use the VIRGIN family of marks in connection with the goods and services covered by those registrations. *See* 15 U.S.C. § 1115(b). The strength of Opposer's rights is further enhanced by its ownership of an additional twenty-three (23) U.S. registrations of the VIRGIN and VIRGIN-formative marks for a wide variety of goods and services (James Decl. ¶ 3 & Ex. 2 attached thereto), including goods *identical* to those identified in the Application. *See* Section I.A, *supra*. "[R]egistered trademarks are presumed to be distinctive and should be afforded the utmost protection." *Lois Sportswear U.S.A., Inc. v. Levi Strauss & Co.*, 799 F.2d 867, 871, 230 U.S.P.Q. 831, 834 (2d Cir. 1986).

In *Virgin Enters. Ltd. v. Nawab*, the Second Circuit held that Opposer's VIRGIN mark is a "famous, arbitrary, and distinctive mark." *Nawab*, 335 F.3d at 146, 67 U.S.P.Q.2d at

1424. Similarly, in *Virgin Enters. Ltd. v. Virgin Petroleum, Inc.*, the Court held that “the VIRGIN mark is arbitrary, strong, and entitled to broad protection” and “has been recognized as a famous brand.” *Virgin Petroleum*, 2000 U.S. Dist. LEXIS 8100, at *8, 39 (Exhibit 38). Again, in *Virgin Enters. Ltd. v. DeFeis*, Opp. No. 108,967 (Oct. 26, 2000), this Board held that “Opposer’s VIRGIN mark is a strong mark which is entitled to a relatively broad latitude of protection” and is “an arbitrary term as applied to opposer’s goods and services.” *DeFeis*, at 13-14 (Exhibit 37). The VIRGIN mark is similarly arbitrary and fanciful in relation to clothing, bags, and retail services.

Fame is measured by volume of sales, advertising, and length of use. *See Giant Food, Inc. v. Nation’s Foodservice, Inc.*, 710 F.2d 1565, 1569, 218 U.S.P.Q. 390, 394 (Fed. Cir. 1983). As the undisputed facts demonstrate, Virgin Group companies have spent _____ of dollars over the past thirty years advertising VIRGIN-branded goods and services in the United States, with _____ of dollars in sales (Block Decl. ¶¶ 7-10 & Exs. 6-10 attached thereto; Rossi Decl. ¶¶ 5 & 9; Stohrer Decl. ¶ 5 & Exs. 3-4). In fiscal year 2003 alone, VAA earned approximately \$_____ in revenue and annually spends an average of \$_____ on marketing its VIRGIN- and VIRGIN ATLANTIC-branded activities. Moreover, VEG earned approximately \$_____ in sales, and spent \$_____ to market its VIRGIN services (Rossi Decl. ¶¶ 5 & 9; Block Decl. ¶ 10 & Ex. 10 attached thereto).

That VIRGIN is also Opposer’s corporate name further bolsters the strength of the VIRGIN mark. *See Sweetarts v. Sunline, Inc.*, 380 F.2d 923, 927, 154 U.S.P.Q. 459, 462 (8th Cir. 1967). The name VIRGIN is also incorporated as the dominant part of trading names for the Virgin Group’s numerous companies and licensees, and the Virgin Group has created a family of marks for these companies that consists of or incorporates its famous VIRGIN mark, including,

but not limited to, VIRGIN ATLANTIC, VIRGIN BOOKS, VIRGIN DIGITAL, VIRGIN DRINKS, VIRGIN GALACTIC, VIRGIN LIMOUSINES, VIRGIN MEGASTORE, VIRGIN MOBILE, VIRGIN RECORDS, VIRGIN VACATIONS, VIRGIN VIE, VIRGIN VODKA, and VIRGIN WARE (James Decl. ¶ 2 & Ex. 1 attached thereto).

In addition to being the dominant part of numerous Virgin Group company names, the VIRGIN mark appears on virtually every product and in connection with virtually every service the Virgin Group companies sell, offer, promote, and distribute. (James Decl. ¶¶ 2 & 4 & Ex. 1 attached thereto). The record shows that the VIRGIN mark is not merely used on a single product line, but on a vast variety of product lines and in connection with the promotion of numerous services (James Decl. ¶¶ 4-10) (Opposer's licensees offer VIRGIN-branded goods and services, including, but not limited to, t-shirts, bags, CDs, personal electronic products, mobile telephones and accessories, candles, clocks, playing cards, jewelry, lingerie, online bookselling services, books, soft drinks, air travel and related services, wireless telecommunications services, and digital music services); *see also Virgin Petroleum*, 2000 U.S. Dist. LEXIS 8100, at *28-29 (Exhibit 38) (holding "wide diversity of business that operate under the VIRGIN mark" made confusion more likely; preliminary injunction granted).

"[F]ame of the mark is a dominant factor in the likelihood of confusion analysis for a famous mark, independent of the consideration of the relatedness of goods." *Recot*, 214 F.3d at 1328, 54 U.S.P.Q.2d at 1898. Furthermore, famous marks such as VIRGIN "cas[t] a long shadow which competitors must avoid." *Id.* *See Specialty Brands, Inc. v. Coffee Bean Distribs., Inc.*, 748 F.2d 669, 675, 223 U.S.P.Q. 1281 (Fed. Cir. 1984) (citation omitted); *see also Kenner Parker Toys, Inc. v. Rose Art Indus., Inc.*, 963 F.2d 350, 352, 22 U.S.P.Q.2d 1453, 1456 (Fed.

Cir. 1992). As described in the following sections, Applicant has clearly failed to do so in this case.

B. As a Purported Designation for the Goods Listed in the Application, VIRGIN GORDA Is Deceptively Similar to Opposer's VIRGIN and VIRGIN-Formative Marks

Opposer's previously used or registered marks include numerous two-word VIRGIN-formative marks including VIRGIN ATLANTIC, VIRGIN DIGITAL, VIRGIN MEGASTORE, VIRGIN MOBILE, VIRGIN RECORDS, VIRGIN VIE, VIRGIN VODKA, and VIRGIN WARE (James Decl. ¶ 2 & Ex. 1 attached thereto). The Opposed Mark is a two-word mark that comprises (a) an identical copy of Opposer's highly distinctive and famous VIRGIN mark, combined with (b) a non-distinctive word, GORDA, which in the English language has meaning only as a surname (Kingsley Decl. ¶¶ 8-9 Exs. 7-8 attached thereto). As a purported designation for the goods listed in the application, VIRGIN GORDA is deceptively similar to Opposer's VIRGIN and VIRGIN-formative marks. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 947, 55 U.S.P.Q.2d 1842, 1845 (Fed. Cir. 2000) (finding "consequent similarities in appearance and pronunciation" between LASER and LASERSWING because both marks began with the same word) (citation omitted); *Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 876, 23 U.S.P.Q.2d 1698, 1700 (Fed. Cir. 1992) (finding likelihood of confusion between CENTURY 21 and CENTURY LIFE OF AMERICA where, "upon encountering each mark, consumers must first notice [the] identical lead word").

Ceccato v. Manifattura Lane Gaetano Marzotto & Figili S.p.A., 32 U.S.P.Q.2d 1192 (TTAB 1994), is analogous. In that case, the Board sustained opposition to the mark DUCA D'AREZZO by the owner of the mark DUCA D'AOSTA, where both marks were used on identical goods, namely, men's clothing. *See Ceccato*, 32 U.S.P.Q.2d at 1197. The Board

reasoned, "even if consumers were to note the specific differences in the marks, they are still likely to believe that both marks identify goods emanating from a single source." *Id.* The same reasoning is applicable here.

In this case, the Applicant has taken Opposer's arbitrary VIRGIN mark and combined it with a non-distinctive surname, "GORDA." The Opposed Mark thus falsely suggests a connection, association, or joint venture between Opposer and some person or company named "GORDA," as often happens when firms combine (e.g., TIME WARNER; REED ELSEVIER; EXXON MOBIL; DAIMLER CHRYSLER).

In *In re West Point-Pepperell, Inc.*, the Court of Customs and Patent Appeals affirmed the refusal of registration of WEST POINT PEPPERELL & Design for textile products due to a likelihood of confusion with opposer's WEST POINT mark for woolens, because even the presence of a distinct design element in the opposed mark would not preclude purchasers from assuming that "'West Point' woolens and 'West Point Pepperell' textiles and textile products have a common origin, or at least that two companies had merged." *In re West Point-Pepperell*, 468 F.2d 200, 201, 175 U.S.P.Q. 558, 559 (C.C.P.A. 1972). "The issue under § 2(d) is not whether people will confuse the marks but whether the marks will confuse people." *Id.* This case presents the same or greater likelihood that people will confuse the origin of goods offered under the Opposed Mark, VIRGIN GORDA, with the origin of goods offered under Opposer's previously used and registered VIRGIN mark. See *Wella Corp. v. Cal. Concep. Corp.*, 558 F.2d. 1019, 1022, 194 U.S.P.Q. 419, 422 (C.C.P.A. 1977) (finding CALIFORNIA CONCEPT confusingly similar to CONCEPT because "when one incorporates the entire arbitrary mark of another into a composite mark, inclusion in the composite mark of a significant, nonsuggestive element will not necessarily preclude a likelihood of confusion."); *Coca-Cola*

Bottling Co. of Memphis, Tenn., Inc. v. Joseph E. Seagram & Sons, Inc., 526 F.2d 556, 188 U.S.P.Q. 105 (C.C.P.A. 1975) (likelihood of confusion found between applicant's BENGAL LANCER & Design mark for nonalcoholic club soda, quinine water, and ginger ale and opposer's BENGAL mark for gin where the opposed mark incorporated opposer's "entire arbitrary registered mark" and the marks as a whole were found to be confusingly similar).

Even if the Opposed Mark did not fully incorporate Opposer's VIRGIN mark, "when marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines." *Century 21 Real Estate Corp.*, 970 F.2d at 877, 23 U.S.P.Q.2d at 1700. As discussed in Section II.C below, Opposer's registrations cover identical goods to those claimed in the Application, thus lessening the degree of similarity necessary to support a conclusion of likely confusion.

C. Opposer's Registrations Cover Identical Goods to Those Claimed in the Application

The goods specified in the Application are "bags, namely, all-purpose athletic bags, beach bags, carry-on bags, leather shopping bags, overnight bags, shoulder bags, tote bags and cosmetic bags sold empty; purses, coin purses, pocket wallets, traveling bags, trunks, make-up bags sold empty, empty vanity cases, briefcases, umbrellas and handbags" and "coats, skirts, trousers, jackets, overcoats, sweaters and pullovers, bomber jackets, hats, scarves, headscarves, stockings, gloves, belts, shoes, boots, sandals, clogs, slippers; waterproof clothing, namely shirts, rain coats and rain jackets."

The Application thus recites goods that are *identical* to goods encompassed by registrations owned by Opposer and distributed in United States commerce under VIRGIN and VIRGIN-formative marks owned by Opposer (Block Decl. ¶ 4 & Ex. 2 attached thereto; James

Decl. ¶ 4). Opposer's United States registrations of VIRGIN include U.S. Registration No. 1,591,952 for VIRGIN (stylized) for, *inter alia*, "articles of outer clothing, namely, shirts, t-shirts, sweat shirts, jackets, hats, clothing caps, clothing belts" (Exhibit 1); U.S. Registration No. 1,597,386, for VIRGIN for, *inter alia*, "belts, articles of outer clothing, namely, shirts, t-shirts, sweat shirts, jackets, hats, clothing caps, clothing belts" (Exhibit 2); U.S. Reg. No. 2,798,130 for VIRGIN (stylized) for, *inter alia*, "retail store services in the fields of . . . luggage and leather goods, clothing, . . ." and "leisurewear, namely, fleece tops and shirts; articles of outer clothing, namely t-shirts, sweat shirts, jackets, hats, clothing caps" and "luggage" (Exhibit 3); U.S. Reg. No. 2,675,758 for VIRGIN for "articles of luggage, namely garment bags; trunks, namely beach bags, hunters' game bags, handbags; mesh shopping bags and leather or leather imitation shopping bags; sling bags for carrying infants; briefcases; purses; walking sticks" and "gloves" (Exhibit 4); U.S. Reg. No. 2,586,162 for "articles of luggage, namely suitcases; bags, namely backpacks, rucksacks, school bags, school satchels, traveling bags, sports bags, all purpose sports bags for campers and climbers, textile shopping bags; wallets; umbrellas and parasols" (Exhibit 5); U.S. Registration No. 1,851,817 for VIRGIN for, *inter alia*, "retail store services" (Exhibit 6); U.S. Registration No. 1,852,776 for VIRGIN (stylized) for, *inter alia*, "retail store services" (Exhibit 7); and U.S. Registration No. 1,863,353 for VIRGIN MEGASTORE for "retail department store services" (Exhibit 8).

"The closer the secondary user's goods are to those the consumer has seen marketed under the prior user's brand, the more likely that the consumer will mistakenly assume a common source." *Nawab*, 335 F.3d at 150, 67 U.S.P.Q.2d at 1427. Moreover, goods and retail store services in the field of such goods are related for the purpose of likelihood of confusion. See 4 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 24:25 ("The

fact that one of the conflicting marks is used and/or registered for sales services and the other for goods does not per se prevent a likelihood of confusion. Where the services consist of retail sales services, likelihood of confusion is found when another mark is used on goods which are commonly sold through such a retail outlet.”).

D. Applicant Seeks Unrestricted Registration of VIRGIN GORDA

Applicant seeks registration of the proposed word mark VIRGIN GORDA, without stylization or a design element, for bags and clothing to be sold in unrestricted channels of trade. *See* Application. Because the Application encompasses goods that are identical to goods recited in registrations of VIRGIN and VIRGIN-formative marks owned by Opposer, the parties’ goods must be deemed to travel in the same channels of trade and to be sold to the same class of consumers. *See Ceccato*, 32 U.S.P.Q.2d at 1197 (citing *Interco Inc. v. Acme Boot Co., Inc.*, 181 U.S.P.Q. 664 (T.T.A.B. 1974)); *c.f. In re Elbaum*, 211 U.S.P.Q. 639, 640 (T.T.A.B. 1981) (“If these purchasers were to encounter the products under the same or similar marks, it would not be unreasonable for them to assume, mistakenly, that they originate from the same source.”).

The United States Court of Appeals for the Federal Circuit has made clear that “[t]he issue in an opposition is the right of an applicant to register the mark depicted in the application for the goods identified therein.” *Octocom Sys., Inc. v. Houston Computer Servs.*, 918 F.2d 937, 942, 16 U.S.P.Q.2d 1783, 1787 (Fed. Cir. 1990). The registrability of an applicant’s mark, therefore

must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which sale of the goods are directed.

Id (emphasis added). Therefore, Applicant may not, in response to this motion, submit evidence of any restrictions of trade channels. This factor, when considered in light of all the other factors, supports a finding of likelihood of confusion.

E. Opposer Has Extensive Rights to Exclude Others from Use of Its Famous VIRGIN Mark, and Has Successfully Asserted Those Rights

As a famous and arbitrary mark covered by numerous United States trademark registrations, including several incontestable registrations, Opposer's VIRGIN family of marks is entitled to a broad scope of protection. *See* 15 U.S.C. 1115. Opposer has undertaken, and continues to undertake, considerable efforts to police the unauthorized and infringing use of VIRGIN and VIRGIN-formative marks by third parties. This Board and many courts have enforced VIRGIN and VIRGIN-formative marks against a wide variety of goods and services, including clothing, cosmetics, chocolates, wigs, petroleum, telecommunications networks and services, and film and television production and direction (James Decl. ¶¶ 11-12 & Exs. 3-4 attached thereto).

Since November 1996, Opposer has been awarded at least thirty-three (33) favorable judgments in Board proceedings against marks incorporating the term VIRGIN (Exhibit 37). As the record illustrates, Opposer has expended considerable efforts and resources to safeguard its VIRGIN mark from infringement. Numerous courts have acknowledged the strength of Opposer's VIRGIN mark and its extensive rights therein. *See* Sections I.B. & II. A., *supra*, Opposer respectfully submits that, consistent with these previous decisions, the Board should recognize that Applicant's registration and use of VIRGIN GORDA would infringe Opposer's extensive rights in its famous VIRGIN mark, and refuse to register that mark.

CONCLUSION

The Opposed Mark, VIRGIN GORDA, so resembles VEL's previously used and registered VIRGIN and VIRGIN-formative marks "as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1052(d). Summary judgment should thus be granted in favor of Opposer, and registration of the Opposed Mark to Applicant should be refused.

Dated: New York, New York
April 18, 2005

Respectfully submitted,

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Attorneys for Opposer
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467168

EXHIBIT 1



1216211

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 30, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 1,591,952 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 10 YEARS FROM *April 17, 1990*

1st RENEWAL FOR A TERM OF 10 YEARS FROM *April 17, 2000*

SECTION 8 & 15

LESS GOODS

SAID RECORDS SHOW TITLE TO BE IN:

Registrant

By Authority of the

COMMISSIONER OF PATENTS AND TRADEMARKS



P. R. GRANT

Certifying Officer

Int. Cls.: 16 and 25

Prior U.S. Cls.: 11, 22, 37, 38 and 39

Reg. No. 1,591,952

United States Patent and Trademark Office Registered Apr. 17, 1990

**TRADEMARK
PRINCIPAL REGISTER**

The logo consists of the word "Virgin" written in a stylized, cursive script. A single, continuous diagonal line starts from the top of the 'V', passes through the middle of the word, and ends at the bottom of the 'n', effectively striking through the text.

VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM COMPANY)
120 CAMPDEN HILL ROAD
LONDON, ENGLAND

FOR: PRINTED SHEET MUSIC; HOLO-
GRAPHS; MOUNTED PHOTOGRAPHS; POST-
ERS, FICTIONAL AND NON-FICTIONAL
BOOKS, GEOGRAPHY AND HISTORY BOOKS,
TEACHING BOOKS, DRAWING BOOKS,
PRINTING BOOKS, WRITING BOOKS;
SCHOOL TEXT BOOKS, PAINTING BOOKS;
NOTE BOOKS, REFERENCE BOOKS, GAR-
DENING BOOKS, MAINTENANCE BOOKS,
LANGUAGE BOOKS, ADDRESS BOOKS,
TELEPHONE BOOKS, COOK BOOKS, BIOGRA-
PHY AND AUTOBIOGRAPHY BOOKS, COMIC

BOOKS, PERIODICALS, NAMELY, PAM-
PHLETS, BROCHURES, NEWSLETTERS, JOUR-
NALS, PAPERBACK BOOKS AND MAGA-
ZINES, ALL DEALING WITH MUSIC, FILMS
AND ENTERTAINMENT; DIARIES, PERSON-
AL ORGANIZERS, BOXES OF CARDBOARD,
PAPER FACE TOWELS, FILTER PAPER,
PAPER POCKET HANDKERCHIEFS, HY-
GENIC PAPER, PAPER BABIES' DIAPERS,
BOXES OF PAPER, PAPER FOR PACKAGING,
PAPER CASES, WRITING INSTRUMENTS,
NAMELY, PENS, PENCILS, BALL POINT
PENS, FOUNTAIN PENS, FELT TIP PENS,
AND CRAYONS; STATIONERY AND OFFICE
SUPPLIES, NAMELY, WRITING AND NOTE
PAPER, ENVELOPES, GREETING CARDS,
POSTCARDS; WRITING INK, UNGRADUATED

RULERS, ERASERS, BLANK BOOKS, LEDGERS, CARDS, INDEX CARDS, ADHESIVE GLUES AND ADHESIVE TAPES FOR STATIONERY AND HOUSEHOLD PURPOSES, ADHESIVE TAPE DISPENSERS, LOOSE-LEAF BINDERS, BLOTTERS, BLOTTING PAPER, DESK ORGANIZER BOXES OR CONTAINERS FOR PENS, PENCILS AND PAPER CLIPS, CALENDARS, CARBON PAPER, CHARTS, DIAGRAMS, DOCUMENT FILES, DRAWING RADS, DRAWING PINS, ELASTIC BANDS FOR OFFICES, STATIONERY FOLDERS, GUMMED LABELS, PAPER KNIVES, PAPER WEIGHTS, PENCIL HOLDERS, PENCIL SHARPENERS, PENCIL SHARPENING MACHINES, ADDRESS STAMPS, POSTCARDS, SEALING WAX, SEALING WAXERS, SEALING STAMPS, SEALS, SIGNS OF PAPER OR CARDBOARD, STAPLES, STAPLING PRESSERS, STENCIL CASES, STENCIL PLATES, STENCILS, TAGS FOR INDEX CARDS, TRAYS FOR SORTING AND COUNTING, PAPER TABLEWARE, NAMELY, TABLE MATS, COASTERS, BECANTER MATS, DISH MATS, TABLE NAPKINS, AND TABLE CLOTHS, PLAYING CARDS, IN CLASS 16 (U.S. CLS. 11, 22, 37 AND 38).

FOR: ARTICLES OF UNDERCLOTHING, NAMELY, VESTS, UNDERPANTS, PANTS, BRASSIERES, CORSETS, CORSELETTES, PET-

TICOATS, CAMISOLES, KNICKERS, TEDDIES, FRENCH KNICKERS, TIGHTS, STOCKINGS, PANTY-HOSE, GARTERS, SUSPENSERS, BELTS, SLIPS, SOCKS, BODICES, BASQUES, ARTICLES OF OUTER CLOTHING, NAMELY, SUITS, DRESSES, SKIRTS, SHIRTS, T-SHIRTS, SWEAT SHIRTS, BLOUSES, TROUSERS, OVERALLS, LEATHER TROUSERS, JEANS, SLACKS, JACKETS, RAINCOATS, WAIST COATS, COATS, SWEATERS, CARDIGANS, PULLOVERS, SOCKS, LEG WARMERS, LEGGINGS, DRESSING GOWNS, BATHROBES, JUMPERS, TIES, NECKWEAR, HATS, CLOTHING CAPS, GLOVES, MITTENS, SCARVES, APRONS, CLOTHING BELTS, SLEEPWEAR, FOOTWEAR, ARTICLES OF SPORTS CLOTHING, NAMELY, SHORTS, TRACK SUITS, SWIMWEAR, SWIMMING TRUNKS, WET SUITS, RAINWEAR, LEOTARDS, IN CLASS 25 (U.S. CLS. 22 AND 39).

OWNER OF UNITED KINGDOM REG. NO. 1259732, DATED 2-6-1986, EXPIRES 2-6-1993.

OWNER OF UNITED KINGDOM REG. NO. 1259731, DATED 2-6-1986, EXPIRES 2-6-1993.

SER. NO. 73-717,555, FILED 3-18-1988.

AMOS T. MATTHEWS, JR., EXAMINING ATTORNEY

EXHIBIT 2

1216204



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME;
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 30, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 1,597,386 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 10 YEARS FROM *May 22, 1990*
1st RENEWAL FOR A TERM OF 10 YEARS FROM *May 22, 2000*
SECTION 8 & 15

LESS GOODS

CLASS(ES) CANCELLED:

INT. CLASS 016

INT. CLASS 025

SAID RECORDS SHOW TITLE TO BE IN:

Registrant

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



W. Montgomery
W. MONTGOMERY
Certifying Officer

Int. Cls.: 16 and 25

Prior U.S. Cls.: 11, 22, 37, 38 and 39

United States Patent and Trademark Office

Reg. No. 1,597,386

Registered May 22, 1990

**TRADEMARK
PRINCIPAL REGISTER**

VIRGIN

**VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM COMPANY)
120 CAMPDEN HILL ROAD
LONDON, ENGLAND W8 7AR**

FOR: PRINTED SHEET MUSIC; HOLOGRAPHs; MOUNTED PHOTOGRAPHS; POSTERS, FICTIONAL AND NON-FICTIONAL BOOKS, GEOGRAPHY AND HISTORY BOOKS, TEACHING BOOKS, DRAWING BOOKS, PRINTING BOOKS, WRITING BOOKS, SCHOOL TEXT BOOKS, PAINTING BOOKS, NOTE BOOKS, REFERENCE BOOKS, GARDENING BOOKS, MAINTENANCE BOOKS, LANGUAGE BOOKS, ADDRESS BOOKS, TELEPHONE BOOKS, COOK BOOKS, BIOGRAPHY AND AUTOBIOGRAPHY BOOKS, COMIC BOOKS, PERIODICALS, NAMELY, PAMPHLETS, BROCHURES, NEWSLETTERS, JOURNALS, PAPERBACK BOOKS AND MAGAZINES, ALL DEALING WITH MUSIC, FILMS AND ENTERTAINMENT; DIARIES, PERSONAL ORGANIZERS, BOXES OF CARDBOARD, PAPER FACE TOWELS, FILTER PAPER, PAPER POCKET HANDKERCHIEFS, HYGIENIC PAPER, PAPER BABIES' DIAPERS, BOXES OF PAPER, PAPER FOR PACKAGING, PAPER CASES; STATIONERY AND OFFICE SUPPLIES, NAMELY, WRITING AND NOTE PAPER, ENVELOPES, GREETING CARDS, POSTCARDS, WRITING INK, BLANK BOOKS, LEDGERS, CARDS, INDEX CARDS, ADHESIVE GLUES AND ADHESIVE TAPES FOR STATIONERY AND HOUSEHOLD PURPOSES, BLOTTERS, BLOTTING PAPER, CALENDARS, CARBON PAPER, CHARTS, DIAGRAMS, DOCUMENTS FILES, DRAWING PADS, STATIONERY FOLDERS, GUMMED LABELS, POSTCARDS, SIGNS OF PAPER OR CARDBOARD,

TAGS FOR INDEX CARDS, PAPER TABLEWARE, NAMELY, TABLE MATS, COASTERS, DECANter MATS, DISH MATS, TABLE NAPKINS, AND TABLE CLOTHS, PLAYING CARDS, IN CLASS 16 (U.S. CLS. 11, 22, 37 AND 38).

FOR: ARTICLES OF UNDERCLOTHING, NAMELY, VESTS, UNDERPANTS, PANTS, BRASSIERES, CORSETS, CORSELETTES, PETTICOATS, CAMISOLES, KNICKERS, TEDDIES, FRENCH KNICKERS, TIGHTS, STOCKINGS, PANTY HOSE, GARTERS, SUSPENDERS, BELTS, SLIPS, SOCKS, BODICES, BASQUES, ARTICLES OF OUTER CLOTHING, NAMELY, SUITS, DRESSES, SKIRTS, SHIRTS, T-SHIRTS, SWEAT SHIRTS, BLOUSES, TROUSERS, OVERALLS, LEATHER TROUSERS, JEANS, SLACKS, JACKETS, RAINCOATS, WAIST COATS, COATS, SWEATERS, CARDIGANS, PULLOVERS, SOCKS, LEG WARMERS, LEGGINGS, DRESSING GOWNS, BATHROBES, JUMPERS, TIES, NECKWEAR, HATS, CLOTHING CAPS, GLOVES, MITTENS, SCARVES, APRONS, CLOTHING BELTS; SLEEPWEAR; FOOTWEAR; ARTICLES OF SPORTS CLOTHING, NAMELY, SHORTS, TRACK SUITS, SWIMWEAR, SWIMMING TRUNKS, WET SUITS, RAINWEAR, LEOTARDS, IN CLASS 25 (U.S. CLS. 22 AND 39).

OWNER OF UNITED KINGDOM REG. NO. 1120877, DATED 9-18-1979, EXPIRES 9-18-2000.

OWNER OF UNITED KINGDOM REG. NO. 1120876, DATED 9-18-1979, EXPIRES 9-18-2000.

SER. NO. 73-717,554, FILED 3-18-1988.

AMOS T. MATTHEWS, JR., EXAMINING ATTORNEY

EXHIBIT 3



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

**UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office**

August 26, 2004

**THE ATTACHED U.S. TRADEMARK REGISTRATION 2,798,130 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.**

**REGISTERED FOR A TERM OF 10 YEARS FROM *December 23, 2003*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant***

**By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS**



E. Bornett
E. BORNETT
Certifying Officer

Int. Cls.: 16, 18, 25, 28, 35, 38, and 42

**Prior U.S. Cls.: 1, 2, 3, 5, 22, 23, 29, 37, 38, 39, 41, 50,
100, 101, 102, and 104**

United States Patent and Trademark Office

Reg. No. 2,798,130

Registered Dec. 23, 2003

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

A stylized, handwritten-style logo of the word "Virgin" in a cursive script. The letters are connected, with a long, sweeping underline that extends from the bottom of the 'n' and curves back up towards the 'V'.

VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM COMPANY)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, ENGLAND

FOR: PLAYING CARDS, WRITING INSTRUMENTS, NAMELY, PENS, PENCILS AND BALL POINT PENS, IN CLASS 16 (U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).

FIRST USE 1-0-2003; IN COMMERCE 1-0-2003.

FOR: LUGGAGE, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 0-0-1990; IN COMMERCE 0-0-1990.

FOR: LEISUREWEAR, NAMELY, FLEECE TOPS AND SHIRTS; ARTICLES OF OUTER CLOTHING, NAMELY T-SHIRTS, SWEAT SHIRTS, JACKETS, HATS, CLOTHING CAPS, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 0-0-1997; IN COMMERCE 0-0-1997.

FOR: SPORTING ARTICLES, NAMELY, GOLF TEES, IN CLASS 28 (U.S. CLS. 22, 23, 38 AND 50).

FIRST USE 1-0-2003; IN COMMERCE 1-0-2003.

FOR: PREPARING ADVERTISING, PROMOTIONS, AND PUBLIC RELATIONS MATERIALS

FOR OTHERS; DEMONSTRATION OF THE GOODS OF OTHERS AND THE PROMOTION THEREOF; AND DISTRIBUTION AND DISSEMINATION OF ADVERTISING, PROMOTIONAL MATERIALS AND SAMPLE MATERIALS OF OTHERS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 1-0-2003; IN COMMERCE 1-0-2003.

FOR: ELECTRONIC TRANSMISSION AND DISPLAY OF INFORMATION FOR BUSINESS OR DOMESTIC PURPOSES FROM A COMPUTER STORED DATA BANK, IN CLASS 38 (U.S. CLS. 100, 101 AND 104).

FIRST USE 11-11-1999; IN COMMERCE 7-24-2002.

FOR: RETAIL STORE SERVICES IN THE FIELDS OF RECORDS, AUDIO AND VIDEO TAPES, COMPUTERS AND ELECTRONIC APPARATUS AND WATCHES, BOOKS, LUGGAGE AND LEATHER GOODS, CLOTHING, GAMES, VIDEO GAME CARTRIDGES, AND CAFES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 0-0-1992; IN COMMERCE 0-0-1992.

OWNER OF U.S. REG. NOS. 1,039,574, 1,863,353, AND OTHERS.

THE DRAWING OF THE TRADEMARK IS LINED FOR THE COLOR RED.

SN 75-983,348, FILED 10-3-1994.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 4

1216115



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 27, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,675,758 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *January 21, 2003*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



P. SWAIN
Certifying Officer

Int. Cls.: 18 and 25

Prior U.S. Cls.: 1, 2, 3, 22, 39 and 41

United States Patent and Trademark Office

Reg. No. 2,675,758

Registered Jan. 21, 2003

**TRADEMARK
PRINCIPAL REGISTER**

VIRGIN

**VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON, W8 7AR, ENGLAND**

**FOR: ARTICLES OF LUGGAGE, NAMELY, GAR-
MENT BAGS; TRUNKS; BAGS, NAMELY, BEACH
BAGS, HUNTERS' GAME BAGS, HANDBAGS;
MESH SHOPPING BAGS AND LEATHER OR LEA-
THER IMITATION SHOPPING BAGS, SLING BAGS
FOR CARRYING INFANTS; BRIEFCASES; PURSES;
WALKING STICKS, IN CLASS 18 (U.S. CLS. 1, 2, 3, 22
AND 41).**

FOR: GLOVES, IN CLASS 25 (U.S. CLS. 22 AND 39).

**OWNER OF UNITED KINGDOM REG. NO.
1230089, DATED 9-2-1988, EXPIRES 11-13-2005.**

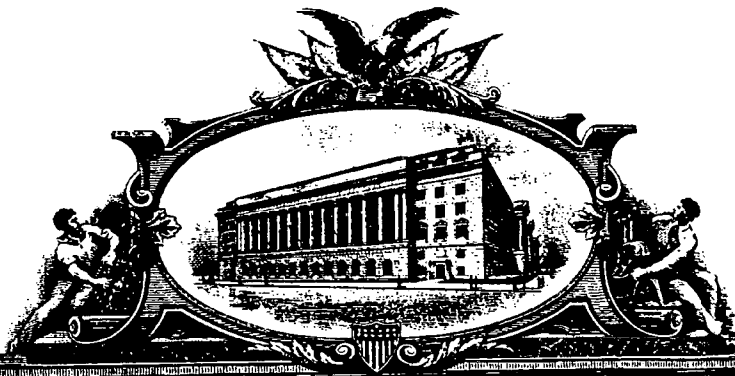
**OWNER OF UNITED KINGDOM REG. NO.
1120877, DATED 9-18-1979, EXPIRES 9-18-2010.**

SER. NO. 75-367,401, FILED 10-3-1997.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 5

1215862



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 25, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,586,162 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *June 25, 2002*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



T. Wallace
T. WALLACE
Certifying Officer

Int. Cl.: 18

Prior U.S. Cls.: 1, 2, 3, 22, and 41

United States Patent and Trademark Office

Reg. No. 2,586,162

Registered June 25, 2002

**TRADEMARK
PRINCIPAL REGISTER**

VIRGIN

**VIRGIN ENTERPRISES LIMITED (ENGLAND
CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, ENGLAND**

**FOR: ARTICLES OF LUGGAGE, NAMELY, SUIT-
CASES; BAGS; NAMELY, BACK PACKS, RUCK-
SACKS, SCHOOL BAGS, SCHOOL SATCHELS,
TRAVELLING BAGS, SPORTS BAGS, ALL PUR-
POSE SPORTS BAGS FOR CAMPERS AND CLIM-**

**BERS, TEXTILE SHOPPING BAGS; WALLETS;
UMBRELLAS AND PARASOLS, IN CLASS 18 (U.S.
CLS. 1, 2, 3, 22 AND 41).**

FIRST USE 0-0-1990; IN COMMERCE 0-0-1990.

SN 75-982,199, FILED 10-3-1997.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 6

1216140



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 27, 2004

**THE ATTACHED U.S. TRADEMARK REGISTRATION 1,851,817 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.**

REGISTERED FOR A TERM OF 10 YEARS FROM August 30, 1994

SECTION 8 & 15

AMENDMENT/CORRECTION/NEW CERT(SECT) ISSUED

LESS GOODS

SAID RECORDS SHOW TITLE TO BE IN:

Registrant

**By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS**



**P. SWAIN
Certifying Officer**

Int. Cls.: 35, 39 and 42

Prior U.S. Cls.: 100, 101, 102 and 105

United States Patent and Trademark Office

Corrected

Reg. No. 1,851,817

Registered Aug. 30, 1994

OG Date Dec. 5, 2000

**SERVICE MARK
PRINCIPAL REGISTER**

VIRGIN

VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120, CAMPDEN HILL ROAD
LONDON, W8 7AR, ENGLAND

OWNER OF U.S. REG. NOS. 1,469,618,
1,597,386 AND OTHERS.

FOR: DIRECT MAIL ADVERTISING FOR
OTHERS; DISSEMINATION OF ADVER-
TISING MATERIALS FOR OTHER; PRE-
PARING ADVERTISING, PROMOTIONS,
AND PUBLIC RELATIONS MATERIALS FOR
OTHERS; MANAGEMENT OF PRO-
MOTIONAL AND INCENTIVE PLANS AND
SERVICES FOR OTHERS; BUSINESS ORGA-
NIZATION PROMOTIONAL CONSULTING
FOR OTHERS; DEMONSTRATION OF THE
GOODS AND SERVICES OF OTHERS AND
THE PROMOTION THEREOF; PROMOTING
AND ADVERTISING THE GOODS AND
SERVICES OF OTHERS BY AIRCRAFT, AIR-
SHIPS AND AIR BALLOONS; OUTDOOR AD-
VERTISING SUCH AS BY BILLBOARDS;
AND DISTRIBUTION OF ADVERTISING,
PROMOTIONAL MATERIALS AND SAMPLE
MATERIALS OF OTHERS. IN CLASS 35 (U.S.
CLS. 100, 101 AND 102).

FIRST USE 6-0-1984; IN COMMERCE
6-0-1984.

FOR: TRANSPORTATION OF GOODS AND
PASSENGERS BY ROAD, RAIL, AIR AND
SEA; FREIGHT TRANSPORTATION SER-
VICES; TOURIST AGENCY SERVICES; TRAV-
EL AGENCY SERVICES; ARRANGING
TRAVEL TOURS; AND TRANSPORTATION
RESERVATION SERVICES, IN CLASS 39
(U.S. CL. 103).

FIRST USE 6-0-1984; IN COMMERCE
6-0-1984.

FOR: CLUBS, NIGHTCLUBS; BARS; HO-
TELS; RESORTS; HOTEL RESERVATION
SERVICES; HOTEL AND RESORT MANAGE-
MENT FOR OTHERS; CARRY-OUT RES-
TAURANT AND RESTAURANT SERVICES;
CATERING; COMPUTER PROGRAMMING
FOR OTHERS; COMPUTER SOFTWARE DE-
SIGN SERVICES FOR OTHERS; ARTWORK
AND GRAPHIC DESIGN SERVICES FOR
OTHERS; AND RETAIL STORE SERVICES IN
THE FIELDS OF COSMETICS AND LAUN-
DRY REPARATIONS; METAL HARDWARE,
CAMERAS, RECORDS, AUDIO AND VIDEO
TAPES, AUDIO AND VIDEO RECORDERS,

*In testimony whereof I have hereunto set my hand and
caused the seal of The Patent and Trademark Office to
be affixed on Dec. 5, 2000.*

COMMISSIONER OF PATENTS AND TRADEMARKS

1,851,817

COMPUTERS AND ELECTRONIC APPARATUS, JEWELRY, CLOCKS AND WATCHES, MUSICAL INSTRUMENTS, STATIONERY, SHEET MUSIC, BOOKS AND PHOTOGRAPHY, HANDBAGS, PURSES, LUGGAGE AND LEATHER GOODS, CLOTHING, LACE, EMBROIDERY, GIFTS AND SEWING MATERIALS, TOYS, GAMES, VIDEO GAME MACHINES AND VIDEO GAME CARTRIDGES, PROCESSED FOODS,

JELLIES AND JAMS, COFFEE, TEA, BAKERY ITEMS AND CANDY, BEER, ALE, MINERAL AND AERATED WATERS AND OTHER NON-ALCOHOLIC DRINKS, WINES, SPIRITS AND LIQUEURS, AND TOBACCO AND SMOKERS' ARTICLES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 5-0-1992; IN COMMERCE 5-0-1992.

SER. NO. 74-162,592, FILED 5-1-1991.

Int. Cls.: 35, 39, and 42

Prior U.S. Cls.: 100, 101, 104, and 105

United States Patent and Trademark Office

Reg. No. 1,851,817

Registered Aug. 30, 1994

**SERVICE MARK
PRINCIPAL REGISTER**

VIRGIN

VIRGIN ENTERPRISES LIMITED (UNITED KINGDOM CORPORATION)
120, CAMPDEN HILL ROAD
LONDON, W8 7AR, ENGLAND

FOR: DIRECT MAIL ADVERTISING FOR OTHERS; DISSEMINATION OF ADVERTISING MATERIALS FOR OTHERS; PREPARING ADVERTISING, PROMOTIONS, AND PUBLIC RELATIONS MATERIALS FOR OTHERS; MANAGEMENT OF PROMOTIONAL AND INCENTIVE PLANS AND SERVICES FOR OTHERS; BUSINESS ORGANIZATION PROMOTIONAL CONSULTING FOR OTHERS; DEMONSTRATION OF THE GOODS AND SERVICES OF OTHERS AND THE PROMOTION THEREOF; PROMOTING AND ADVERTISING THE GOODS AND SERVICES OF OTHERS BY AIRCRAFT, AIRSHIPS AND AIR BALLOONS; OUTDOOR ADVERTISING SUCH AS BY BILLBOARDS; AND DISTRIBUTION OF ADVERTISING, PROMOTIONAL MATERIALS AND SAMPLE MATERIALS OF OTHERS, IN CLASS 35 (U.S. CLS. 101 AND 104).

FIRST USE 2-13-1993; IN COMMERCE 2-13-1993.

FOR: TRANSPORTATION OF GOODS AND PASSENGERS BY ROAD, RAIL, AIR AND SEA; FREIGHT TRANSPORTATION SERVICES; TOURIST AGENCY SERVICES; TRAVEL AGENCY SERVICES; ARRANGING TRAVEL TOURS; AND TRANSPORTATION RESERVATION SERVICES, IN CLASS 39 (U.S. CL. 105).

FIRST USE 6-0-1984; IN COMMERCE 6-0-1984.

FOR: CLUBS, NIGHTCLUBS; BARS; HOTELS; RESORTS; HOTEL RESERVATION SERVICES;

HOTEL AND RESORT MANAGEMENT FOR OTHERS; CARRY-OUT RESTAURANT AND RESTAURANT SERVICES; CATERING; COMPUTER PROGRAMMING FOR OTHERS; COMPUTER SOFTWARE DESIGN SERVICES FOR OTHERS; ARTWORK AND GRAPHIC DESIGN SERVICES FOR OTHERS; AND RETAIL STORE SERVICES IN THE FIELDS OF COSMETICS AND LAUNDRY PREPARATIONS, METAL HARDWARE, CAMERAS, RECORDS, AUDIO AND VIDEO TAPES, AUDIO AND VIDEO RECORDERS, COMPUTERS AND ELECTRONIC APPARATUS, JEWELRY, CLOCKS AND WATCHES, MUSICAL INSTRUMENTS, STATIONERY, SHEET MUSIC, BOOKS AND PHOTOGRAPHY, HANDBAGS, PURSES, LUGGAGE AND LEATHER GOODS, CLOTHING, LACE, EMBROIDERY, GIFTS AND SEWING MATERIALS, TOYS, GAMES, VIDEO GAME MACHINES AND VIDEO GAME CARTRIDGES, PROCESSED FOODS, JELLIES AND JAMS, COFFEE, TEA, BAKERY ITEMS AND CANDY, BEER, ALE, MINERAL AND AERATED WATERS AND OTHER NON-ALCOHOLIC DRINKS, WINES, SPIRITS AND LIQUEURS, AND TOBACCO AND SMOKERS' ARTICLES, IN CLASS 42 (U.S. CL. 100).

FIRST USE 11-28-1990; IN COMMERCE 11-28-1990.

OWNER OF U.S. REG. NOS. 1,469,618, 1,597,386, AND OTHERS.

SN 74-162,592, FILED 5-1-1991.

ELEANOR MELTZER, EXAMINING ATTORNEY

EXHIBIT 7

1216145



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS, SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 27, 2004

**THE ATTACHED U.S. TRADEMARK REGISTRATION 1,852,776 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.**

REGISTERED FOR A TERM OF 10 YEARS FROM *September 06, 1994*

SECTION 8 & 15

**AMENDMENT/CORRECTION/NEW CERT(SEC7) ISSUED
LESS GOODS**

SAID RECORDS SHOW TITLE TO BE IN:

Registrant

**By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS**



**P. SWAIN
Certifying Officer**

Int. Cls.: 35, 39 and 42

Prior U.S. Cls.: 100, 101, 102 and 105

United States Patent and Trademark Office

Corrected

Reg. No. 1,852,776

Registered Sep. 6, 1994

OG Date Dec. 5, 2000

**SERVICE MARK
PRINCIPAL REGISTER**



VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120, CAMPDEN HILL ROAD
LONDON, W8 7AR, ENGLAND

OWNER OF U.S. REG. NOS. 1,469,618,
1,597,386 AND OTHERS.

FOR: DIRECT MAIL ADVERTISING FOR
OTHERS; DISSEMINATION OF ADVER-
TISING MATERIALS FOR OTHERS; PRE-
PARING ADVERTISING, PROMOTIONS,
AND PUBLIC RELATIONS MATERIALS FOR
OTHERS; MANAGEMENT OF PRO-
MOTIONAL AND INCENTIVE PLANS AND

~~SERVICES FOR OTHERS: BUSINESS ORGA-
NIZATION PROMOTIONAL CONSULTING
FOR OTHERS; DEMONSTRATION OF THE
GOODS AND SERVICES OF OTHERS AND
PROMOTION THEREOF; PROMOTING AND
ADVERTISING THE GOODS AND SERVICES
OF OTHERS BY AIRCRAFT, AIRSHIPS AND
AIR BALLOONS; OUTDOOR ADVERTISING
SUCH AS BY BILLBOARDS; AND DIS-
TRIBUTION OF ADVERTISING, PRO-
MOTIONAL MATERIALS AND SAMPLE MA-
TERIALS OF OTHERS. IN CLASS 35 (U.S.
CLS 100, 101 AND 102).~~

*In testimony whereof I have hereunto set my hand and
caused the seal of The Patent and Trademark Office to
be affixed on Dec. 5, 2000.*

COMMISSIONER OF PATENTS AND TRADEMARKS

1,852,776

FIRST USE 6-0-1984; IN COMMERCE
6-0-1984.

FOR: TRANSPORTATION OF GOODS AND
PASSENGERS BY ROAD, RAIL, AIR AND
SEA; FREIGHT TRANSPORTATION SER-
VICES; TOURIST AGENCY SERVICES; AR-
RANGING TRAVEL TOURS; AND, TRANS-
PORTATION RESERVATION SERVICES, IN
CLASS 39 (U.S. CL. 105).

FIRST USE 6-0-1984; IN COMMERCE
6-0-1984.

FOR: CLUBS, NIGHTCLUBS, BARS, HO-
TELS, RESORTS; HOTEL RESERVATION
SERVICES; HOTEL AND RESORT MANAGE-
MENT FOR OTHERS; CARRY-OUT RES-
TAURANT AND RESTAURANT SERVICES;
CATERING; RENTAL OF FOOD SERVICE
EQUIPMENT; NAMELY, VENDING MA-
CHINES; COMPUTER PROGRAMMING FOR
OTHERS; COMPUTER SOFTWARE DESIGN
SERVICES FOR OTHERS; ARTWORK AND
GRAPHIC DESIGN SERVICES FOR OTHERS;
PORTRAIT AND AERIAL PHOTOGRAPHY;
TYPESETTING AND PRINTING SERVICES;
AND RETAIL STORE SERVICES IN THE

FIELDS OF COSMETICS AND LAUNDRY
PREPARATIONS; METAL HARDWARE;
CAMERAS, RECORDS, AUDIO AND VIDEO
TAPES, AUDIO AND VIDEO RECORDERS,
COMPUTERS AND ELECTRONIC APPA-
RATUS; JEWELRY, CLOCKS AND WATCH-
ES; MUSICAL INSTRUMENTS; STA-
TIONERY, SHEET MUSIC, BOOKS AND
PHOTOGRAPHY; HANDBAGS, PURSES,
LUGGAGE AND LEATHER GOODS; CLOTH-
ING; HACE, EMBROIDERY, GIFTS AND
SEWING MATERIALS; TOYS, GAMES,
VIDEO GAME MACHINES AND VIDEO
GAME CARTRIDGES; PROCESSED FOODS,
JELLIES AND JAMS; COFFEE, TEA, BAK-
ERY ITEMS AND CANDY, BEER, ALE, MIN-
ERAL AND AERATED WATERS, AND
OTHER NONALCOHOLIC DRINKS, WINES,
SPIRITS AND LIQUEURS, AND TOBACCO
AND SMOKERS ARTICLES, IN CLASS 42
(U.S. CLS. 100 AND 101).

FIRST USE 5-0-1992; IN COMMERCE
5-0-1992.

SER. NO. 74-164,928, FILED 5-9-1991.

Int. Cls.: 35, 39, and 42

Prior U.S. Cls.: 100, 101, 104, and 105

Reg. No. 1,852,776

United States Patent and Trademark Office

Registered Sep. 6, 1994

**SERVICE MARK
PRINCIPAL REGISTER**

A large, stylized, handwritten-style logo of the word "Virgin" in a bold, cursive script. The letters are thick and black, with a prominent vertical stroke for the 'V' and a long, sweeping tail for the 'n'.

VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120, CAMPDEN HILL ROAD
LONDON, W8 7AR, ENGLAND

FOR: DIRECT MAIL ADVERTISING FOR
OTHERS; DISSEMINATION OF ADVERTISING
MATERIALS FOR OTHERS; PREPARING AD-
VERTISING, PROMOTIONS, AND PUBLIC RE-
LATIONS MATERIALS FOR OTHERS; MAN-
AGEMENT OF PROMOTIONAL AND INCEN-
TIVE PLANS AND SERVICES FOR OTHERS;
BUSINESS ORGANIZATION PROMOTIONAL
CONSULTING FOR OTHERS; DEMONSTRATION
OF THE GOODS AND SERVICES OF
OTHERS AND PROMOTION THEREOF; PRO-
MOTING AND ADVERTISING THE GOODS

AND SERVICES OF OTHERS BY AIRCRAFT,
AIRSHIPS AND AIR BALLOONS; OUTDOOR
ADVERTISING SUCH AS BY BILLBOARDS;
AND DISTRIBUTION OF ADVERTISING, PRO-
MOTIONAL MATERIALS AND SAMPLE MA-
TERIALS OF OTHERS, IN CLASS 35 (U.S. CLS.
101 AND 104).

FIRST USE 2-13-1993; IN COMMERCE
2-13-1993.

FOR: TRANSPORTATION OF GOODS AND
PASSENGERS BY ROAD, RAIL, AIR AND SEA;
FREIGHT TRANSPORTATION SERVICES;
TOURIST AGENCY SERVICES; ARRANGING
TRAVEL TOURS; AND, TRANSPORTATION
RESERVATION SERVICES, IN CLASS 39 (U.S.
CL. 105).

FIRST USE 6-0-1984; IN COMMERCE 6-0-1984.

FOR: CLUBS, NIGHTCLUBS; BARS; HOTELS; RESORTS; HOTEL RESERVATION SERVICES; HOTEL AND RESORT MANAGEMENT FOR OTHERS; CARRY-OUT RESTAURANT AND RESTAURANT SERVICES; CATERING; RENTAL OF FOOD SERVICE EQUIPMENT; NAMELY, VENDING MACHINES; COMPUTER PROGRAMMING FOR OTHERS; COMPUTER SOFTWARE DESIGN SERVICES FOR OTHERS; ARTWORK AND GRAPHIC DESIGN SERVICES FOR OTHERS; PORTRAIT AND AERIAL PHOTOGRAPHY; TYPESETTING AND PRINTING SERVICES; AND RETAIL STORE SERVICES IN THE FIELDS OF COSMETICS AND LAUNDRY PREPARATIONS; METAL HARDWARE; CAMERAS, RECORDS, AUDIO AND VIDEO TAPES, AUDIO AND VIDEO RECORDERS, COMPUTERS AND ELECTRONIC APPARATUS; JEWELRY, CLOCKS AND WATCHES; MUSICAL INSTRUMENTS; STATIONERY,

SHEET MUSIC, BOOKS AND PHOTOGRAPHY; HANDBAGS, PURSES, LUGGAGE AND LEATHER GOODS; CLOTHING; LACE, EMBROIDERY, GIFTS AND SEWING MATERIALS; TOYS, GAMES, VIDEO GAME MACHINES AND VIDEO GAME CARTRIDGES; PROCESSED FOODS, JELLIES AND JAMS; COFFEE, TEA, BAKERY ITEMS AND CANDY; BEER, ALE, MINERAL AND AERATED WATERS AND OTHER NONALCOHOLIC DRINKS; WINES, SPIRITS AND LIQUEURS; AND, TOBACCO AND SMOKERS ARTICLES. IN CLASS 42 (U.S. CL. 100).

FIRST USE 11-28-1990; IN COMMERCE 11-28-1990.

OWNER OF U.S. REG. NOS. 1,469,618, 1,597,386, AND OTHERS.

SN 74-164,928, FILED 5-9-1991.

ELEANOR MELTZER, EXAMINING ATTORNEY

EXHIBIT 8

1215875



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 25, 2004

**THE ATTACHED U.S. TRADEMARK REGISTRATION 1,863,353 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.**

REGISTERED FOR A TERM OF 10 YEARS FROM *November 15, 1994*

SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

REGISTRANT



**By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS**

T. Wallace
T. WALLACE

Certifying Officer

Int. Cl.: 42

Prior U.S. Cl.: 101

United States Patent and Trademark Office

Reg. No. 1,863,353

Registered Nov. 15, 1994

**SERVICE MARK
PRINCIPAL REGISTER**

VIRGIN MEGASTORE

**VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM COMPANY)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, ENGLAND**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "MEGASTORE", APART
FROM THE MARK AS SHOWN.**

**FOR: RETAIL DEPARTMENT STORE SERV-
ICES, IN CLASS 42 (U.S. CL. 101).
FIRST USE 0-0-1979; IN COMMERCE
12-4-1992.**

SN 74-277,025, FILED 5-19-1992.

JULIA A. HARDY, EXAMINING ATTORNEY

EXHIBIT 9

1216175



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 30, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,625,455 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *September 24, 2002*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



M. K. Hawkins
M. K. HAWKINS
Certifying Officer

Int. Cls.: 35 and 38

Prior U.S. Cls.: 100, 101, 102, and 104

Reg. No. 2,625,455

United States Patent and Trademark Office

Registered Sep. 24, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

VIRGIN

**VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, ENGLAND**

**FOR: PROVIDING AN ON-LINE SHOPPING
MALL VIA A GLOBAL COMPUTER NETWORK;
PROVIDING BUSINESS INFORMATION VIA A
GLOBAL COMPUTER NETWORK , IN CLASS 35
(U.S. CLS. 100, 101 AND 102).**

FIRST USE 12-0-1997; IN COMMERCE 12-0-1997.

**FOR: COMPUTERIZED COMMUNICATION SER-
VICES, NAMELY, ELECTRONIC MAIL SERVICES,
AND PROVIDING NETWORKS FOR THE PURPOSE
OF TRANSMISSION AND RECEPTION OF ELEC-
TRONIC MAIL, COMPUTER GENERATED MUSIC,**

**NEWS AND OTHER DATA AND INFORMATION;
AND BROADCASTING SERVICES BY RADIO AND
OVER A GLOBAL COMPUTER NETWORK OF A
WIDE VARIETY OF PROGRAMS, NAMELY, CUR-
RENT EVENTS, ECONOMICS, POLITICS, SPORTS,
ENTERTAINMENT, THE ARTS AND BUSINESS, IN
CLASS 38 (U.S. CLS. 100, 101 AND 104).**

FIRST USE 11-11-1999; IN COMMERCE 3-21-2000.

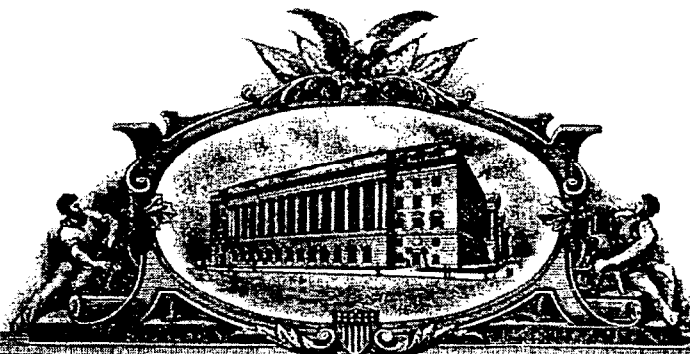
**OWNER OF U.S. REG. NOS. 1,039,574, 2,151,589,
AND OTHERS.**

SN 75-607,592, FILED 12-17-1998.

KEVON CHISOLM, EXAMINING ATTORNEY

EXHIBIT 10

1716215



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:
UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 30, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 1,039,574 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 20 YEARS FROM *May 18, 1976*
1st RENEWAL FOR A TERM OF 10 YEARS FROM May 18, 1996
SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

VIRGIN ENTERPRISES LIMITED

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



W. Montgomery
W. MONTGOMERY
Certifying Officer

Int. Cl.: 9

Prior U.S. Cl.: 36

United States Patent and Trademark Office
10 Year Renewal

Reg. No. 1,039,574
Registered May 18, 1976

Renewal Term Begins May 18, 1996

**TRADEMARK
PRINCIPAL REGISTER**



VIRGIN ENTERPRISES LIMITED
(UNITED KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, ENGLAND, BY
CHANGE OF NAME AND CHANGE
OF NAME FROM VIRGIN RECORDS
(HOLDINGS) LIMITED (UNITED
KINGDOM COMPANY) LONDON
W.11, ENGLAND

CASSETTES FOR USE THEREWITH, IN
CLASS 9 (U.S. CL. 36).

FIRST USE 1-0-1970; IN COMMERCE
1-0-1970.

SER. NO. 73-031,575, FILED 9-9-1974.

FOR: SOUND RECORDS IN THE
FORM OF DISCS AND TAPES AND

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Nov. 19, 1996.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 9

Prior U.S. Cl.: 36

United States Patent Office

Reg. No. 1,039,574
Registered May 18, 1976

TRADEMARK
Principal Register



Virgin Records (holdings) Limited (British company)
130 Notting Hill Gate
London W.11, England

For: SOUND RECORDS IN THE FORM OF
DISCS AND TAPES AND CASSETTES FOR USE
THEREWITH, in CLASS 9 (U.S. CL. 36).

First use at least as early as January 1970; in com-
merce at least as early as January 1970.

Ser. No. 31,575, filed Sept. 9, 1974.

R. A. FLYNT, Examiner

EXHIBIT 11

1216224



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 30, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 1,413,664 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 20 YEARS FROM *October 14, 1986*

SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

VIRGIN ENTERPRISES LIMITED

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



W. Montgomery
W. MONTGOMERY
Certifying Officer

Int. Cl.: 39

Prior U.S. Cl.: 105

United States Patent and Trademark Office

Reg. No. 1,413,664

Registered Oct. 14, 1986

**SERVICE MARK
PRINCIPAL REGISTER**

VIRGIN

VIRGIN HOLDINGS LIMITED (UNITED KING-
DOM LIMITED LIABILITY COMPANY)
95-99 LADBROKE GROVE
LONDON, ENGLAND W11 1 PG

FIRST USE 6-22-1984; IN COMMERCE
6-22-1984.

SER. NO. 511,000, FILED 11-29-1984.

FOR: AIR TRAVEL SERVICES, IN CLASS 39
(U.S. CL. 105).

EDWARD NELSON, EXAMINING ATTORNEY

EXHIBIT 12

1216211



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 30, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 1,469,618 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 20 YEARS FROM *December 22, 1987*
SECTION 8 & 15

LESS GOODS

CLASS(ES) CANCELLED:

INT. CLASS 009

SAID RECORDS SHOW TITLE TO BE IN:
VIRGIN ENTERPRISES LIMITED

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



W. Montgomery
W. MONTGOMERY
Certifying Officer

Int. Cl.: 9

Prior U.S. Cls.: 21, 36 and 38

United States Patent and Trademark Office Reg. No. 1,469,618
Registered Dec. 22, 1987

**TRADEMARK
PRINCIPAL REGISTER**

VIRGIN

VIRGIN HOLDINGS LIMITED (UNITED KING-
DOM LIMITED LIABILITY COMPANY)
95-99 LADBROKE GROVE
LONDON, ENGLAND W11 1PG

FOR: PRE-RECORDED AUDIO AND/OR
VIDEO TAPES, CASSETTES AND CAR-
TRIDGES; PRE-RECORDED AUDIO AND
VIDEO DISCS, PHONOGRAPH RECORDS;

PHOTOGRAPHIC AND CINEMATOGRAPHIC
FILMS, IN CLASS 9 (U.S. CLS. 21, 36 AND 38).
OWNER OF UNITED KINGDOM REG. NO.
1120875, DATED 9-18-1979, EXPIRES 9-18-2000.

SER. NO. 585,969, FILED 3-3-1986.

DEBORAH S. COHN, EXAMINING ATTORNEY

EXHIBIT 13

1216210



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 30, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 1,517,801 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 20 YEARS FROM *December 27, 1988*

SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

VIRGIN ENTERPRISES LIMITED

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



W. Montgomery
W. MONTGOMERY
Certifying Officer

Int. Cl.: 9

Prior U.S. Cls.: 21, 36 and 38

United States Patent and Trademark Office

Reg. No. 1,517,801

Registered Dec. 27, 1988

**TRADEMARK
PRINCIPAL REGISTER**

The image shows the word "Virgin" written in a stylized, handwritten script. A large, bold "X" is drawn over the word, extending from the top left to the bottom right, crossing through the letters.

VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM LIMITED LIABILITY COMPANY)
95-99 LADBROKE GROVE
LONDON, ENGLAND W11 1 PG, BY CHANGE
OF NAME FROM VIRGIN HOLDINGS LIM-
ITED (UNITED KINGDOM LIMITED LI-
ABILITY COMPANY) LONDON, ENGLAND
W11 1 PG

FOR: PRE-RECORDED AUDIO AND/OR
VIDEO TAPES, CASSETTES AND CAR-

TRIDGES; PRE-RECORDED AUDIO AND
VIDEO DISCS, PHONOGRAPH RECORDS;
PHOTOGRAPHIC AND CINEMATOGRAPHIC
FILMS, IN CLASS 9 (U.S. CLS. 21, 36 AND 38).
OWNER OF UNITED KINGDOM REG. NO.
1120874, DATED 9-18-1979, EXPIRES 9-18-2000.

SER. NO. 585,970, FILED 3-3-1986.

ROBERT PEVERADA, EXAMINING ATTOR-
NEY

EXHIBIT 14

1216203



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 31, 2004

**THE ATTACHED U.S. TRADEMARK REGISTRATION 2,151,589 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.**

REGISTERED FOR A TERM OF 10 YEARS FROM *April 21, 1998*

SECTION 8 & 15

AMENDMENT/CORRECTION/NEW CERT(SEC7) ISSUED

SAID RECORDS SHOW TITLE TO BE IN:

VIRGIN ENTERPRISES LIMITED

A GREAT BRITAIN CORPORATION

**By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS**



W. Montgomery
W. MONTGOMERY
Certifying Officer

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

United States Patent and Trademark Office

Corrected

Reg. No. 2,151,589

Registered Apr. 21, 1998

OG Date Apr. 6, 1999

**TRADEMARK
PRINCIPAL REGISTER**

VIRGIN VODKA

VIRGIN ENTERPRISES LIMITED
(GREAT BRITAIN CORPORATION)
120 CAMPDEN HILL ROAD
LONDON, ENGLAND W8 7ARE, AS-
SIGNEE OF HEAVEN HILL DISTILL-
ERIES, INC. (KENTUCKY CORPORA-
TION), DBA MEADOWLAWN DIS-
TILLING CO., BARDSTOWN, KY

NO CLAIM IS MADE TO THE EXCLU-
SIVE RIGHT TO USE "VODKA", APART
FROM THE MARK AS SHOWN.

FOR: VODKA, IN CLASS 33 (U.S. CLS.
47 AND 49).

FIRST USE 1-24-1986; IN COMMERCE
1-24-1986.

SER. NO. 74-625,444, FILED 1-25-1995.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Apr. 6, 1999.*

COMMISSIONER OF PATENTS AND TRADEMARKS

Int. Cl.: 33

Prior U.S. Cls.: 47 and 49

Reg. No. 2,151,589

United States Patent and Trademark Office

Registered Apr. 21, 1998

**TRADEMARK
PRINCIPAL REGISTER**

VIRGIN VODKA

HEAVEN HILL DISTILLERIES, INC. (KENTUCKY CORPORATION), DBA MEADOW-LAWN DISTILLING CO.
P.O. BOX 729
BARDSTOWN, KY 40004

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VODKA", APART FROM THE MARK AS SHOWN.

SER. NO. 74-625,444, FILED 1-25-1995.

FOR: VODKA, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 1-24-1986; IN COMMERCE 1-24-1986.

CLAIRE WUDOWSKY, EXAMINING ATTORNEY

EXHIBIT 15

1216191



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 31, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,237,092 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *April 06, 1999*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



W. Montgomery
W. MONTGOMERY
Certifying Officer

Int. Cls.: 39 and 42

Prior U.S. Cls.: 100, 101, and 105

United States Patent and Trademark Office

Reg. No. 2,237,092

Registered Apr. 6, 1999

**SERVICE MARK
PRINCIPAL REGISTER**

VIRGIN VACATIONS

**VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, GB2, ENGLAND**

**FOR: ARRANGING THE TRANSPORT OF
PASSENGERS BY AIR AND ROAD, ARRANG-
ING AND CONDUCTING TRAVEL TOURS,
TRAVEL AGENCY SERVICES, NAMELY,
MAKING RESERVATIONS AND BOOKINGS
FOR TRANSPORTATION, AND TRANSPORTA-
TION RESERVATION SERVICES, IN CLASS 39
(U.S. CLS. 100 AND 105).**

**FIRST USE 11-1-1994; IN COMMERCE
11-1-1994.**

**FOR: RESORT HOTEL AND HOTEL RESER-
VATION; TRAVEL AGENCY SERVICES,**

**NAMELY, MAKING RESERVATIONS AND
BOOKINGS FOR TEMPORARY LODGING, IN
CLASS 42 (U.S. CLS. 100 AND 101).**

**FIRST USE 11-1-1994; IN COMMERCE
11-1-1994.**

**OWNER OF U.S. REG. NOS. 1,039,574,
1,863,353, AND OTHERS.**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "VACATIONS", APART FROM
THE MARK AS SHOWN.**

SN 75-116,946, FILED 6-10-1996.

**MELVIN AXILBUND, EXAMINING ATTOR-
NEY**

EXHIBIT 16

1216111



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office


August 27, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,482,726 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *August 28, 2001*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS




P. SWAIN
Certifying Officer

Int. Cls.: 39 and 42

Prior U.S. Cls.: 100, 101, and 105

United States Patent and Trademark Office

Reg. No. 2,482,726

Registered Aug. 28, 2001

**SERVICE MARK
PRINCIPAL REGISTER**

VIRGIN ATLANTIC VACATIONS

**VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, ENGLAND**

**FOR: TRANSPORTATION OF AND ARRANGING
TRANSPORTATION OF GOODS AND PASSENGERS BY ROAD, RAIL, AIR AND SEA; TRANSPORTATION OF HUMAN BEINGS BY MEANS OF LAND VEHICLES; AUTOMOBILE AND MOTORCYCLE RENTAL SERVICES; CHAUFFEUR SERVICES; TOURIST AGENCY SERVICES; TRAVEL AGENCY SERVICES, NAMELY, MAKING RESERVATIONS AND BOOKINGS FOR TRANSPORTATION; ARRANGING AND/OR CONDUCTING TRAVEL TOURS; AND ARRANGING VISITS TO PLACES OF INTEREST, IN CLASS 39 (U.S. CLS. 100 AND 105).**

FIRST USE 11-0-1997; IN COMMERCE 11-0-1997.

FOR: MAKING HOTEL RESERVATIONS FOR OTHERS; ARRANGING, ORGANIZING AND PROVIDING FACILITIES FOR EXHIBITIONS AND CONFERENCES; AND PROVIDING BEAUTY SALONS AND HAIRDRESSING, MASSAGE, MANICURE AND PEDICURE SERVICES, IN CLASS 42 (U.S. CLS. 100 AND 101).

FIRST USE 11-0-1997; IN COMMERCE 11-0-1997.

OWNER OF U.S. REG. NOS. 1,413,664, 1,863,353, AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "VACATIONS", APART FROM THE MARK AS SHOWN.

SN 75-419,254, FILED 1-16-1998.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 17

1216171



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 30, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,488,605 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *September 11, 2001*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



L. E. Edele

L. EDELEN
Certifying Officer

Int. Cl.: 39

Prior U.S. Cls.: 100 and 105

United States Patent and Trademark Office

Reg. No. 2,488,605

Registered Sep. 11, 2001

**SERVICE MARK
PRINCIPAL REGISTER**

VIRGIN CARGO WINGS

**VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, ENGLAND**

**OWNER OF U.S. REG. NOS. 1,413,664, 1,852,776,
AND OTHERS.**

**FOR: FREIGHT AIRLINE SERVICES; ARRAN-
GING OF TRANSPORTATION OF GOODS BY AIR;
PACKAGING AND STORAGE OF GOODS, IN
CLASS 39 (U.S. CLS. 100 AND 105).**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "CARGO", APART FROM THE
MARK AS SHOWN.**

SN 75-728,946, FILED 6-15-1999.

FIRST USE 1-12-1998; IN COMMERCE 1-12-1998.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 18

1216216



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 30, 2004

**THE ATTACHED U.S. TRADEMARK REGISTRATION 2,507,654 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.**

REGISTERED FOR A TERM OF 10 YEARS FROM *November 13, 2001*

**AMENDMENT/CORRECTION/NEW CERT(SECT) ISSUED
LESS GOODS**

**SAID RECORDS SHOW TITLE TO BE IN:
*REGISTRANT***

**By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS**



L. Edele

**L. EDELEN
Certifying Officer**

Int. Cl.: 32 and 33

Prior U.S. Cls.: 45, 46, 47, 48 and 49

Reg. No. 2,507,654

United States Patent and Trademark Office

Registered Nov. 13, 2001

Corrected

OG Date June 11, 2002

TRADEMARK
PRINCIPAL REGISTER



VIRGIN ENTERPRISES LIMITED (ENGLAND CORPORATION)
120 CAMPDEN HILL ROAD
LONDON, W8 7AR, ENGLAND
OWNER OF U.S. REG. NOS. 1,039,574,
1,852,776 AND 2,151,589.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "TRADING COMPANY", APART FROM THE MARK AS SHOWN.

THE STIPPLING SHOWN IN THE DRAWING IS A FEATURE OF THE MARK AND IS NOT INTENDED TO INDICATE COLOR.

FOR: NON-ALCOHOLIC BEVERAGES, NAMELY, SOFT DRINKS, AND SYRUPS AND PREPARATIONS FOR MAKING SOFT DRINKS, IN CLASS 32 (U.S. CLS. 45, 46 AND 48).
FIRST USE 11-0-1994; IN COMMERCE 5-0-1998.

FOR: [WINES,] SPIRITS [AND LIQUEURS], IN CLASS 33 (U.S. CLS. 47 AND 49).
FIRST USE 1-4-1995; IN COMMERCE 1-4-1995.
SER. NO. 75-706,581, FILED 5-14-1999.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on June 11, 2002.*

DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE

Int. Cls.: 32 and 33

Prior U.S. Cls.: 45, 46, 47, 48, and 49

United States Patent and Trademark Office

Reg. No. 2,507,654

Registered Nov. 13, 2001

**TRADEMARK
PRINCIPAL REGISTER**



VIRGIN ENTERPRISES LIMITED (ENGLAND
CORPORATION)
120 CAMPDEN HILL ROAD
LONDON, W8 7AR, ENGLAND

OWNER OF U.S. REG. NOS. 1,039,574, 1,852,776,
AND 2,151,589.

FOR: NON-ALCOHOLIC BEVERAGES, NAMELY,
SOFT DRINKS, AND SYRUPS AND PREPARA-
TIONS FOR MAKING SOFT DRINKS, IN CLASS 32
(U.S. CLS. 45, 46 AND 48).

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "TRADING COMPANY", APART
FROM THE MARK AS SHOWN.

FIRST USE 11-0-1994; IN COMMERCE 5-0-1998.

THE STIPLING SHOWN IN THE DRAWING IS A
FEATURE OF THE MARK AND IS NOT INTENDED
TO INDICATE COLOR.

FOR: WINES, SPIRITS AND LIQUEURS, IN
CLASS 33 (U.S. CLS. 47 AND 49).

SN 75-706,581, FILED 5-14-1999.

FIRST USE 1-4-1995; IN COMMERCE 1-4-1995.

GI HYUN AN, EXAMINING ATTORNEY

EXHIBIT 19

1216119



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 30, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,536,973 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *February 05, 2002*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



L. Edelen

L. EDELEN
Certifying Officer

Int. Cl.: 36

Prior U.S. Cls.: 100, 101, and 102

United States Patent and Trademark Office

Reg. No. 2,536,973

Registered Feb. 5, 2002

**SERVICE MARK
PRINCIPAL REGISTER**



VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON, UNITED KINGDOM W8 7AR

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "HEALTHCARE FOUNDATION",
APART FROM THE MARK AS SHOWN.

FOR: CHARITABLE FUNDRAISING, IN CLASS 36
(U.S. CLS. 100, 101 AND 102).

SN 75-554,057, FILED 9-16-1998.

FIRST USE 0-0-1996; IN COMMERCE 0-0-1996.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 20

1215878



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 25, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,600,080 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *July 30, 2002*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



T. Wallace
T. WALLACE
Certifying Officer

Int. Cl.: 32

Prior U.S. Cls.: 45, 46 and 48

Reg. No. 2,600,080

United States Patent and Trademark Office

Registered July 30, 2002

**TRADEMARK
PRINCIPAL REGISTER**

A stylized, handwritten-style logo of the word "Virgin" in a cursive script. The letters are connected, with a long, sweeping underline that extends from the bottom of the 'g' and curves back under the 'i' and 'n'.

VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM COMPANY)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, ENGLAND

OWNER OF U.S. REG. NOS. 1,039,574, 1,863,353
AND OTHERS.

FOR: NON-ALCOHOLIC BEVERAGES, NAMELY,
SOFT DRINKS, IN CLASS 32 (U.S. CLS. 45, 46 AND
48).

THE DRAWING OF THE TRADEMARK IS LINED
FOR THE COLOR RED.

SER. NO. 75-976,776, FILED 10-3-1994.

FIRST USE 10-9-1994; IN COMMERCE 10-9-1994.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 21

1216199



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 30, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,622,510 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *September 24, 2002*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



L. Edelen

L. EDELEN
Certifying Officer

Int. Cl.: 36

Prior U.S. Cls.: 100, 101 and 102

United States Patent and Trademark Office

Reg. No. 2,622,510

Registered Sep. 24, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

A stylized, handwritten-style logo of the word "Virgin" in a cursive script.

VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, GB2, ENGLAND

OWNER OF UNITED KINGDOM REG. NO.
1586946, DATED 4-17-1996, EXPIRES 9-15-2011.

FOR: UNDERWRITING LIFE, HEALTH AND
GENERAL INSURANCE; FUNDS INVESTMENT;
INVESTMENT OF FUNDS FOR OTHERS; OPEN
AND CLOSE-ENDED FUNDS INVESTMENT; FI-
NANCIAL ANALYSIS AND CONSULTATION IN
THE FIELD OF SECURITIES, PERSONAL EQUITY
AND TAX ADVANTAGED SAVINGS, IN CLASS 36
(U.S. CLS. 100, 101 AND 102).

OWNER OF U.S. REG. NOS. 1,851,817, 1,852,776
AND OTHERS.

SER. NO. 75-045,561, FILED 1-18-1996.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 22

1216150



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 27, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,639,079 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *October 22, 2002*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



P. SWAIN
Certifying Officer

Int. Cls.: 39 and 43

Prior U.S. Cls.: 100, 101 and 105

United States Patent and Trademark Office

Reg. No. 2,639,079

Registered Oct. 22, 2002

**SERVICE MARK
PRINCIPAL REGISTER**

VIRGIN HOLIDAYS

**VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON, ENGLAND W8 7AR**

**FOR: TRANSPORTATION OF PASSENGERS
AND GOODS BY ROAD, RAIL AND AIR; ARRAN-
GING OF PACKAGE HOLIDAYS; ARRANGING
AND ORGANIZING TOURS; ARRANGING VISITS
TO PLACES OF INTEREST; TOURIST OFFICE SER-
VICES; TRAVEL AGENCY SERVICES, NAMELY,
MAKING RESERVATIONS AND BOOKINGS FOR
TRANSPORTATION; TRANSPORTATION RESER-
VATION SERVICES, IN CLASS 39 (U.S. CLS. 100 AND
105).**

FIRST USE 11-0-1985; IN COMMERCE 11-0-1985.

**FOR: TRAVEL AGENCY SERVICES, NAMELY,
MAKING RESERVATIONS AND BOOKINGS FOR
TEMPORARY LODGING, IN CLASS 43 (U.S. CLS.
100 AND 101).**

FIRST USE 11-0-1985; IN COMMERCE 11-0-1985.

**OWNER OF U.S. REG. NOS. 2,237,092 AND
2,482,726.**

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "HOLIDAYS", APART FROM THE
MARK AS SHOWN.**

SER. NO. 76-307,727, FILED 8-30-2001.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 23

1216158



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

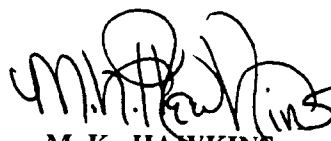
August 30, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,643,644 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *October 29, 2002*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS




M. K. HAWKINS
Certifying Officer

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51, and 52

United States Patent and Trademark Office

Reg. No. 2,643,644

Registered Oct. 29, 2002

**TRADEMARK
PRINCIPAL REGISTER**

VIRGIN
VIE

VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, ENGLAND

FIRST USE 10-0-1997; IN COMMERCE 0-0-1998.

OWNER OF U.S. REG. NOS. 1,039,574, 1,852,776,
AND OTHERS.

FOR: PERFUMES; EAU-DE-COLOGNE; NON-
MEDICATED TOILET PREPARATIONS, NAMELY,
LOTIONS AND MOISTURIZERS; NON-MEDICA-
TED PREPARATIONS FOR THE CARE OF THE
SKIN, HANDS, SCALP AND BODY, NAMELY,
MOISTURIZERS, LOTIONS, CREAMS AND GELS;
NON-MEDICATED SKIN CLEANSING PREPARA-
TIONS, NAMELY, LOTIONS, CREAMS AND GELS;
CREAMS AND LOTIONS FOR THE SKIN; NAIL
VARNISHES, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND
52).

THE MARK CONSISTS OF THE DESIGNATION
MAQILIC WITH A STYLIZED I.

THE ENGLISH TRANSLATION OF THE WORD
"VIE" IS "LIFE".

SN 75-982,307, FILED 9-8-1997.

ANDREA K. NADELMAN, EXAMINING ATTOR-
NEY

EXHIBIT 24

1216163



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME;

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 30, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,689,097 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.


REGISTERED FOR A TERM OF 10 YEARS FROM *February 18, 2003*

AMENDMENT/CORRECTION/NEW CERT(SEC7) ISSUED
LESS GOODS

SAID RECORDS SHOW TITLE TO BE IN:
REGISTRANT

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS




M. K. HAWKINS
Certifying Officer

Int. Cls.: 9 and 38

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101 and 104

Reg. No. 2,689,097

United States Patent and Trademark Office

Registered Feb. 18, 2003

Corrected

OG Date Oct. 7, 2003

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

The Virgin logo, featuring the word "Virgin" in a stylized, handwritten-style script.

VIRGIN ENTERPRISES LIMITED (UNITED KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, UNITED KINGDOM

FOR: MOBILE TELEPHONES; TELEPHONES; MODEMS; BATTERIES; BATTERY CHARGERS; CIGARETTE LIGHTER ADAPTERS; DASHBOARD MOUNTS; ~~(HAND-FREE)~~ * HANDS-FREE * HEADSETS; CARRYING CASES; BELT CLIPS, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 11-11-1999, IN COMMERCE 6-23-2002.

FOR: TELECOMMUNICATIONS SERVICES, NAMELY, TRANSMISSION OF VOICE, DATA, IMAGES, AUDIO, VIDEO, AND INFORMATION VIA TELEPHONE OR THE INTERNET; PERSONAL COMMUNICATIONS SERVICES; PAGER SERVICES; ELECTRONIC MAIL SERVICES; TRANSMISSION OR BROADCAST OF NEWS AND INFORMATION FOR OTHERS VIA TELEPHONE, INCLUDING THE INTERNET, IN CLASS 38 (U.S. CLS. 100, 101 AND 104).

FIRST USE 11-11-1999, IN COMMERCE 11-18-1999.

SER. NO. 76-107,264, FILED 8-10-2000

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Oct. 7, 2003.*

DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE

Int. Cls.: 9 and 38

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101, and 104

United States Patent and Trademark Office

Reg. No. 2,689,097

Registered Feb. 18, 2003

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

The logo consists of the word "Virgin" written in a stylized, cursive script. A horizontal line is drawn through the middle of the letters, starting from the 'V' and extending past the 'n'.

VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, UNITED KINGDOM

FOR: MOBILE TELEPHONES; TELEPHONES;
MODEMS; BATTERIES; BATTERY CHARGERS; CI-
GARETTE LIGHTER ADAPTERS; DASHBOARD
MOUNTS; HAND-FREE HEADSETS; CARRYING
CASES; BELT CLIPS, IN CLASS 9 (U.S. CLS. 21, 23,
26, 36 AND 38).

FIRST USE 11-11-1999; IN COMMERCE 6-23-2002.

FOR: TELECOMMUNICATIONS SERVICES,
NAMELY, TRANSMISSION OF VOICE, DATA, IMA-

GES, AUDIO, VIDEO, AND INFORMATION VIA
TELEPHONE OR THE INTERNET; PERSONAL
COMMUNICATIONS SERVICES; PAGER SERVI-
CES; ELECTRONIC MAIL SERVICES; TRANSMIS-
SION OR BROADCAST OF NEWS AND
INFORMATION FOR OTHERS VIA TELEPHONE,
INCLUDING THE INTERNET, IN CLASS 38 (U.S.
CLS. 100, 101 AND 104).

FIRST USE 11-11-1999; IN COMMERCE 11-18-1999.

SN 76-107,264, FILED 8-10-2000.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 25

1216152



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 27, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,689,098 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *February 18, 2003*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



P. SWAIN
Certifying Officer

Int. Cls.: 9 and 38

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101, and 104

Reg. No. 2,689,098

United States Patent and Trademark Office

Registered Feb. 18, 2003

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

VIRGIN

**VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, UNITED KINGDOM**

**FOR: MOBILE TELEPHONES; TELEPHONES;
MODEMS; BATTERIES; BATTERY CHARGERS; CI-
GARETTE LIGHTER ADAPTERS; DASHBOARD
MOUNTS; HANDS-FREE HEADSETS; CARRYING
CASES; BELT CLIPS, IN CLASS 9 (U.S. CLS. 21, 23, 26,
36 AND 38).**

FIRST USE 11-11-1999; IN COMMERCE 6-23-2002.

**FOR: TELECOMMUNICATIONS SERVICES,
NAMELY, TRANSMISSION OF VOICE, DATA, IMA-**

**GES, AUDIO, VIDEO, AND INFORMATION VIA
TELEPHONE OR THE INTERNET; PERSONAL
COMMUNICATIONS SERVICES; PAGER SERVI-
CES; ELECTRONIC MAIL SERVICES; TRANSMIS-
SION OR BROADCAST OF NEWS AND
INFORMATION FOR OTHERS VIA TELEPHONE,
INCLUDING THE INTERNET, IN CLASS 38 (U.S.
CLS. 100, 101 AND 104).**

FIRST USE 11-11-1999; IN COMMERCE 11-18-1999.

SN 76-107,265, FILED 8-10-2000.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 26

1216284



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

August 30, 2004

**THE ATTACHED U.S. TRADEMARK REGISTRATION 2,698,986 IS
CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND
EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN
THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES
PATENT AND TRADEMARK OFFICE.**

REGISTERED FOR A TERM OF 10 YEARS FROM *March 25, 2003*

AMENDMENT/CORRECTION/NEW CERT(SEC7) ISSUED

SAID RECORDS SHOW TITLE TO BE IN:

***VIRGIN ENTERPRISES LIMITED
AN ENGLAND CORPORATION***

**By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS**



L. Edele

**L. EDELEN
Certifying Officer**

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51 and 52

Reg. No. 2,698,986

United States Patent and Trademark Office

Registered Mar. 25, 2003

Corrected

OG Date Aug. 26, 2003

**TRADEMARK
PRINCIPAL REGISTER**

VIRGIN SOL

VIRGIN ENTERPRISES LIMITED (ENGLAND CORPORATION)
120 CAMPDEN HILL ROAD
LONDON, ENGLAND W8 7AR. BY ASSIGNMENT CARIBBEAN PACIFIC INTERNATIONAL, INC. (FLORIDA CORPORATION) LAKE BUENA VISTA, FL

THE ENGLISH TRANSLATION OF THE WORD "SOL" IS "SUN".

FOR COSMETICS, MOISTURIZERS, AND SUNTANNING PREPARATIONS.

NAMELY, SUN BLOCKS, SUN BLOCK PREPARATIONS, SUN CREAMS, SUNSCREENS, SUNSCREEN PREPARATIONS, SUNTAN GELS, SUNTAN LOTIONS, SUNTAN OILS, NON-MEDICATED SUNBURN RELIEF LOTIONS, GELS, OILS, AND CREAMS, AFTER-SUN MOISTURIZING LOTIONS, OILS, GELS, AND CREAMS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 7-1-1992; IN COMMERCE 7-1-1992.

SER. NO. 75-217,551. FILED 12-23-1996.

*In testimony whereof I have hereunto set my hand
and caused the seal of The Patent and Trademark
Office to be affixed on Aug. 26, 2003.*

DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51 and 52

United States Patent and Trademark Office

Reg. No. 2,698,986

Registered Mar. 25, 2003

**TRADEMARK
PRINCIPAL REGISTER**

VIRGIN SOL

CARIBBEAN PACIFIC INTERNATIONAL, INC.
(FLORIDA CORPORATION)
P.O. BOX 22309
LAKE BUENA VISTA, FL 32830

CREAMS, IN CLASS 3 (U.S. CLS. 1, 4, 6, 50, 51 AND 52).

FIRST USE 7-1-1992; IN COMMERCE 7-1-1992.

THE ENGLISH TRANSLATION OF THE WORD "SOL" IS "SUN".

SER. NO. 75-217,551, FILED 12-23-1996.

FOR: COSMETICS, MOISTURIZERS, AND SUN-TANNING PREPARATIONS, NAMELY, SUN BLOCKS, SUN BLOCK PREPARATIONS, SUN CREAMS, SUNSCREENS, SUNSCREEN PREPARATIONS, SUNTAN GELS, SUNTAN LOTIONS, SUNTAN OILS, NON-MEDICATED SUNBURN RELIEF LOTIONS, GELS, OILS, AND CREAMS, AFTER-SUN MOISTURIZING LOTIONS, OILS, GELS, AND

LYNN A. LUTHEY, EXAMINING ATTORNEY

EXHIBIT 27

1216202



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 30, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,709,578 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *April 22, 2003*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



L. Edelen

L. EDELEN
Certifying Officer

Int. Cls.: 9, 32, and 33

Prior U.S. Cls.: 21, 23, 26, 36, 38, 45, 46, 47, 48, and 49

Reg. No. 2,709,578

United States Patent and Trademark Office

Registered Apr. 22, 2003

**TRADEMARK
PRINCIPAL REGISTER**

A stylized, handwritten signature of the word "Virgin" in cursive script.

VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM COMPANY)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, ENGLAND

FOR: SOUND RECORDS OF MUSIC IN THE
FORM OF DISCS AND TAPES AND CASSETTES;
PRE-RECORDED AUDIO OR VIDEO TAPES, CAS-
SETTES AND CARTRIDGES FEATURING MUSIC;
PRE-RECORDED AUDIO AND VIDEO DISCS, PHO-
NOGRAPH RECORDS FEATURING MUSIC; DATA
PROCESSORS AND DISPLAYS; GRAPHICAL IN-
TERFACE TO AID THE DELIVERY OF INTERAC-
TIVE PRODUCTS AND SERVICES BY CABLE OR
WIRELESS TRANSMISSION; PARTS FOR THE
AFORESAID GOODS; COMPUTER GAME SOFT-
WARE; COMPUTER SOFTWARE FOR EDUCA-
TIONAL COMPUTER GAMES, FOR
CALCULATORS, FOR GLOBAL COMPUTER NET-
WORK ACCESS AND FOR MUSIC PRODUCTS;
COMPUTER HARDWARE, IN CLASS 9 (U.S. CLS.
21, 23, 26, 36 AND 38).

FIRST USE 0-0-1980; IN COMMERCE 0-0-1987.

FOR: WATER, NAMELY, MINERAL WATERS,
AERATED WATERS AND FLAVORED WATERS;
NON-ALCOHOLIC BEVERAGES, NAMELY, FRUIT
FLAVORED DRINKS, IN CLASS 32 (U.S. CLS. 45, 46
AND 48).

FIRST USE 11-4-1994; IN COMMERCE 4-0-1998.

FOR: SPIRITS, NAMELY VODKA, IN CLASS 33
(U.S. CLS. 47 AND 49).

FIRST USE 1-4-1995; IN COMMERCE 1-4-1995.

OWNER OF U.S. REG. NOS. 1,039,574, 1,863,353,
AND OTHERS.

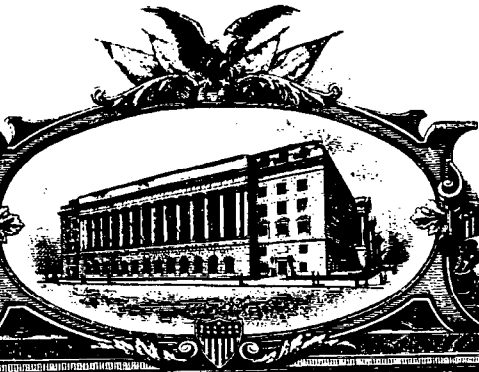
THE DRAWING OF THE TRADEMARK IS LINED
FOR THE COLOR RED.

SN 74-581,589, FILED 10-3-1994.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 28

1216177



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 30, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,717,644 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *May 20, 2003*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



L. Edelen

L. EDELEN
Certifying Officer

Int. Cl.: 32

Prior U.S. Cls.: 45, 46, and 48

Reg. No. 2,717,644

United States Patent and Trademark Office

Registered May 20, 2003

**TRADEMARK
PRINCIPAL REGISTER**

VIRGIN

**VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON, W8 7AR, ENGLAND**

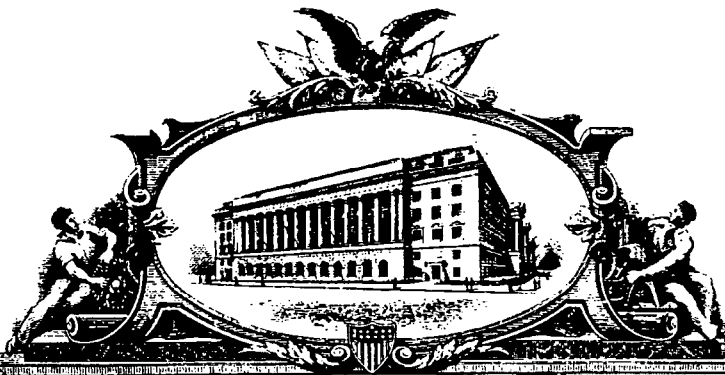
FIRST USE 10-9-1994; IN COMMERCE 10-9-1994.

SN 75-353,824, FILED 9-9-1997.

**FOR: NON-ALCOHOLIC BEVERAGES, NAMELY,
SOFT DRINKS, IN CLASS 32 (U.S. CLS. 45, 46 AND
48).**

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 29



122-6160

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 26, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,770,775 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *October 07, 2003*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



E. Bornett
E. BORNETT
Certifying Officer

Int. Cls.: 9, 35 and 38

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101, 102 and 104

United States Patent and Trademark Office

Reg. No. 2,770,775

Registered Oct. 7, 2003

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

VIRGIN MOBILE

**VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, ENGLAND**

**FOR: MOBILE TELEPHONES, TELEPHONES
AND MODEMS, AND ACCESSORIES THEREFOR,
NAMELY, BATTERIES; BATTERY CHARGERS; CI-
GARETTE LIGHTER ADAPTERS; HANDS-FREE
HEADSETS; CARRYING CASES AND BELT CLIPS,
IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).**

FIRST USE 11-11-1999; IN COMMERCE 7-24-2002.

**FOR: PROVIDING DIRECTORY INFORMATION
VIA TELEPHONE, IN CLASS 35 (U.S. CLS. 100, 101
AND 102).**

FIRST USE 11-11-1999; IN COMMERCE 7-24-2002.

**FOR: TELECOMMUNICATIONS SERVICES,
NAMELY, TRANSMISSION OF VOICE, DATA, IMA-
GES, AUDIO, VIDEO, AND INFORMATION VIA
TELEPHONE OR THE INTERNET; PERSONAL
COMMUNICATIONS SERVICES; PAGER SERVI-
CES; ELECTRONIC MAIL SERVICES; TRANSMIS-
SION OR BROADCAST OF NEWS AND
INFORMATION FOR OTHERS VIA TELEPHONE,
INCLUDING THE INTERNET, IN CLASS 38 (U.S.
CLS. 100, 101 AND 104).**

FIRST USE 11-11-1999; IN COMMERCE 7-24-2002.

**NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "MOBILE", APART FROM THE
MARK AS SHOWN.**

SER. NO. 76-301,009, FILED 8-16-2001.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 30

1216138



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 26, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,770,776 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *October 07, 2003*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



H. L. Jackson
H. L. JACKSON
Certifying Officer

Int. Cls.: 9, 35 and 38

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101, 102 and 104

United States Patent and Trademark Office

Reg. No. 2,770,776

Registered Oct. 7, 2003

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**



VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR. ENGLAND

FOR: MOBILE TELEPHONES, TELEPHONES
AND MODEMS, AND ACCESSORIES THEREFOR,
NAMELY, BATTERIES; BATTERY CHARGERS; CI-
GARETTE LIGHTER ADAPTERS; HANDS-FREE
HEADSETS; CARRYING CASES AND BELT CLIPS,
IN CLASS 9 (U.S. CLS. 21, 23, 26, 36 AND 38).

FIRST USE 11-11-1999; IN COMMERCE 7-24-2002.

FOR: PROVIDING DIRECTORY INFORMATION
VIA TELEPHONE, IN CLASS 35 (U.S. CLS. 100, 101
AND 102).

FIRST USE 11-11-1999; IN COMMERCE 7-24-2002.

FOR: TELECOMMUNICATIONS SERVICES,
NAMELY, TRANSMISSION OF VOICE, DATA, IMA-
GES, AUDIO, VIDEO, AND INFORMATION VIA
TELEPHONE OR THE INTERNET; PERSONAL
COMMUNICATIONS SERVICES; PAGER SERVI-
CES; ELECTRONIC MAIL SERVICES; TRANSMIS-
SION OR BROADCAST OF NEWS AND
INFORMATION FOR OTHERS VIA TELEPHONE,
INCLUDING THE INTERNET, IN CLASS 38 (U.S.
CLS. 100, 101 AND 104).

FIRST USE 11-11-1999; IN COMMERCE 7-24-2002.

NO CLAIM IS MADE TO THE EXCLUSIVE
RIGHT TO USE "MOBILE", APART FROM THE
MARK AS SHOWN.

SER. NO. 76-301,011, FILED 8-16-2001.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 31

1216104



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 26, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,808,270 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *January 27, 2004*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*



By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS

H. L. JACKSON
Certifying Officer

EXHIBIT 32

1216154



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 31, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,818,572 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *March 02, 2004*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



W. Montgomery
W. MONTGOMERY
Certifying Officer

Int. Cl.: 3

Prior U.S. Cls.: 1, 4, 6, 50, 51 and 52

United States Patent and Trademark Office

Reg. No. 2,818,572

Registered Mar. 2, 2004

TRADEMARK
PRINCIPAL REGISTER

VIRGIN
VIE

VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, ENGLAND

FOR: SOAPS; SHAMPOOS; TOILET WATERS;
ESSENTIAL OILS FOR PERSONAL USE; SHAVING
PREPARATIONS; AFTER-SHAVE LOTIONS; SHAV-
ING FOAMS; NON-MEDICATED TOILET PRE-
PARATIONS, NAMELY, SOAPS, SHAMPOOS,
CONDITIONERS, NON-MEDICATED BATH SALTS
AND BATH OILS; ANTI-PERSPIRANTS, DEODOR-
ANTS FOR USE ON THE PERSON; DEPILATORIES;
DENTIFRICES; MOUTHWASHES; COSMETICS,
NAMELY, FOUNDATION CREAMS AND LO-
TIONS, FACE POWDERS, BLUSHER, LIPSTICKS,
LIP GLOSS, AND EYE MAKE-UP; SUNTANNING
AND SUNSCREENING PREPARATIONS; NON-
MEDICATED PREPARATIONS FOR THE CARE
OF THE SKIN, HANDS, SCALP AND BODY, NAME-
LY, TONERS, EXFOLIATORS, SCRUBS, SOAPS,
NAIL CARE PREPARATIONS NAMELY, SHAM-
POOS, CONDITIONERS, LOTIONS, STYLING GELS,
MOUSSE, OILS, SPRAYS, HAIR COLORING AND
DECOLORANT PREPARATIONS; DYES FOR THE
HAIR AND PERMANENT WAVING AND CUR-
LING PREPARATIONS; NON-MEDICATED SKIN

CLEANSING PREPARATIONS NAMELY, CLEANS-
ERS, EXFOLIATORS, SCRUBS, SOAPS AND TO-
NERS; TALCUM POWDERS; NAIL VARNISH
REMOVERS; NAIL CARE PREPARATIONS; ARTI-
FICIAL NAILS AND ADHESIVES THEREFOR;
GLUES, ADHESIVES, ACRYLIC, AND SILK AND
LINEN WRAPS FOR THE REPAIR OF ARTIFICIAL
NAILS; ARTIFICIAL EYELASHES AND ADHE-
SIVES THEREFOR, IN CLASS 3 (U.S. CLS. 1, 4, 6,
50, 51 AND 52).

PRIORITY CLAIMED UNDER SEC. 44(D) ON
UNITED KINGDOM APPLICATION NO. 2126337,
FILED 3-12-1997, REG. NO. 2126337, DATED 10-3-
1997, EXPIRES 3-12-2007.

OWNER OF U.S. REG. NOS. 1,039,574, 1,852,776
AND OTHERS.

THE ENGLISH TRANSLATION OF THE WORD
"VIE" IS "LIFE".

SER. NO. 75-353,068, FILED 9-8-1997.

GEORGE POLOGEORGIS, EXAMINING ATTOR-
NEY

EXHIBIT 33

1216109



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

August 26, 2004

THE ATTACHED U.S. TRADEMARK REGISTRATION 2,870,028 IS
CERTIFIED TO BE A TRUE COPY OF THE REGISTRATION ISSUED BY
THE UNITED STATES PATENT AND TRADEMARK OFFICE WHICH
REGISTRATION IS IN FULL FORCE AND EFFECT.

REGISTERED FOR A TERM OF 10 YEARS FROM *August 03, 2004*
SAID RECORDS SHOW TITLE TO BE IN: *Registrant*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS



H. L. JACKSON
Certifying Officer

Int. Cls.: 9 and 38

Prior U.S. Cls.: 21, 23, 26, 36, 38, 100, 101, and 104

United States Patent and Trademark Office

Reg. No. 2,870,028

Registered Aug. 3, 2004

**TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER**

VIRGIN XTRAS

**VIRGIN ENTERPRISES LIMITED (UNITED
KINGDOM CORPORATION)
120 CAMPDEN HILL ROAD
LONDON W8 7AR, ENGLAND**

**FOR: MOBILE TELEPHONES; COMPUTER SOFTWARE
DOWNLOADABLE FROM THE INTERNET
FOR TRANSMISSION, RECEPTION AND STORAGE
OF VOICE, DATA, IMAGES, E-MAIL AND DIGITAL
INFORMATION, IN CLASS 9 (U.S. CLS. 21, 23, 26, 36
AND 38).**

FIRST USE 6-22-2002; IN COMMERCE 6-22-2002.

**FOR: TELECOMMUNICATIONS SERVICES,
NAMELY, TRANSMISSION OF VOICE, DATA, IMAGE,**

**AND INFORMATION VIA
TELEPHONE OR THE INTERNET; PERSONAL
COMMUNICATIONS SERVICES; ELECTRONIC
MAIL SERVICES; TRANSMISSION OR BROADCAST
OF NEWS AND INFORMATION FOR OTHERS
VIA TELEPHONE, INCLUDING THE
INTERNET, IN CLASS 38 (U.S. CLS. 100, 101 AND
104).**

FIRST USE 6-22-2002; IN COMMERCE 6-22-2002.

SN 76-301,267, FILED 8-16-2001.

MELVIN AXILBUND, EXAMINING ATTORNEY

EXHIBIT 34

THE

WORLD'S
GREATEST
BRANDS

an international review by

Interbrand

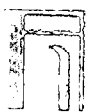
EDITED BY

NICHOLAS KOCHAN

BRANDS

Edited by Nicholas Kochan

Interbrand



NEW YORK UNIVERSITY PRESS
Washington Square, New York

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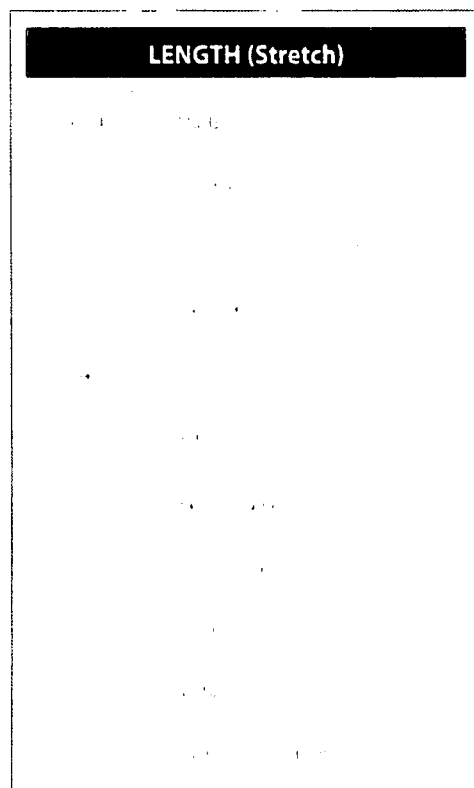
Printed in the United States of America
by the University of Chicago Press

Library of Congress

Position	Brand	Score	Position	Brand	Score
87th	Agfa		90th	Kleenex	635
	Hewlett Packard	647	91st	Canon	
89th	Borden	646		Virgin	634
92nd	Chrysler	645	93rd	<i>The Financial Times</i>	633
94th	Carter	643	94th	Haagen-Dazs	632
96th	Domstegen	642	95th	Braun	631
100th	Day bar	641	96th	Samsung	
101st	St. Paul	640		Gordons	630
102nd	Bachelder		98th	Benetton	
	Phillips	639		Sainsbury	629
104th	Leas	638	100th	Dr Martens	628
105th	Barneys	637			
106th	San Leppes				
107th	Harold				
	Reader's Digest	636			



We have awarded brands a score for **weight** that reflects their dominance over their particular category or market. This is a key component of a brand's power. A high score for dominance tends to indicate a dominant market share (brands which score well in their category are usually clear market leaders). But other factors are taken into account as well. Through innovation and clear brand focus, a brand often can outgrow its market and can move into other markets over that market as the market leader (e.g., Apple in personal computing, for example). All the brands shown above exert clear dominance over their respective markets.



The **length** of a brand refers to its stretch and stretchability into new categories and markets. As the cost of brand support and new brand launches becomes prohibitive, a brand's ability to be extended into new areas is increasingly important to brand owners and has become an important element in most brand equity analyses. The brands shown above have proven ability to break into new categories and cross product boundaries – their area of competence is the widest of the brands studied for this book.



virgin atlantic



Virgin Atlantic seems to be both young and old at the same time: young in that it still plays up to its 'new kid on the block' image which gives it a more dynamic personality than some of its more established rivals; but old in that the name seems to have been around for longer than its 11 years, such have been its achievements in this relatively short space of time.

When one first hears the brand Richard Branson was famous as a leading light in the world of pop and rock music. Cynics, who predicted that the Virgin directors' saw his move into the airline business as a halfhearted stunt which would undoubtedly backfire, but Branson was convinced his knowledge of the music business could be applied to the airline industry – after all, both were consumer-oriented industries.

Although the early Virgin Atlantic service was restricted to the London-New York route Branson immediately began forming plans to establish the most distinctive brand in the skies. He believed that the two classes only – business and economy – would not be sufficient to attract the level of service would be sufficient to attract the business classes sit up and take notice. Over the years his independent-minded approach has seen the addition of many in-flight creature comforts. These include on-board telephones and faxes, Sony video walkmans, individual TV screens, interactive video entertainment, video gambling and radio-cassette.

The brand's formula has proved phenomenally successful. With a host of industry awards behind it (particularly for what has now been renamed Upper Class), Virgin Atlantic now flies many long-haul routes (including Hong Kong, Los Angeles and Tokyo). It has also entered into partnerships with other airlines, such as Gulf Malaysian Airlines and British Midland. In 1992-3 it carried over 1.4 million passengers. By 1994 Virgin Atlantic had carried over 1.5 million passengers.

Virgin Atlantic has grown from a frivolous young upstart into a hugely respected airline, well positioned to take maximum advantage of the world's increasingly open skies.

P.P.

Visa International is a credit and debit card payment system operator. Its major rival is the MasterCard network and the two brands are now in fierce competition for the global leadership of the plastic-card payment market. The market, however, is a complex and rapidly changing one: success depends not just on product and brand quality but on widespread distribution through participating banks and financial service organisations and on availability of the service at point of sale.

The increase in electronic banking, changing alliances between banks and payment system operators, the launch of value added services (such as gold and debit cards) and the entry of retailers into the fray are all tending to create a kind of brand soup which experts understand but which is often confusing to the consumer. In such a situation the reassurance provided by the powerful brands such as Visa will be of increasing value.



Locked in fierce combat with arch-rival MasterCard, Visa has managed to remain aloof from the flood of new entries into the credit and debit card market.

Virgin Enterprises Ltd. v. Albion
Motors Ford Mercury, Inc.
Opposition No. 91153575
Opposer's Testimony Deposition
Exhibit No.



EXHIBIT 35

rollingstone.com

Usher's Wild Ride

Surviving Courtney Love

24 HOURS of the Heart Department

Summer Movies

Tobey Maguire
Tom Cruise
Will Ferrell
Halle Berry

The AI Franken Factor

18800L*****CR LOT 0162A**C-016
Virgin Enterprises Ltd. v. Albion
Motors Ford Mercury, Inc.
Opposition No. 91153575
Opposer's Testimony Deposition
Exhibit No. 449

UNOS
RLFM

UN05
RLE7

1544

Shallow Grave

The Deadly End of a Goth Love Triangle



*"You don't just
charge people fees
and not tell them.
That's Sunday
School 101."*

Pay As You Go by



Live without a plan.

EXHIBIT 36

The Punk'd
star takes on
a new role

Rapping about
high school horrors
and his first love

What's new
with your
favorite crush

BONUS
POSTER
INSIDE

GUYS, GUYS, GUYS!

486

THINGS YOU
GOTTA KNOW
ABOUT HIM:

- CATCH HIS EYE
- FLIRT WITHOUT FEAR
- GO FROM CRUSH TO COUPLE

READERS'
CHOICE!

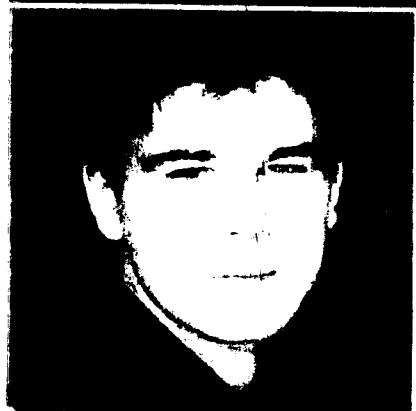
50 SEXIEST GUYS EVER

starring your #1 pick

BLOOM

EMBARRASSING MOMENTS:
your funny love life

PG. 92



ROBIN WILSON
ON THIS
PAGE

TEENPEOPLE.COM

*****CAR-RE LOT000-016
Virgin Enterprises Ltd. A Virgin
Motor Ltd. Motor, Ltd.
Opposition No. 115, 116
Opposition No. 115, 116
Exhibit No. 115, 116

Should someone
be forced to
pay for minutes
they don't use?

Not in my America.

Pay As You Go by  mobile Live without a plan

EXHIBIT 37

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

8343-044

AMD/kes

H. Smith
REFERRED TO
REC'D
DEC 2 1996
Pennie & Edmonds
O.K. for filing *fn*

MAILED

NOV 26 1996

PAT. & T.M. OFFICE

Opposition No. 98,545

Virgin Enterprises
Limited

v.

Virgin Films

On September 19, 1996, the Board sent a notice of default to applicant because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused. See Fed. R. Civ. P. 55, and Trademark Rule 2.106(a).

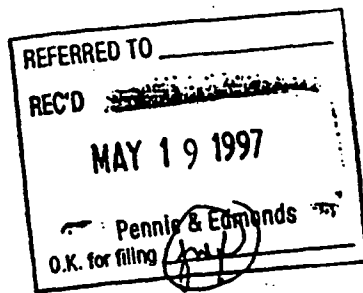
R. L. Simms
R. L. Simms

R. F. Cissel
R. F. Cissel

E. W. Hanak
E. W. Hanak

Administrative Trademark Judges,
Trademark Trial and Appeal Board

EF/gjs



MAILED

MAY 15 1997

PAT. & T.M. OFFICE

8343.045

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Opposition No. 99,108

Virgin Enterprises
Limited

v.

Savon Vierge Italia
S.R.L.

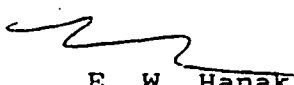
On February 5, 1997, applicant filed an abandonment of its application Serial No. 74/516,151.

Trademark Rule 2.135 provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant.

In view thereof, and because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant, the opposition is sustained and registration to applicant is refused.


R. L. Simms


R. F. Cissel


E. W. Hanak
Administrative Trademark Judges
Trademark Trial and Appeal Board

8343-070

GFR/jas

REFERRED TO <i>Dalmer</i>
REC'D <i>2-12-97</i>
FEB 12 1997
Perdue & Edmonds C.K. for filing <i>[initials]</i>

MAILED

FEB 7 1997

PAT. & T.M. OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Opposition No. 101,819

Virgin Enterprises
Limited

v.

H & S Enterprises

On September 16, 1996, the Board sent a notice of default to applicant because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused. See Fed. R. Civ. P. 55, and Trademark Rule 2.106(a).

R. L. Simms
R. L. Simms

R. F. Cissel
R. F. Cissel

E. W. Hanak
E. W. Hanak

Administrative Trademark
Judges, Trademark Trial
and Appeal Board

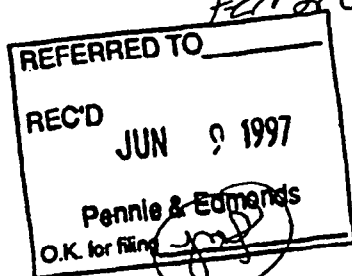
43-095-999

MAILED

JUN 5 1997

TEH

PAT. & T.M. OFFICE



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Opposition No. 103,287

Virgin Enterprises Limited

v.

Maple Leaf Corporation

The Board, in an order mailed February 19, 1997, allowed applicant until March 11, 1997 to show cause why judgment should not be entered against it in view of applicant's apparent loss of interest in defending this case.

Inasmuch as no response to the Board's order has been received, judgment is hereby entered against applicant.

The opposition is accordingly sustained, and registration to applicant is refused.

R. L. Simms

R. F. Cissel

E. W. Hanak
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

ac/HRW

MAILED
MAY 8 1998
PAT. & T.M. OFFICE

Opposition No. 105,266

Virgin Enterprises
Limited

v.

ANS Enterprises,
Incorporated

On April 3, 1998, applicant filed an abandonment of its application Serial No. 74/635,944 under Trademark Rule 2.68.¹

However, the applicable rule is Trademark Rule 2.135, which provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against the applicant.

¹ Applicant's abandonment does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119. In order to expedite this matter, a copy of said abandonment is forwarded herewith to counsel for opposer, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

V 2177

Opposition No. 100,266

Accordingly, because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant, the opposition is sustained and registration to applicant is refused.

T. D. Quinn
T. D. Quinn

G. D. Hohein
G. D. Hohein

C. E. Walters
C. E. Walters
Administrative Trademark Judges
Trademark Trial and Appeal Board

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

THE/cv

#5

Opposition No. 106,762

Virgin Enterprises
Limited

v.

LPL Promoters, LLC

MAILED

JAN 05 1998

PAT. & T.M. OFFICE

On October 31, 1997, the Board sent a notice of default to applicant because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused. See Fed. R. Civ. P. 55, and Trademark Rule 2.106(a).

R. A. Simms
R. A. Simms

R. F. Cissel
R. F. Cissel

T. D. Quinn
T. D. Quinn
Administrative Trademark Judges,
Trademark Trial and Appeal Board

V 2017

C: JWD
EAM

8343.127.1

OCT 26 2000

Paper No. 33
Bottorff

**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Virgin Enterprises Limited
v.
David DeFeis

Opposition No. 108,967
to application Serial No. 75/116,208
filed on June 10, 1996

8343-127-1-11
Jeff Dabney

REFERRED TO REC'D	<i>fermo</i>
OCT 30 2000	
Pennie & Edmonds O.K. for filing	

James W. Dabney of Pennie & Edmonds LLP for Virgin Enterprises Limited.

John F. Vodopia of Scully, Scott, Murphy & Presser for David DeFeis

Before Hohein, Bottorff and McLeod, Administrative Trademark Judges.

Opinion by Bottorff, Administrative Trademark Judge:

Applicant has filed an application by which he seeks registration on the Principal Register of the mark VIRGIN STEELE, in typed form, for goods and services identified in the application, as amended, as "a series of pre-recorded audio and video cassettes, compact disks and records, featuring music," in Class 9; "posters," in Class 16; "clothing, namely, t-shirts, hats, headbands, headwear," in Class 25; and "entertainment in the nature of a live musical

group," in Class 41.¹ The application is based on use in commerce under Trademark Act Section 1(a), 15 U.S.C. §1051(a), and includes an allegation of March 1982 as the date of first use of the mark anywhere and first use of the mark in commerce on or in connection with all of the identified goods and services.

Opposer has filed a timely notice of opposition to registration of applicant's mark, alleging priority and likelihood of confusion under Section 2(d) as its ground of opposition. Specifically, opposer alleges prior use and registration of various VIRGIN marks for a variety of goods and services, including goods and services which are alleged to be identical or closely related to the goods and services identified in applicant's application, and that applicant's use of the mark VIRGIN STEELE on or in connection with the identified goods and services is likely to cause confusion, to cause mistake, or to deceive.²

¹ Serial No. 75/116,208, filed June 10, 1996.

² As will be discussed more fully, *infra* at pp. 20-21, opposer, for the first time in its briefs, argues that its pleading should be deemed to be amended pursuant to Fed. R. Civ. P. 15(b) to include, as an additional ground of opposition, a claim that applicant's allegation in the original application of use of the mark on "headgear" and its allegation in the amended application of use of the mark on "hats, headbands and headwear" were false and fraudulent, and that the application therefore is void ab initio in its entirety. Opposer did not file a separate Rule 15(b) motion requesting such amendment of its pleading prior to or with its main brief on the case. Applicant, in his brief, argues that opposer's fraud claim is unpleaded and untimely, and that it is unfounded as well. Applicant further asserts that if opposer files a Rule 15(b) motion to amend the notice of opposition, applicant also will move to amend his answer to add

Applicant has filed an answer by which he denies the allegations of the notice of opposition which are essential to opposer's Section 2(d) claim.

Opposer submitted the following evidence: various documents, including status and title copies of its registrations, submitted under notices of reliance filed during its main testimony period and its rebuttal testimony period; transcripts of the testimony depositions of its witnesses David Steel, Lori Levin-Hyams, and Catherine Clayton, with exhibits; and the transcript of the testimony deposition of applicant David DeFeis as an adverse witness, taken by opposer during its main testimony period.

Applicant submitted the following evidence: the transcript of the (second) testimony deposition of applicant David DeFeis taken by applicant during its case in chief, with exhibits; and various documents submitted under notice of reliance.

Opposer and applicant filed main briefs, and opposer filed a reply brief. No oral hearing was requested. In reaching its decision herein, the Board has carefully

counterclaims for cancellation of certain of opposer's registrations on the ground that opposer is no longer the owner of those marks or has abandoned those marks by naked licensing. Opposer, in its reply brief, asserts that it has not and will not file a separate Rule 15(b) motion because such a motion is not a prerequisite to the amendment of its pleading under Rule 15(b). Subsequently, applicant did not file any counterclaims.

considered all of the evidence and arguments offered by the parties, including any evidence or arguments not specifically mentioned in this opinion.

As discussed below, opposer has proven its ownership of registrations of various VIRGIN marks for goods and/or services which are identical and/or related to applicant's identified goods and services, as well as its prior use of VIRGIN as a trade name. In view thereof, we find that opposer has established its real interest in the outcome of this proceeding and a reasonable basis for its belief that it will be damaged by issuance of a registration to applicant, and that it thus has established its standing to oppose. See Trademark Act Section 13; *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999); *Jewelers Vigilance Committee Inc. v. Ullenberg Corp.*, 823 F.2d 490, 2 USPQ2d 2021 (Fed. Cir. 1987).³

As noted above, Trademark Act Section 2(d) is the statutory ground of opposition opposer pleaded in the notice of opposition. Section 2(d) provides, in relevant part,

³ For the reasons discussed *infra* with regard to Section 2(d) priority, applicant's attacks on the validity of opposer's registrations (based on applicant's asserted priority of use vis-à-vis certain of the registrations and on opposer's alleged abandonment and/or non-ownership of the mark in connection with music-related goods) will not be heard inasmuch as applicant has not asserted any counterclaims against those registrations. Trademark Rule 2.106(b). Opposer's registrations accordingly will be given full effect, and they constitute evidence of opposer's standing.

-that registration of an applicant's mark must be refused if-----
it:

Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive.

Opposer has made of record, by notice of reliance, status and title copies of eleven registrations of various VIRGIN marks, each of which are shown to be subsisting and owned by opposer.¹ Those registrations are as follows:

Registration No. 1,039,574, issued May 18, 1976, of the mark VIRGIN in stylized form as depicted below



for "sound records in the form of discs and tapes and cassettes for use therewith" in Class 9. Affidavits under Section 8 and 15 filed and acknowledged; renewed under Section 9 for a term of ten years from May 18, 1996;

Registration No. 1,413,664, issued October 14, 1986, of the mark VIRGIN, in typed form, for "air travel services" in Class 39. Affidavits under Section 8 and 15 filed and acknowledged;

¹ In its brief, opposer also refers to an additional registration, Reg. No. 2,237,092. However, opposer has not made that registration of record, and we have given it no consideration.

Registration No. 1,469,618, issued December 22, 1987, of the mark VIRGIN, in typed form, for "prerecorded audio and/or video tapes, cassettes and cartridges; pre-recorded audio and video discs, phonograph records; photographic and cinematographic films" in Class 9. Affidavits under Section 8 and 15 filed and acknowledged;

Registration No. 1,517,801, issued December 27, 1988, of the mark VIRGIN in stylized form as depicted below



for "prerecorded audio and/or video tapes, cassettes and cartridges; pre-recorded audio and video discs, phonograph records; photographic and cinematographic films" in Class 9. Affidavits under Section 8 and 15 filed and acknowledged;

Registration No. 1,591,952, issued April 17, 1990, of the mark VIRGIN in the same stylized form depicted in Reg. No. 1,517,801 (immediately above), for "printed sheet music; fictional and non-fictional books, biography and autobiography books, periodicals, namely, paperback books and magazines, all dealing with music, films and entertainment; paper for packaging, paper cases; writing instruments, namely, pens, pencils, ball point pens, and crayons; stationery and office supplies, namely, writing and note paper; playing cards," all in Class 16; and "articles of outer clothing, namely, shirts, t-shirts, sweat shirts, jackets, hats, clothing caps, clothing belts," in Class 25. Affidavits under Sections 8 and 15 accepted and acknowledged;

Registration No. 1,597,386, issued May 22, 1990, of the mark VIRGIN, in typed form, for "printed sheet music; mounted photographs; posters; fictional and non-fictional books, biography and autobiography books, periodicals, namely, pamphlets, brochures, newsletters, journals, paperback books and magazines, all dealing with music, films and entertainment; paper for packaging, paper cases; stationery and office supplies, namely, writing and note paper, tags for index cards; paper tableware, namely, table mats, coasters, decanter mats, dish mats, table napkins; and playing cards," all in Class 16; and "articles of outer clothing, namely,

shirts, t-shirts, sweat shirts, jackets, hats, clothing caps, clothing belts," in Class 25. Affidavits under Sections 8 and 15 accepted and acknowledged;

Registration No. 1,851,817, issued August 30, 1994, of the mark VIRGIN, in typed form, for "direct mail advertising for others; dissemination of advertising materials for others; preparing advertising, promotions, and public relations materials for others; management of promotional and incentive plans and services for others; business organization promotional consulting for others; demonstration of the goods and services of others and the promotion thereof; promoting and advertising the goods and services of others by aircraft, airships and air balloons; outdoor advertising such as by billboards; and distribution of advertising, promotional materials and sample materials of others," in Class 35; "transportation of goods and passengers by road, rail, air and sea; freight transportation services; tourist agency services; travel agency services; arranging travel tours; and transportation reservation services," in Class 39; Clubs, nightclubs; bars; hotels; resorts; hotel reservation services; hotel and resort management for others; carry-out restaurant and restaurant services; catering; computer programming for others; computer software design services for others; artwork and graphic design services for others; and retail store services in the fields of cosmetics and laundry preparations, metal hardware, cameras, records, audio and video tapes, audio and video recorders, computers and electronic apparatus, jewelry, clocks and watches, musical instruments, stationery, sheet music, books and photography, handbags, purses, luggage and leather goods, clothing, lace, embroidery, gifts and sewing materials, toys, games, video game machines and video game cartridges, processed foods, jellies and jams, coffee, tea, bakery items and candy, beer, ale, mineral and aerated waters and other non-alcoholic drinks, wines, spirits and liqueurs, and tobacco and smokers' articles," in Class 42;

Registration No. 1,852,776, issued September 6, 1994, of the mark VIRGIN in the stylized form depicted above in Registration No. 1,517,801, for the same services as those recited in Registration No. 1,851,817, immediately above;

Registration No. 1,863,353, issued November 15, 1994, of the mark VIRGIN MEGASTORE (MEGASTORE disclaimed), in

typed form, for "retail department store services" in Class 42;

Registration No. 2,094,460, issued September 9, 1997, of the mark VIRGIN, in typed form, for "underwriting life, health and general insurance; administration of employee pension plans; annuity underwriting; estate trust management; funds investment; investment of funds for others; open and close-ended funds investment; financial analysis and consultation in the field of securities, personal equity and tax advantaged savings," in Class 36; and

Registration No. 2,151,589, of the mark VIRGIN VODKA (VODKA disclaimed), in typed form, for "vodka" in Class 33.

In view of opposer's ownership of these registrations, priority is not an issue in this proceeding. **King Candy Co., Inc. v. Eunice King's Kitchen, Inc.**, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Contrary to applicant's contention, it is irrelevant that the dates of first use alleged by opposer in some of its registrations are subsequent to applicant's alleged date of first use of his mark. Section 2(d) provides that registration must be refused to a mark which is confusingly similar to "a mark registered in the Patent and Trademark Office, or a mark or trade name previously used..."

(Emphasis added.) Because opposer has made its registrations of record, and because applicant has not asserted any counterclaims for cancellation of those registrations (such counterclaims being compulsory under

Trademark Rule 2.106(b)(2)), actual priority of use is not an issue in this case. *King Candy, supra.*

Applicant also argues that opposer, having sold its Virgin Music Group to Thorn EMI in 1992, no longer uses the VIRGIN mark on music-related goods, including the music-related goods identified in several of the registrations made of record in this case, and that opposer accordingly is not the owner of the VIRGIN mark as to those goods and/or has abandoned the mark as to those goods by virtue of its naked licensing of the mark to Thorn EMI. To the extent that these arguments are an attack on the validity of those registrations and/or opposer's ownership thereof, such attack is a compulsory counterclaim which should have been pleaded with the original answer or pleaded promptly after the grounds therefor were learned, and it will not be heard in the absence of such counterclaim. See Trademark Rule 2.106(b)(2)(i) and (ii). No counterclaim having been asserted by applicant, the Board shall give applicant's arguments on these issues no consideration, and shall give full effect to opposer's registrations, which, according to the status and title copies opposer has made of record, are owned by opposer.

Our likelihood of confusion determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the

likelihood of confusion issue. See *In re E.I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

In considering the evidence of record on these factors, we keep in mind that "[t]he fundamental inquiry mandated by §2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We turn first to a comparison of the parties' goods and services, their trade channels and their customers. It is not necessary that the parties' respective goods and/or services be identical or even competitive in order to support a finding of likelihood of confusion. Rather, it is sufficient that the goods and/or services are related in some manner or that the circumstances surrounding their marketing are such that they would be likely to be encountered by the same persons in situations that would give rise, because of the marks used thereon, to a mistaken belief that they originate from or are in some way associated with the same producer or that there is an association or connection between the producers of the respective goods and/or services. See *In re Melville Corp.*, 18 USPQ2d 1386 (TTAB 1991); *In re International Telephone & Telegraph Corp.*, 197 USPQ 910 (TTAB 1978).

In this case, the goods identified in applicant's application are legally identical and/or highly similar to the goods identified in one or more of opposer's VIRGIN registrations. That is, applicant's Class 9 goods, i.e., "a series of pre-recorded audio and video cassettes, compact disks and records, featuring music," are legally identical and/or highly similar to the "sound records in the form of discs and tapes and cassettes for use therewith" identified in opposer's Registration No. 1,039,574 and to the "pre-recorded audio and/or video tapes, cassettes and cartridges; pre-recorded audio and video discs, phonograph records" identified in opposer's Registration Nos. 1,469,618 and 1,517,801. Applicant's Class 16 "posters" are legally identical to the "posters" identified in opposer's Registration No. 1,597,386. Applicant's Class 25 clothing items, "namely, t-shirts, hats, headbands, headwear" are legally identical and/or highly similar to the "shirts, t-shirts, sweat shirts, hats, clothing caps" identified in opposer's Registration Nos. 1,591,952 and 1,597,386. Each of applicant's goods also must be deemed to be related to the retail store services identified in opposer's VIRGIN Registration Nos. 1,851,817 and 1,852,776 and in opposer's VIRGIN MEGASTORE Registration No. 1,863,353, inasmuch as they are the types of goods which are sold in opposer's stores.

As for the services recited in applicant's application, i.e., "entertainment in the nature of a live musical group," we find that these services are related to the Class 9 audio and video recordings and discs identified in opposer's registrations as referenced above, as well as to the posters and clothing items identified in certain of opposer's other registrations. The relationship between such goods and applicant's entertainment services is evidenced by the fact that applicant itself offers such goods in conjunction with its entertainment services. We also find that applicant's services are related to various services identified in opposer's registrations. It is common knowledge, for example, that "nightclubs," which are among the services recited in opposer's Registration Nos. 1,851,817 and 1,852,776, often feature live performances by musical groups. Further, opposer's witness Ms. Levin-Hyams testified that opposer frequently sponsors and promotes live performances and other appearances by musical groups at its retail stores.

Thus, we find that applicant's goods and services are identical and closely related to certain of opposer's goods and services, as discussed above. Likewise, we find that the parties' identical and closely related goods and services move in the same trade channels and are marketed to the same classes of purchasers. There are no limitations as

to trade channels or purchasers in applicant's identification of goods and services or in opposer's registrations. Accordingly, we presume that the parties' identical and closely related goods and services are marketed in all normal trade channels and to all normal classes of purchasers for such goods and services. See *In re Elbaum*, 211 USPQ 639 (TTAB 1981). Moreover, the evidence of record shows that both applicant's and opposer's records, discs and videos are sold at Tower Records, and through the same mail-order catalogs.

Finally, it appears that the goods involved herein are common consumer items which are relatively inexpensive. There is no evidence that the normal purchasers of these goods are especially sophisticated or careful in making their purchasing decisions.

We turn next to the issue of whether applicant's mark VIRGIN STEELE and opposer's VIRGIN mark, when viewed in their entirety, are similar in terms of appearance, sound, connotation and overall commercial impression. The test to be applied is not whether the marks can be distinguished when subjected to a side-by-side comparison, but rather whether the marks are sufficiently similar in terms of their overall commercial impressions that confusion as to the source of the goods and services offered under the respective marks is likely to result. The focus is on the

recollection of the average purchaser, who normally retains a general rather than a specific impression of trademarks. See *Sealed Air Corp. v. Scott Paper Co.*, 190 USPQ 106 (TTAB 1975). Furthermore, because applicant's goods and services are closely related and in many respects legally identical to opposer's goods and services, the degree of similarity between the marks that is required to support a finding of likelihood of confusion declines. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Our analysis of the parties' marks begins with our finding that opposer's VIRGIN mark is a strong mark which is entitled to a relatively broad latitude of protection.⁵ VIRGIN is an arbitrary term as applied to opposer's goods and services. The record shows that opposer uses VIRGIN both as its trade name and as a house mark on an extremely wide variety of goods and services, and that opposer actively cross-promotes its VIRGIN mark among these various

⁵ On this record, however, we cannot conclude that opposer's VIRGIN mark is "famous." The news articles (and the district court order) submitted and relied upon by opposer are insufficient to prove that opposer's mark is famous, in the absence of any direct evidence as to the dollar or unit volume of sales under the mark, or as to the amount of its advertising and promotional expenditures, or as to opposer's market share in the relevant industries. See *Hard Rock Café Licensing Corp. v. Elsea*, 48 USPQ2d 1400, 1409 (TTAB 1998). Moreover, the district court's findings and conclusions in the context of opposer's lawsuit against a third party are not evidence in this case of the facts said to underlie such findings and conclusions, nor are they entitled to any legally preclusive effect as against applicant, who was not a party to that litigation.

goods and services.---There is no evidence of any use by-----
third parties of VIRGIN marks on or in connection with the
goods and services involved in this case or, indeed, in
connection with any goods or services at all.⁶ The record
also shows that opposer diligently polices its rights in the
VIRGIN mark and name. Finally, we find that opposer's mark
is especially strong in connection with music-related goods
and services. The evidence of record establishes that the
VIRGIN record label is a highly respected and well-known
label, with a roster of famous artists which includes The
Rolling Stones, Janet Jackson, David Bowie, Tina Turner and
Lenny Kravitz, among others.

Keeping the strength of opposer's mark in mind, we turn
to a comparison of opposer's mark and applicant's mark. In
terms of appearance and sound, we find that opposer's VIRGIN
mark and applicant's VIRGIN STEELE mark obviously are
identical to the extent that both marks use the arbitrary
word VIRGIN, but are dissimilar to the extent that
applicant's mark includes the word STEELE while opposer's
mark does not. We are not persuaded by applicant's argument
that the stylized lettering and form of certain of opposer's

⁶ The third-party registrations made of record by applicant
(Exhibits 1-9 of applicant's Notice of Reliance) are not
evidence that the marks depicted therein are in actual use, or
that the public is accustomed to and capable of making source
distinctions among various VIRGIN marks. See *AMF Incorporated
v. American Leisure Products, Inc.*, 474 F.2d 1403, 177 USPQ 268
(CCPA 1973).

registered marks suffices to visually distinguish them from applicant's mark. We do not believe that opposer's mark is so highly stylized, in either Registration No. 1,039,574 or in Registration Nos. 1,517,801, 1,591,952 and 1,852,776 (see *supra* at footnote 4), as to negate or outweigh the commercial impression created by those marks' use of the term VIRGIN, per se. Moreover, we note that opposer owns registrations of its VIRGIN mark in typed form for the same goods and services covered by its registered stylized marks.

In terms of connotation, we find that the word VIRGIN, as it appears in both marks, carries its normal meaning, i.e., "free of impurity or stain: unsullied" or "fresh, unspoiled." Webster's Ninth New Collegiate Dictionary (1990) at 1317. In applicant's mark, the word VIRGIN modifies the word STEELE (or STEEL), whereas in opposer's mark it stands alone. Opposer argues that applicant's VIRGIN STEELE mark merely takes opposer's arbitrary VIRGIN mark and adds the "descriptive" word STEELE thereto.⁷ However, the record does not support opposer's argument that STEELE is a descriptive term as applied to "heavy metal" music such as applicant's. We find, instead, that it is

⁷ Neither party has argued that STEELE would be perceived as a surname due to the presence of the terminal letter "E." Rather, both parties have treated the word as a mere misspelling of the word STEEL. Based on this record, we do not disagree.

suggestive of such music, at most, and that it cannot be discounted in our comparison of the marks.⁸

Further with respect to the connotation of applicant's mark, and likewise with respect to the mark's overall commercial impression, we find that VIRGIN STEELE would most likely be perceived as a unitary composite term much like "virgin wool," "virgin forest" or "virgin birth." Applicant testified: "Also we play what is called metal music. It's like a sword, virgin metal, torching the fires of adversity, like Excalibur, that kind of thing. It's a gothic kind of music." (Id. at 118.) This testimony as to the meaning of VIRGIN STEELE is corroborated by the artwork appearing on applicant's recordings, posters and t-shirts, in which depictions of swords often figure prominently. (See, e.g., DeFeis depo. (2/10/99), Exhibits 3, 9, 10, 12-14, and 18.)

⁸ Opposer (at page 25 of its brief), in support of its argument that STEELE is "descriptive" of heavy metal music, cites to applicant's testimony at page 51 of applicant's August 30, 1999 testimony deposition:

Q. When you say this kind of music, what kind of music are you referring to?

A. It's a certain kind of heavy metal. A very specific kind of heavy metal.

Q. Is the word steel supposed to conjure up metal?

A. It's supposed to conjure up whatever you think. Sure. It's related to steel. Like Iron Maiden, Led Zeppelin. It's a combination of light things and things that are harder or heavier.

(DeFeis depo. (8/30/99) at 51.) We find that this testimony does not establish that STEELE or STEEL is descriptive of heavy metal music.

Applicant also testified that it is common for heavy metal rock bands like applicant's to take a name which combines opposite characteristics, such as light and heavy, or light and hard. Applicant cited as examples the bands named IRON MAIDEN, IRON BUTTERFLY, LED ZEPPELIN, and BLACK SABBATH. Applicant testified, persuasively, that the name VIRGIN STEELE creates the same sort of commercial impression when used in connection with applicant's band. (DeFeis depo. (8/30/99) at 51; DeFeis depo. (2/10/99), at 4-5 and 117-118.) Opposer's VIRGIN mark does not create this same detailed commercial impression.

In summary, when we compare applicant's and opposer's marks in their entireties as to appearance, sound and connotation, and as to their overall commercial impressions, we find that there certainly are dissimilarities between the marks which result from the presence of the word STEELE in applicant's mark and the absence of that word in opposer's mark. However, we find that those dissimilarities are insufficient to outweigh or negate the basic, underlying similarity between the marks which arises from both marks' use of the arbitrary term VIRGIN. Although we cannot discount the significance of the word STEELE in applicant's mark, as opposer would have us do, we likewise cannot discount the presence of the word VIRGIN in applicant's mark, as applicant would have us do.

As discussed above, opposer's VIRGIN mark is a strong mark which is entitled to a wide scope of protection vis-à-vis other marks. This is especially so where, as in this case, the other mark in question (applicant's mark) is being used on goods and services which are legally identical and/or closely related to opposer's goods and services. See *Century 21 Real Estate Corp.*, *supra*. In these circumstances, and on this record, we find that applicant's mark is similar, rather than dissimilar, to opposer's mark, under the first du Pont evidentiary factor.

The only other du Pont factors argued by the parties relate to the issue of actual confusion. After careful consideration of the record, we find no evidence that actual confusion has occurred. The third-party advertisements for applicant's live shows which referred to applicant's band as "EMI recording artists," cited by opposer, do not prove actual confusion the part of the relevant purchasing public. Opposer argues (and opposer's witness Mr. Steel opined) that, because Virgin Records became a subsidiary of EMI in 1992 and because applicant's band's name is VIRGIN STEELE, the third parties responsible for the advertisements mistakenly believed that applicant's band was affiliated with, or under contract to, EMI. However, we find this

argument--(and Mr. Steel's testimony on this issue) to be highly tenuous and based on nothing but conjecture.³

However, we accord no significant weight to the absence of evidence of actual confusion in this case. The nature and extent of applicant's use of the mark in the United States is not particularly clear from the record. We cannot conclude that the opportunity for actual confusion has been so great that the absence of any evidence of actual confusion is significant. See *Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768 (TTAB 1992).

After careful consideration of all of the evidence of record relating to the du Pont likelihood of confusion factors, we conclude that a likelihood of confusion exists in this case. The strength of opposer's mark, combined with the legal identity between most of applicant's goods and services and those of opposer's, suffice to make confusion likely. Any doubts as to this conclusion which may have been raised by applicant's arguments or evidence must be resolved in favor of opposer, as the prior registrant. In *re Hyper Shoppes (Ohio) Inc.*, 837 F.2d 840, 6 USPQ2d 1025

³ There is no testimony from the third party advertisers as to why they believed that applicant was an EMI recording artist. It is likely that their quite specific references to applicant's band as "EMI recording artists" were based on specific erroneous or mistaken information provided to or gathered by them, rather than on the attenuated chain of reasoning suggested by opposer.

(Fed. Cir. 1988); ~~In re Martin's Famous Pastry Shoppe, Inc.,~~
748 F.2d 1565, 223 USPQ 1289 (Fed. Cir. 1984).

Opposer has requested that the notice of opposition be deemed to have been amended, under Fed. R. Civ. P. 15(b), to include the additional ground of fraud. We find, however, that this ground was not tried by the express or implied consent of the parties, and that, in view of applicant's objection to our consideration of the additional ground, the requested amendment is not warranted.

The issue of applicant's use of the mark on hats and other headwear, which appears to be the focus of opposer's proposed fraud claim, arose only twice during the course of applicant's lengthy depositions, and on those occasions only as part of an extended line of questioning regarding the history of applicant's band and the nature and extent of applicant's use of its mark on the identified goods and services. Such questioning was clearly relevant to opposer's pleaded Section 2(d) claim, e.g., to the issues of the nature of applicant's goods and the trade channels and customers for such goods, and we cannot conclude that applicant was fully apprised that the questioning also was intended to elicit evidence supporting the additional unpleaded ground of fraud. "The purpose of Rule 15(b) is to allow the pleadings to conform to issues actually tried, not to extend the pleadings to introduce issues inferentially

suggested-by-incidental-evidence in the record."—ABC-Moving—
Company, Inc. v. Brown, 218 USPQ 336, 339 (TTAB 1983). See
also Auburn Farms Inc. v. McKee Foods Corp., 51 USPQ2d 1439
at n.5 (TTAB 1999); Devries v. NCC Corporation, 227 USPQ 705
(TTAB 1985); Color Key Corporation v. Color 1 Associates,
Inc., 219 USPQ 936 (TTAB 1983).

Accordingly, opposer's request that the notice of
opposition be deemed to be amended under Rule 15(b) to
include a fraud claim is denied.

Decision: The opposition (based on Section 2(d)) is
sustained.

G. D. Hohein
G. D. Hohein

C. M. Bottorff
C. M. Bottorff

L. K. McLeod
L. K. McLeod

Administrative Trademark Judges
Trademark Trial and Appeal Board

OCT 26 2000

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

RFC

8343-150-999
Opposition No. 111,633

Virgin Enterprises
Limited

v.

Urban Ingenuity
International Records
Corp. dba Virgin Toght
Productions Entertainment

MAILED

JUL 11 2001

PAT. & T.M. OFFICE

Before Cissel, Quinn and Hohein, Administrative Trademark
Judges.

Opinion by Cissel, Administrative Trademark Judge:

This case now comes up before the Board on applicant's motion to dismiss, filed May 31, 2000, as well as on applicant's motion to extend and opposer's motion for sanctions. Action on applicant's motion to extend time to file an amended response to opposer's April 7, 2000 motion for sanctions was deferred pending resolution of applicant's motion to dismiss.

Applicant's motion to dismiss is denied. Neither the motion nor the rambling narrative submitted with it provides any legal or factual basis for dismissing this proceeding in favor of applicant.

Ferraro

REFERRED TO <i>H. A. ...</i>
REC'D
JUL 18 2001
Pennie & Edmonds
O.K. for filing <i>(initials)</i>

Opposer filed its Notice of Opposition on August 26, 1998. After applicant failed to comply with opposer's discovery requests, on January 10, 2000, the Board granted opposer's September 30, 1999 motion to compel, noting that applicant's continued failure to comply could result in the imposition of sanctions against applicant. After applicant still did not fully comply with opposer's discovery requests, on April 7, 2000 opposer moved for sanctions in the form of judgment in its favor. On the day applicant's response to the motion for judgment was due, applicant requested an extension of time in which to file an "amended response" to opposer's motion. Applicant stated that additional time was necessary "in order that applicant be able to file a more artful and explanatory response for the board's consideration." Opposer filed a brief in opposition to applicant's request.

As opposer points out, applicant has not provided a proper basis for extending the period in which to respond to opposer's motion. Applicant has not alleged facts which establish good cause or that extenuating circumstances exist which would excuse its failure to comply with the order of the Board. Accordingly, applicant's motion to extend is denied. Although on May 12, 2000, applicant filed a response to opposer's motion for sanctions, that response does not establish a reasonable basis for ruling in favor of

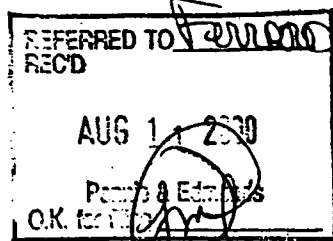
'applicant on opposer's motion for sanctions, so even if we had granted applicant's requested extension and considered the May 12, 2000 as applicant's timely response to opposer's motion, the outcome in this proceeding would be no different.

We therefore turn to opposer's April 7, 2000 motion for sanctions, which seeks the entry of judgment against applicant, sustaining the opposition on the basis that applicant has failed to comply with the Board's January 10, 2000 order compelling full and complete responses to opposer's discovery requests. The motion is supported by the declaration (with exhibits) of Catherine Kaczowka, an attorney for opposer.

The declaration and its associated exhibits establish that after the Board granted opposer's motion to compel, applicant sent opposer unsigned, unsworn "answers" which failed to provide even basic information such as the address of applicant's principal place of business or the full names and addresses of individuals knowledgeable of facts relating to applicant's use of the mark sought to be registered. Additionally, the cover page of applicant's response included the following inflammatory declaration: "HERE ARE THE ANSWERS TO THE INTERROGATORIES, SUCKER!" Counsel for opposer later received a package containing a shirt, bumper stickers and drawings with no written explanation or

acknowledgement of the request for other items relating to applicant's use of the mark. Opposer's counsel informed applicant by letter that applicant had failed to respond fully, and therefore was in violation of the Board's order compelling discovery, but applicant did not respond further, either to that letter or to the outstanding discovery requests.

As noted above, in granting opposer's motion to compel, the Board advised applicant that continued failure to comply with discovery requirements could result in the imposition of sanctions against applicant. Applicant's willful failure to comply with the Board's order of January 10, 2000 under these circumstances entitles opposer to the sanction of judgment in its favor under Trademark Rule 2.120(g)(1). The unsigned, unsworn, incomplete responses have left opposer unable to conduct further meaningful discovery in this case. Applicant's conduct, including his profane attacks on opposer (Exhibits I, J and L), has unnecessarily protracted this proceeding and needlessly obstructed the resolution of the dispute on its merits. The only sanction that provides opposer with appropriate relief is granting judgment in its favor. See *Unicut Corp. v. Unicut, Inc.*, 222 USPQ 341 (TTAB 1984). Accordingly, opposer's motion for sanctions is granted. Trademark Rule 2.120(g)(1). The opposition is _____ sustained and registration to applicant is refused.



PWC/rr

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

8343-231-999

Cancellation No. 29,855

Virgin Enterprises
Limited

v.

Catherine R. Burke and
Kenneth A. Lenhardt, dba
Black Virgin

MAILED
AUG 7 2000
PAT. & T.M. OFFICE

Answer was due on February 22, 2000. A review of the record shows that an answer has not been filed.¹

This case now comes up for consideration of petitioner's motion, filed April 10, 2000, for default judgment against respondent for failure to file an answer. The motion is uncontested.²

Inasmuch as respondent failed to file an answer in this case, and failed to respond to petitioner's motion in any manner, the motion for default judgment is granted. See

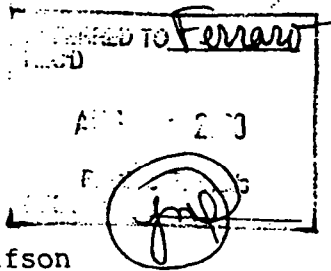
¹ The Board sent out a notice of default on April 12, 2000.

² If a defendant fails to file an answer to a complaint during the time allowed therefor, the Board, on its own initiative, may issue a notice of default allowing the defendant time to show cause why default judgment should not be entered against it. The issue of whether default judgment should be entered against a defendant for failure to file an answer may also be raised by means of a motion filed by the party in the position of plaintiff. In such cases, the motion may serve as a substitute for the Board's issuance of a notice of default.

Cancellation No. 29,855

Trademark Rule 2.127(a). Accordingly, judgment is hereby entered against respondent, the petition for cancellation is granted, and Registration No. 1,872,879 will be cancelled in due course. See Fed. R. Civ. P. 55 and Trademark Rule 2.127(a).

*By the Trademark Trial
and Appeal Board*



Wolfson

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD
2900 Crystal Drive
Arlington, Virginia 22202-3513

8343-220-999

Opposition No. 116,254

Virgin Enterprises
Limited

v.

C.K. Hair International
Limited

MAILED

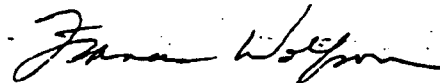
AUG 1 6 2000

PAT. & T.M. OFFICE

On March 22, 2000, opposer, alleging that applicant is in default for failure to file an answer, filed a motion for default judgment.¹ See Trademark Rule 2.106(a); and TBMP 317.01.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused.² See Fed. R. Civ. P. 55, and Trademark Rule 2.106(a).


Frances S. Wolfson
Attorney,
Trademark Trial and
Appeal Board
(703) 308-9330 ext. 191

¹ Opposer's motion serves as a substitute for the Board's issuance of a notice of default to applicant because no answer has been filed.

² In view thereof, opposer's motion to extend, filed July 24, 2000, is moot.

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Johnson

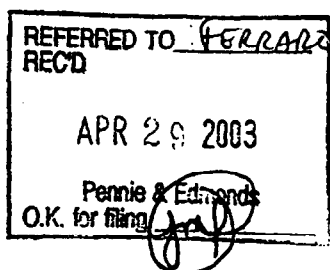
Mailed: April 24, 2003

Opposition No. 91118079

VIRGIN ENTERPRISES LIMITED

v.

BLUE Q



On May 2, 2002, applicant filed an abandonment, with prejudice, of its application Serial No. 75/699110 under Trademark Rule 2.68.¹

However, the applicable rule is Trademark Rule 2.135, which provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against the applicant.

Accordingly, because opposer's written consent to the abandonment is not of record, judgment is hereby entered

¹ Inasmuch as the original filing was never associated with the file, opposing counsel resubmitted the filing by facsimile on March 27, 2003 acknowledging receipt of the abandonment by the Office on May 2, 2002.

Opposition No. 91118079

against applicant, the opposition is sustained and
registration to applicant is refused.

*By the Trademark Trial
and Appeal Board*

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

KSK/rr

Mailed: July 23, 2002

Opposition No. 91118362

VIRGIN ENTERPRISES LIMITED

v.

BEAUTY FOR ALL SEASONS, INC.

On January 17, 2002, the Board re-issued an order to show cause in view of applicant's apparent loss of interest in this case.

Inasmuch as no response to the Board's order has been received, judgment is hereby entered against applicant. The opposition is accordingly sustained and registration to applicant is refused.

*By the Trademark Trial
and Appeal Board*

levis

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Opposition No. 119,393

Virgin Enterprises
Limited

v.

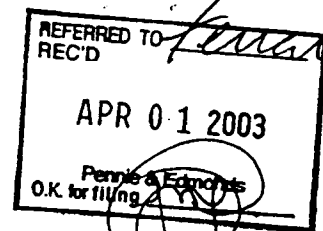
Holt's Company

Peter Cataldo, Interlocutory Attorney

Answer was due (as last reset) in this case on November 17, 2002. Inasmuch as it appears that no answer has been filed, nor has applicant filed a motion to further extend its time to answer, notice of default is hereby entered against applicant under Fed. R. Civ. P. 55(a).

Applicant is allowed until thirty days from the mailing date of this order to show cause why judgment by default should not be entered against applicant in accordance with Fed. R. Civ. P. 55(b).

MAR 19 2003



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

kk

Mailed: August 11, 2003

Opposition No. 119,511

VIRGIN ENTERPRISES LIMITED

v.

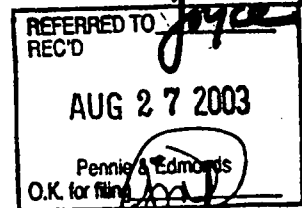
HOLT'S COMPANY

Answer was due in this case on November 18, 2002.

Inasmuch as it appears that no answer has been filed, nor has applicant filed a motion to extend its time to answer, notice of default¹ is hereby entered against applicant under Fed. R. Civ. P. 55(a).

Applicant is allowed until thirty days from the mailing date of this order to show cause why judgment by default should not be entered against applicant in accordance with Fed. R. Civ. P. 55(b).

Karl Kochersperger, Paralegal



¹ Notice of default was entered pursuant to the Board's order dated April 22, 2003. One copy of the order was returned as undeliverable by the US Postal Service on May 5, 2003. Because the mailing envelope for the returned order was not received by the Board, it is uncertain which party failed to receive the order. Both parties have been contacted by Board personnel and have stated that they did not receive the Board's April 22, 2002 order. In view thereof, the Board herein resets the time for defendant to show cause. Plaintiff's mailing address has been updated by Board personnel.



United States Patent and Trademark Office

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TTABVUE. Trademark Trial and Appeal Board Inquiry System

Opposition**Number:** 91124241**Status:** Terminated**Interlocutory Attorney:** NANCY L OMELKO**Filing Date:** 06/22/2000**Status Date:** 05/17/2002**Defendant****Name:** VIRGIN CUTS, INC.**Correspondence:** VIRGIN CUTS, INC.508 CENTRAL DRIVE STE 105
VIRGINIA BEACH, VA 23454**Serial #:** 75566056**Application Status:** Abandoned - After Inter-Partes Decision**Mark:** VIRGIN CUTS**Plaintiff****Name:** VIRGIN ENTERPRISES LIMITED**Correspondence:** KATHARINE E. SMITHPENNIE & EDMONDS LLP
1155 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-2711**Serial #:** 75116946**Registration #:** 2237092**Application Status:** Registered**Mark:** VIRGIN VACATIONS**Prosecution History**

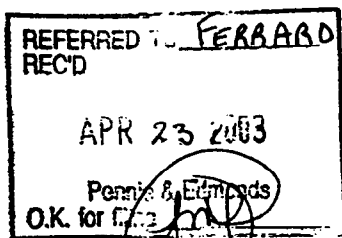
#	Date	History Text	Due Date
6	05/17/2002	TERMINATED	
5	05/17/2002	BOARD'S DECISION: SUSTAINED	
4	02/27/2002	NOTICE OF DEFAULT	
3	10/16/2001	PENDING, INSTITUTED	
2	10/16/2001	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	11/25/2001
1	06/22/2000	FILED AND FEE	

Results as of 10/11/2004 02:06 PM

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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Lykos



Mailed: April 9, 2003

Opposition No. 91125265
Opposition No. 91125275
Opposition No. 91125394
Opposition No. 91125395;

Virgin Enterprises Ltd.

v.

Corporate Solutions LLC

On December 17, 2002 applicant filed abandonments of its applications Serial Nos. 75/845508, 75/845509, 75/845510, and 75/845511.¹

Trademark Rule 2.135 provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant.

In view thereof, and because opposer's written consent to the abandonment is not of record, judgment is hereby entered

¹ Applicant's abandonment does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119. In order to expedite this matter, a copy of said abandonment is forwarded herewith to counsel for opposer.

Not attached

Opposition No. 91125265, 91125275, 91125394, and 91125395

against applicant, the consolidated opposition proceedings
herein are sustained and registration to applicant is refused.

*By the Trademark Trial
and Appeal Board*

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

MAILED
DEC - 2 2002
PAT. & T.M. OFFICE

Opposition No. 125,299

Virgin Enterprises Limited

v.

Weston D. Farris

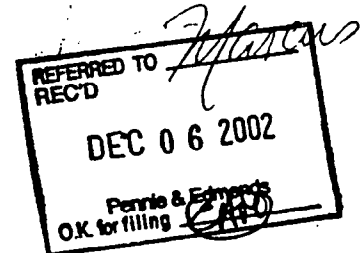
8343-305-999

On September 25, 2002, the Board sent a notice of default to applicant because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused. See Fed. R. Civ. P. 55, and Trademark Rule 2.106(a).

*By the Trademark Trial
and Appeal Board*



8343-306-999

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Smt/rr

Mailed: December 17, 2002

Opposition No. 91151160

VIRGIN ENTERPRISES LIMITED

v.

APC EXPORT, INC.

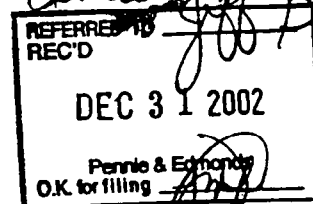
Sandra Thompson, Legal Assistant

On August 20, 2002, the Board sent a notice of default to applicant because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused. See Fed. R. Civ. P. 55, and Trademark Rule 2.106(a).

*By the Trademark Trial
and Appeal Board*



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

dmd

Mailed: June 16, 2004

Opposition No. 91151907

VIRGIN ENTERPRISES LIMITED

v.

Virgin Looms Inc.

On May 27, 2004, applicant filed an abandonment of its application Serial No. 78026199.¹

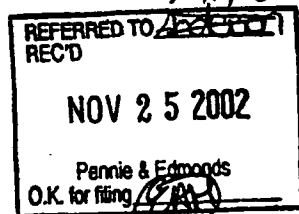
Trademark Rule 2.135 provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant.

In view thereof, and because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant, the opposition is sustained and registration to applicant is refused.

***By the Trademark Trial
and Appeal Board***

¹ Applicant's abandonment does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119. In order to expedite this matter, a copy of said abandonment is forwarded herewith to counsel for opposer.

C. Joyce



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

8343-314

Hassan

Mailed: November 22, 2002

Opposition No. 91152707

VIRGIN ENTERPRISES LIMITED

v.

A2 CORPORATION LIMITED

On October 3, 2002, applicant filed an abandonment of its application Serial No. 76074516 under Trademark Rule 2.68.¹

However, the applicable rule is Trademark Rule 2.135, which provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against the applicant.

Accordingly, because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant, the opposition is sustained and registration to applicant is refused.²

***By the Trademark Trial
and Appeal Board***

¹ Applicant's abandonment does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119. In order to expedite this matter, a copy of said abandonment is forwarded herewith to counsel for opposer.

² Accordingly, any outstanding motion is considered moot.

8343-39-979

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

HER/LCJ

Mailed: May 21, 2003

Opposition No. 91153751

VIRGIN ENTERPRISES LIMITED

v.

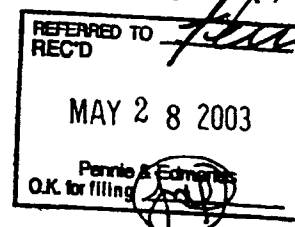
IBERIAN PRODUCTS (USA) INC

On March 17, 2003, the Board sent a notice of default to applicant because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused. See Fed. R. Civ. P. 55, and Trademark Rule 2.106(a).

*By the Trademark Trial
and Appeal Board*



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Hr/Johnson

8343-326-999

Mailed: July 28, 2003

Opposition No. 91154145

VIRGIN ENTERPRISES LIMITED

v.

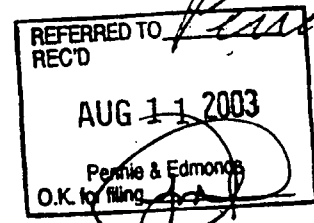
Martisius, Taly

On April 3, 2003, the Board sent a notice of default to applicant because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused. See Fed. R. Civ. P. 55, and Trademark Rule 2.106(a).

*By the Trademark Trial
and Appeal Board*



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Ricks

Mailed: August 13, 2003

Opposition No. 91154358

VIRGIN ENTERPRISES LIMITED

v.

Ultimate Nutrition, Inc.

8343-323

On July 7, 2003, applicant filed an abandonment of its application Serial No. 76/260,583.

Trademark Rule 2.135 provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant.

In view thereof, and because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant, the opposition is sustained and registration to applicant is refused.

REFERRED TO
REC'D

AUG 27 2003

Pennie & Edmonds
O.K. for filing

Jeff Bednar

By the Trademark Trial
and Appeal Board

**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513**

kk

Mailed: April 7, 2004

Cancellation No. 92041744

Virgin Enterprises Limited

v.

Micro Computer Solutions,
Inc. d/b/a Virgin Lake
Software

On March 31, 2004, respondent filed a voluntary surrender under Section 7(e) of the Trademark Act of its Registration No. 2579470.

Trademark Rule 2.134(a) provides that if the respondent in a cancellation proceeding applies to cancel its involved registration under Section 7(e) without the written consent of every adverse party to the proceeding, judgment shall be entered against respondent.

In view thereof, and because petitioner's written consent to the voluntary surrender is not of record, judgment is hereby entered against respondent, the petition to cancel is granted, and Registration No. 2,579,470 will be cancelled in due course.

By the Trademark Trial

and Appeal Board

REFERRED TO
REC'D *Ferraro*
JUL 1 2003
Perrin & Edmonds
O.K. for Reg. *[Signature]*

8343-337-999

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

King

Mailed: July 8, 2003

Opposition No. 91156268

VIRGIN ENTERPRISES LIMITED

v.

BERRY TEXTILE (SHANGHAI)
CO., LTD

On June 25, 2003, applicant filed an abandonment of its application Serial No. 76/182,471.¹

Trademark Rule 2.135 provides that if, in an inter partes proceeding, the applicant files an abandonment without the written consent of every adverse party to the proceeding, judgment shall be entered against applicant.

In view thereof, and because opposer's written consent to the abandonment is not of record, judgment is hereby entered against applicant, the opposition is sustained and registration to applicant is refused.

***By the Trademark Trial
and Appeal Board***

¹ Applicant's abandonment does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119. In order to expedite this matter, a copy of said abandonment is forwarded herewith to counsel for opposer.

TTAB

1 0000 0000 0000 0000 0000 0000 0000 0000

06-25-2003

U.S. Patent & Trademark Office Post Office Box 722

A. Bacon
P.O. Box 7053
Santa Monica, Ca. 90406
310 394 9339 tel
Edwidggge@aol.com

Date: June 16, 2003
To: USPTO
Attn.: Denise M DelGizzi, Legal Assistant
Re.: Opposition No 91156268
Serial No 76182471

Dear Ms. DelGizzi,

At this time, Berry Textile (Shanghai) Co., LTD respectfully requests to withdraw the registration process for Virgintex (serial No 76182471).

Sincerely,



Alicia Bacon
Representative for Berry Textile (Shanghai) Co., LTD

06 JUL - 3 PM '03

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

lh

Mailed: June 5, 2004

Opposition No. 91156580

VIRGIN ENTERPRISES LIMITED

v.

VANDERLAAN, GLORIA

On **October 7, 2003**, the Board sent a notice of default to applicant because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused. See Fed. R. Civ. P. 55, and Trademark Rule 2.106(a).

*By the Trademark Trial
and Appeal Board*

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: August 9, 2004

Opposition No. 91157585

VIRGIN ENTERPRISES LIMITED

v.

Roth Kase U.S.A. Ltd.

Helen Johnson, Legal Assistant

On April 6, 2004, the Board sent a notice of default to applicant because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused. See Fed. R. Civ. P. 55, and Trademark Rule 2.106(a).

***By the Trademark Trial
and Appeal Board***

**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513**

TLW/EM

Mailed: August 9, 2004

Cancellation No. 92042419

VIRGIN ENTERPRISES LIMITED

v.

Everyman, LLC

On April 23, 2004, the Board sent a notice of default to respondent because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against respondent, the petition to cancel is granted, and Registration No. 2410838 will be cancelled in due course. See Fed. R. Civ. P. 55, and Trademark Rule 2.114(a).

***By the Trademark Trial
and Appeal Board***

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

ST/TDC

Mailed: August 25, 2004

Cancellation No. 92042478

Registration No. 2246816

VIRGIN ENTERPRISES LIMITED

v.

Worldscapes Incorporated

No appearance having been entered in response to service effected by publication in the Official Gazette, the petition to cancel is granted, and the above-identified registration will be cancelled in due course.

*By the Trademark Trial
and Appeal Board*

Sthompson/TDC

U. S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

VIRGIN ENTERPRISES LIMITED

v.

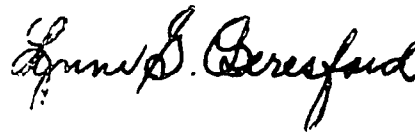
Worldscapes Incorporated

Cancellation No. 92042478

Hayley Werner of Fried, Frank, Harris, Shriver & Jacobson
for Virgin Enterprises Limited.

Worldscapes Incorporated, pro se.

The petition of Virgin Enterprises Limited having been
granted on August 25, 2004, Registration No. 2246816 is
hereby cancelled.



Lynne G. Beresford
Acting Deputy Commissioner
for Trademark Operations

SEP 29 2004

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Ricks

Mailed: June 9, 2004

Opposition No. **91158496**

VIRGIN ENTERPRISES LIMITED

v.

FremantleMedia
North America, Inc.

On April 9, 2004, the Board sent a notice of default to applicant because no answer had been filed.

The record shows no response thereto.

Accordingly, judgment by default is hereby entered against applicant, the opposition is sustained, and registration to applicant is refused. See Fed. R. Civ. P. 55, and Trademark Rule 2.106(a).

*By the Trademark Trial
and Appeal Board*

EXHIBIT 38

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(b) (1) (A) (i) (ii) (iii) (iv) (v) (vi) (vii) (viii) (ix) (x) (xi) (xii) (xiii) (xiv) (xv) (xvi) (xvii) (xviii) (xix) (xx) (xxi) (xxii) (xxiii) (xxiv) (xxv) (xxvi) (xxvii) (xxviii) (xxix) (xxx)

James W. Dabney
Catherine M. Clayton
PENNIE & EDMONDS LLP
1155 Avenue of the Americas
New York, New York 10036-2711
Tel: (212) 790-9090
Fax: (212) 869-9741

Richard J. Coddington (S.B. No. 128302)
Brian S. Kim (S.B. No. 186523)
HOWREY & SIMON
550 South Hope Street
Suite 1400
Los Angeles, California 90071-2627
Tel: (213) 892-1800
Fax: (213) 892-2300

Attorneys for Plaintiff
VIRGIN ENTERPRISES LIMITED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

VIRGIN ENTERPRISES LIMITED,

Plaintiff,

vs.

VIRGIN PETROLEUM, INC.,

Defendant.

NOTE CHANGES MADE BY THE COURT

CASE NO. CV 99-12826 MMM (MANx)

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY INJUNCTION

DATE: January 19, 2000

TIME: 8:00 a.m.

CTRM: Roybal Building
Room 790

Hon. Margaret M. Morrow

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
FIRST CLASS AIR MAIL POSTAGE PREPAID TO ALL ADDRESSES
(OF PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF
RECORD, IN THIS ACTION, ON THIS DATE.

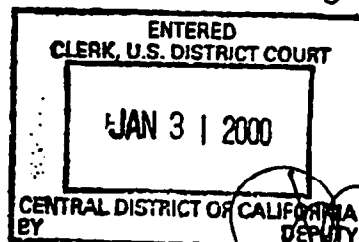
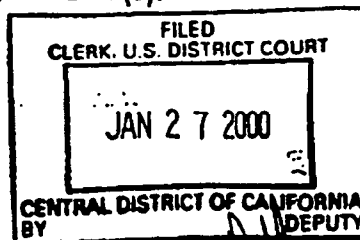
DATED: JAN 19 2000

DEPUTY CLERK

JAN 19 2000

JAN 19 2000

JAN 31 2000

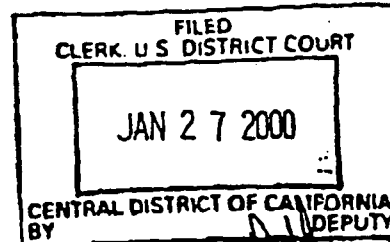


CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.

1999 DEC 29 PM 4:05

LOGGED

ENTER SEND

1999 DEC 29 PM 4:05
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.

LOGGED

1 James W. Dabney
2 Catherine M. Clayton
3 PENNIE & EDMONDS LLP
4 1155 Avenue of the Americas
5 New York, New York 10036-2711
6 Tel: (212) 790-9090
7 Fax: (212) 869-9741

8 Richard J. Coddington (S.B. No. 128302)
9 Brian S. Kim (S.B. No. 186523)
10 HOWREY & SIMON
11 550 South Hope Street
12 Suite 1400
13 Los Angeles, California 90071-2627
14 Tel: (213) 892-1800
15 Fax: (213) 892-2300

16 Attorneys for Plaintiff
17 VIRGIN ENTERPRISES LIMITED

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 WESTERN DIVISION

21 VIRGIN ENTERPRISES LIMITED,
22
23

24 Plaintiff,
25

26 vs.
27

28 VIRGIN PETROLEUM, INC.,
29
30

31 Defendant.

NOTE CHANGES MADE BY THE COURT

CASE NO. CV 99-12826 MMM (MANx)

~~PROPOSED~~ ORDER GRANTING
PRELIMINARY INJUNCTION

DATE: January 19, 2000

TIME: 8:00 a.m.

CTRM: Roybal Building
Room 790

Hon. Margaret M. Morrow

1 Plaintiff Virgin Enterprises Ltd. ("VEL") having filed a motion pursuant to 15
2 U.S.C. § 1116(a) and Fed. R. Civ. P. 65 of the Federal Rules of Civil Procedure for a
3 Preliminary Injunction against trademark and trade name infringement by defendant
4 Virgin Petroleum, Inc.; and the Court having considered the submissions of the parties
5 and having heard oral argument on the motion,¹ it is hereby⁵

6 ORDERED, that VEL's motion is GRANTED; and it is further

7 ORDERED, that defendant Virgin Petroleum, Inc., its officers, agents, servants,
8 employees, and attorneys, and all those persons in active concert or participation with
9 them who receive actual notice of this Order by personal service or otherwise, are hereby
10 preliminarily enjoined and restrained from using the word VIRGIN, or any imitation
11 thereof, in any trade name or as all or part of any designation for gasoline, gasoline
12 station services, or any related goods or services sold by defendant; and it is further

13 ORDERED, that within forty-eight (48) hours from the date of this Order,
14 defendant shall ~~take down, remove, and cease any and all use of~~ ^{cover all} signage, gasoline pump
15 displays, or materials bearing the trade name or trademark VIRGIN or any imitation
16 thereof at the gasoline station operated by defendant at 1430 East Pacific Coast Highway,
17 Wilmington, California 90744^{*}; and it is further

18 ORDERED, that defendant shall forthwith cease use of the name "Virgin
19 Petroleum, Inc.", or any other business name incorporating the word "virgin", in any
20 manner including in or on sales receipts issued to retail customers or in any business
21 dealings with suppliers or the public; and it is further

22 ORDERED, that within fifteen (15) days from the date of this Order, VEL shall
23 post a bond with this Court in the amount of U.S. \$10,000.00; and it is further

24 * within 48 hours of the date of this order,
25 and that within fourteen (14) days of the date of this order, defendant shall
26 take down, remove and cease all use of said signage and displays

27 ^{1/} Pursuant to Rule 65 of the Federal Rules of Civil Procedure, the court's
28 findings of fact and conclusions of law are set forth in the separate order
of even date attached hereto as Exhibit A.

1 ORDERED, that VEL shall serve a copy of this Order on defendant by hand at or
2 before 5:00 p.m. on January 28, 2000.

3 SO ORDERED at Los Angeles, California this 19 day of January, 2000.

4
5 DATED: January 19, 2000
6 ~~December~~ 1999

Margaret M. Morrow
Hon. Margaret M. Morrow
United States Judge

7 PRESENTED BY:

8 Richard J. Coddington
9 Brian S. Kim
10 HOWREY & SIMON
11 550 South Hope Street
12 Suite 1400
13 Los Angeles, California 90071-2627

14 By: Richard J. Coddington
15 Richard J. Coddington

16 Of Counsel:

17 James W. Dabney
18 Catherine M. Clayton
19 PENNIE & EDMONDS LLP
20 1155 Avenue of the Americas
21 New York, New York 10036

22 Attorneys for Plaintiff
23 VIRGIN ENTERPRISES LIMITED

24 I hereby attest and certify on 1/27/00
25 that the foregoing document is a full, true
26 and correct copy of the original on file in
27 my office and in my legal custody.

28 CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Deputy Clerk
DEPUTY CLERK



0147

LEXSEE 2000 U.S. DIST. LEXIS 8100

**VIRGIN ENTERPRISES LIMITED, Plaintiff, vs. VIRGIN PETROLEUM, INC.,
Defendant.**

CASE NO. CV 99-12826 MMM (MANx)

**UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA**

2000 U.S. Dist. LEXIS 8100

January 19, 2000, Decided

January 27, 2000, Filed; January 31, 2000, Entered, Entered in Docket

DISPOSITION: [*1] VEL's motion for a preliminary injunction granted.

LexisNexis(R) Headnotes

COUNSEL: For VIRGIN ENTERPRISES LIMITED, plaintiff: James W Dabney, Catherine M Clayton, Pennie & Edmonds, New York, NY.

For VIRGIN ENTERPRISES LIMITED, plaintiff: Richard J Coddington, Howrey Simon Arnold & White, Los Angeles, CA.

For VIRGIN PETROLEUM INC, defendant: Herbert Abrams, Herbert Abrams Law Offices, North Hollywood, CA.

JUDGES: MARGARET M. MORROW, UNITED STATES DISTRICT JUDGE.

OPINIONBY: MARGARET M. MORROW

OPINION:

**ORDER RE PLAINTIFF'S APPLICATION FOR
PRELIMINARY INJUNCTION**

Plaintiff Virgin Enterprises Limited ("VEL") and its related companies (collectively, the "Virgin Group") operate various worldwide businesses, including an airline, a travel-related company, a limousine service, a soft drink bottler and distributor, and a chain of retail stores that sell CDs, books, clothing, and other products and services. The VIRGIN trademark and service mark are protected under approximately 956 issued registrations in 114 countries, including 12 registrations issued by the United States Patent and Trademark Office ("PTO"). Defendant Virgin Petroleum, Inc. is a corporation that operates a gasoline station located at 1430 E. Pacific Coast Highway

[*2] in Wilmington, California.

On October 12, 1999, VEL received an unsolicited e-mail from a person who noticed Virgin Petroleum's gasoline station while driving in Wilmington. The individual believed that the Virgin Petroleum logo was actually the VIRGIN mark owned by VEL, and thus associated the gas station with VEL. After examining the logo more closely, he concluded that there was no relationship, but advised VEL that he thought defendant's mark would generate confusion among consumers. Shortly after being contacted by this individual, VEL sent letters to Virgin Petroleum demanding that it cease and desist from further use of the VIRGIN name and logo.

On December 7, 1999, VEL filed suit alleging trademark and trade name infringement, dilution, unfair competition and unfair business practices. By its present application, VEL seeks a preliminary injunction enjoining defendant from using the VIRGIN trademark or any confusingly similar variant thereof, in or as any designation for any business, gasoline, gasoline station services, or any related goods or services sold by defendant.

The court may issue a preliminary injunction if the moving party establishes either (1) a combination [*3] of probable success on the merits and the possibility of irreparable harm or (2) the existence of serious questions going to the merits, a demonstration that there is at least a fair chance the movant will prevail, and a balance of hardships that tips sharply in the movant's favor. In order to prevail on its trademark infringement claim, VEL must prove that it has a protectable trademark and that Virgin Petroleum's use of the same or a similar mark is likely to cause confusion in the minds of the relevant consuming public.

VEL's federal registration of the VIRGIN mark is prima facie evidence that it has protectable rights in the trademark. VEL has also shown that it will probably prove

Virgin Petroleum's use of the mark is likely to cause confusion in the minds of the consuming public. In evaluating the likelihood of confusion, courts consider the strength of the mark; the proximity or relatedness of the services; the similarity in appearance, sound, and meaning of the marks; evidence of actual confusion; the degree to which the same marketing channels are used; the type of goods and degree of care customers are likely to exercise in purchasing them; evidence of the defendant's intention [*4] in selecting and using the allegedly infringing name; and the likelihood that the parties will expand their product lines.

Here, the VIRGIN mark is arbitrary and strong, and defendant's mark is strikingly similar to it. While the parties' services and products are not directly related, there is some relation between them, as VEL offers transportation via air and limousine, and Virgin Petroleum's gasoline station can be said to be transportation-related. Given the diversity of the businesses run by the Virgin Group under the VIRGIN mark, and the fact that defendant's sign is nearly identical to the VIRGIN mark, it is especially likely that consumers will believe defendant's gasoline station is sponsored or approved by VEL in some manner. This conclusion is reinforced by the unsolicited e-mail that put VEL on notice of defendant's operation, which is itself evidence of actual confusion in the marketplace. Likelihood of confusion is also probable because consumers will exercise minimal care in deciding whether to buy defendant's gasoline. The product itself is relatively inexpensive, and drivers have little time after seeing defendant's "Virgin" sign to decide whether to pull into the [*5] station or drive by it.

On the record before the court, Virgin Petroleum's intent in selecting the mark is a neutral factor because of the conflicting evidence offered by the parties, while the two remaining factors — marketing channels and the prospects for product line expansion — weigh against a finding of likelihood of confusion. Application of the likelihood of confusion factors is a case-specific inquiry, however, and these factors are of minimal importance in this case. Consequently, the court concludes that VEL has demonstrated it will probably prove a likelihood of consumer confusion. This being so, irreparable harm is presumed, and VEL's motion for a preliminary injunction is properly granted.

I. FACTUAL BACKGROUND

A. Virgin Enterprises

The Virgin Group operates a number of worldwide businesses under the trade name, trademark, and service mark VIRGIN(R). n1 The VIRGIN(R) trademark and service mark are protected by approximately 956 issued

registrations in 114 countries worldwide, including 12 registrations by the PTO in this country. n2

n1 See Declaration of Rory J. Richardson ("Richardson Decl."). P 2, Exs. 1-2; Second Declaration of James W. Dabney in Support of Plaintiff's Motion for Preliminary Injunction ("Second Dabney Decl."), P 2, Ex. 7.

[*6]

n2 Richardson Decl., P 3, Ex. 3.

One of VEL's licensee's, Virgin Retail (BVI) Limited ("Virgin Retail"), owns and operates a chain of approximately 150 VIRGIN MEGASTORE(R) retail stores in major cities throughout the United States, Canada, the United Kingdom, continental Europe, and Japan. n3 Six of these stores are located in the California cities of Los Angeles, San Francisco, Orange, Burbank, Costa Mesa and Sacramento. n4 The VIRGIN MEGASTORE(R) stores sell various VIRGIN(R) branded goods and services, including CD's, clothing, books, computer games, travel-related services, and other items. n5 The stores often have a cafe that sells food and non-alcoholic drinks including VIRGIN(R) cola. n6

n3 *Id.*, P 6.

n4 *Id.*

n5 *Id.*, P 6. Second Dabney Decl., PP 4-10, Exs. 9-15.

n6 Richardson Decl., P 6.

VIRGIN(R) cola is a soft drink bottled and distributed under the authority of VEL's licensee, the Virgin [*7] Cola Company (USA), Inc., and is available at Von's grocery stores and other retail outlets in the Los Angeles area. n7

n7 Second Dabney Decl., P 17.

Another VEL licensee, Virgin Atlantic Airways, Ltd. ("VAA"), provides airline service to and from various U.S. cities, including Los Angeles. n8 Passengers on VIRGIN(R) flights receive various VIRGIN(R) branded products, and the VIRGIN(R) duty free catalog offers VIRGIN(R) toys, VIRGIN(R) clocks, VIRGIN(R) pens, VIRGIN(R) playing cards, VIRGIN(R) sweatshirts, VIRGIN(R) T-shirts, VIRGIN(R) hats, VIRGIN(R) wrist watches, and other VIRGIN(R) branded merchandise. n9

n8 Richardson Decl., P 5.

n9 Second Dabney Decl., PP 11-14, Exs. 16-20.

Virgin Limousines (California) LLC ("Virgin Limousine") is a VEL licensee that provides limousine service to passengers in California. n10

n10 *Id.*, P 16, Ex. 21.

[*8]

Thus, the VIRGIN(R) mark is used extensively, and has been recognized as a famous brand. In 1992, for example, Interbrand identified VIRGIN(R) as one of the "world's greatest brands," stating that the "Virgin brand is now established as a broadly based entertainment and travel brand with a dependable but nonetheless somewhat 'fun' and irreverent image." n11 In 1995, the publication, Advertising Age, identified the mark as one of "twenty-five rising international brands." n12

n11 *Id.*, Ex. 27, at 259.

n12 *Id.*, Ex. 37.

Virgin Group companies typically use a stylized version of the VIRGIN(R) mark that consists of a white VIRGIN(R) signature logo against a red background. n13

n13 Richardson Decl., P 4. For examples of the stylized VIRGIN(R) mark, see Richardson Decl., Ex. 4.

-----End Footnotes-----

B. Virgin Petroleum

Virgin Petroleum is a gasoline [*9] station located at 1430 East Pacific Coast Highway in Wilmington, California. n14 Virgin Petroleum's Articles of Incorporation were filed on March 10, 1999. n15 According to Ambartsum Telalyan, a co-owner of the company, it did not intend to copy or infringe upon VEL's trademark. Rather, he states that he and his co-owner selected the Virgin Petroleum name after they saw Virgin Olive Oil on grocery store shelves, and decided that cus-

tomers would be attracted by the combination of the words "virgin" and "oil." n16

n14 Declaration of Ambartsum Telalyan ("Telalyan Decl."), P 3; Complaint, P 16.

n15 Telalyan Decl., P 2, Ex. A.

n16 *Id.*, P 4.

A large red sign at Virgin Petroleum's service station bears the word "Virgin" in cursive script at the top, with posted gasoline prices below. The word "Virgin" also appears on the station's gasoline pumps. The letters are written in white on a red background. n17 Telalyan asserts that in order to avoid litigation, Virgin Petroleum has changed the format of its [*10] logo. n18 A visit to the gasoline station on January 9, 2000, however, revealed that the sign and pumps have not in fact been altered. n19 The proposed new design utilizes block letters and includes the word "petroleum" under the larger word "Virgin." n20 From the exemplar provided by Telalyan, it is not possible to tell what color defendant proposes the sign will be.

n17 Complaint, Ex. 4 (photos of Virgin Petroleum's gas station, sign, and gas pumps).

n18 Telalyan Decl., P 5.

n19 Declaration of Maurice Nelson ("Nelson Decl."), PP 4-5, Ex. 1.

n20 Telalyan Decl., Ex. B.

C. Events Leading To The Filing Of This Action

On or about October 12, 1999, VEL received an e-mail from a person who had seen defendant's service station. The individual stated:

"I was driving down Pacific Coast Highway near Torrence when I saw a Virgin Gas Station. I am quite aware of Virgin's diverse business but was surprised to see a Gasoline representation in their company. But before accepting this new (or unknown) [*11] venture, I noticed a few details. The Virgin logo was not [the] same, it was red, but drawn more crude, as if there were jagged parts along the italic letters. The word seemed [a little] stretched and unproportional, so then I began wondering if the Gas Station was legitimate at all. Like I said, it is not my place to monitor the legality of public business, but I've been fond of Virgin and have read Richard Branson's biography so I'd hate to

see somebody else capitalize off of a proven self-made businessman. Please let me know, though, [for] my own [curiosity], about the knowledge and nature of this Gas Station I encountered. n21

n21 Richardson Decl., P 8, Ex. 5.

On October 19, 1999, VEL sent a letter to defendant protesting its use of the VIRGIN mark, and demanding that defendant immediately cease and desist from employing the VIRGIN name. n22 After receiving no response, VEL's United States counsel sent defendant a second letter on November 5, 1999. The letter again objected to Virgin Petroleum's [*12] use of the VIRGIN mark, and threatened suit if defendant did not cease and desist. n23 When once again no response was received, VEL sent a third letter to defendant on December 2, 1999. This communication advised that VEL intended to file an ex parte application seeking leave to move for a preliminary injunction. n24 On December 3, 1999, VEL's lawyer received a telephone call from a representative of Virgin Petroleum. He advised the caller that suit would be filed on December 6, 1999 unless defendant ceased its use of the trade name VIRGIN. n25 Counsel for Virgin Petroleum faxed the proposed new design for Virgin Petroleum's logo to the lawyer on that day. Because it continued to contain the word VIRGIN, and merely changed the style of the lettering and added the word "Petroleum," n26 VEL filed suit on December 7, 1999 and simultaneously sought preliminary injunctive relief.

n22 *Id.*, P 9, Ex. 6.

n23 Declaration of James W. Dabney ("Dabney Decl."), P 2, Ex. 1.

n24 *Id.*, P 3, Ex. 2.

n25 *Id.*, P 4.

n26 Telalyan Decl., Ex. B.

[*13]

D. Deposition Of Ambartsum Telalyan

Ambartsum Telalyan's deposition was taken on January 8, 2000. Telalyan testified that he had heard of Virgin Airlines before March 1999 when Virgin Petroleum was incorporated. n27 He further testified that he first heard of Virgin Records a few months ago, and admitted that two or three customers have asked whether Virgin Petroleum is associated with Virgin Records as they were writing a check to pay for gasoline. n28

n27 Second Declaration of Brian S. Kim in Support of Plaintiff's Reply Memorandum in Support of Plaintiff's Motion for Preliminary Injunction ("Second Kim Decl."), Ex. 1 at 5:1-6:3.

n28 *Id.*, Ex. 1 at 7:5-8:4 (stating that "there has been people asking me, you know, 'Oh, this is similar to the Virgin Records'").

II. ANALYSIS

A. Standard For Granting Injunctive Relief

In deciding whether to issue a preliminary injunction, the court must consider (1) the likelihood that the moving party will succeed on the merits; (2) the possibility it will [*14] suffer irreparable injury if relief is not granted; (3) the extent to which the balance of hardships tips in favor of one party or the other; and in certain cases (4) whether the public interest will be advanced by granting preliminary relief. *Miller v. California Pacific Med. Ctr.*, 19 F.3d 449, 456 (9th Cir. 1994). The court may issue a preliminary injunction if the moving party establishes either (1) a combination of probable success on the merits and the possibility of irreparable harm or (2) the existence of serious questions going to the merits, a demonstration that there is at least a fair chance the movant will prevail, and a balance of hardships that tips sharply in the movant's favor. *Id.* "These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases." *Id.*

B. Likelihood Of Success On The Merits

VEL's complaint pleads claims for trademark and trade name infringement, dilution, unfair competition, and unfair business practices under the Lanham Act, California and common law. In order to prevail on its trademark infringement claim under 15 U.S.C. §§ 1114 [*15] (1) and 1125(a), VEL must prove that it has a protectable trademark and that Virgin Petroleum's use of the same or a similar mark will likely cause confusion in the minds of the relevant consuming public. *Fuddrucker, Inc. v. Doc's B.R. Others, Inc.*, 826 F.2d 837, 841 (9th Cir. 1987); *First Brands Corp. v. Fred Meyer, Inc.*, 809 F.2d 1378, 1381 (9th Cir. 1987); *Committee for Idaho's High Desert v. The Committee for Idaho's High Desert, Inc.*, 881 F. Supp. 1457, 1471 (D.Idaho 1995), modified on other grounds, 92 F.3d 814 (9th Cir. 1996) (citing *Levi Strauss v. Blue Bell, Inc.*, 778 F.2d 1352, 1354 (9th Cir. 1985)).

1. Virgin Enterprises Has Protectable Rights In Its Virgin Trademark

Under 15 U.S.C. § 1115(a), the fact that a party holds

a valid federal trademark registration constitutes prima facie evidence of its ownership of the mark, and of its exclusive right to use the mark in commerce in connection with the goods or services specified in the registration. The PTO has registered the VIRGIN (stylized) mark to VEL for various uses, including "transportation of goods and passengers [*16] by road." n29 The VIRGIN mark has also been registered to VEL in an unstylized form for various uses that again include the "transportation of goods and passengers by road." n30 These registrations constitute prima facie evidence that VEL has protectable rights in the mark. See *Brookfield Communications, Inc. v. West Coast Entertainment Corp.*, 174 F.3d 1036, 1046-47 (9th Cir. 1999) (in determining the likelihood of success on a motion for preliminary injunction, the court stated that it "first [had to] determine whether Brookfield has a valid, protectable trademark interest in the 'MovieBuff' mark. Brookfield's registration of the mark on the Principal Register in the Patent and Trademark Office constitutes prima facie evidence of the validity of the registered mark and of Brookfield's exclusive right to use the mark on the goods and services specified in the registration"). See also *Maktab Tarighe Oveyssi Shah Maghsoudi, Inc. v. Kianfar*, 179 F.3d 1244, 1249 (9th Cir. 1999) ("This registration constitutes prima facie evidence that Angha owns the marks. . . . It also provides constructive notice of the claimed ownership of the marks").

n29 Richardson Decl., Ex. 3, at 49 (Registration No. 1,852,776).

[*17]

n30 *Id.*, Ex. 3, at 51 (Registration No. 1,851,817).

2. Virgin Enterprises Has Demonstrated That It Will Probably Prove There Is A Likelihood Of Consumer Confusion

While VEL has shown that it has protectable rights in the VIRGIN mark, it must also prove that there is a likelihood consumers will be confused by defendant's mark, and believe that Virgin Petroleum is affiliated, connected or associated with VEL before it can prevail on its trademark infringement claim. "The test for likelihood of confusion is whether a 'reasonably prudent consumer' in the marketplace is likely to be confused as to the origin of the good or service bearing one of the marks." *Dreamwerks Production Group, Inc. v. SKG Studio, dba DreamWorks SKG*, 142 F.3d 1127, 1129 (9th Cir. 1998).

In evaluating whether a likelihood of confusion exists, courts consider the following factors: the strength

of the mark; the proximity or relatedness of the services; the similarity in appearance, sound, and meaning of the marks; evidence of actual confusion; the degree to which the same marketing channels are used; [*18] the type of goods and degree of care customers are likely to exercise in purchasing them; evidence of the defendant's intention in selecting and using the allegedly infringing name; and the likelihood that the parties will expand their product lines. *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979). See also *Park 'N Fly, Inc. v. Dollar Park and Fly, Inc.* 782 F.2d 1508, 1509 (9th Cir. 1986); *Transgo, Inc. v. AJAC Transmission Parts Corp.*, 768 F.2d 1001, 1015 (9th Cir. 1985) (facts considered in determining likelihood of confusion are the similarity of the marks, the class of goods in question, the intent of the defendant, and the strength or weakness of the mark).

"These factors should not be rigidly weighed." *Dreamwerks, supra*, 142 F.3d at 1129. Rather, they "are intended to guide the court in assessing the basic question of likelihood of confusion." *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1290 (9th Cir. 1992). The court need not address all of the factors, nor must plaintiff establish that each weighs in its favor in order to establish a likelihood of confusion. [*19] See *C & C Organization v. AGDS, Inc.*, 676 F. Supp. 204, 206 (C.D.Cal. 1987) (citing *Apple Computer, Inc. v. Formula Intern. Inc.*, 725 F.2d 521, 526 (9th Cir. 1984)). Moreover, "some factors are much more important than others, and the relative importance of each individual factor will be case-specific." *Brookfield Communications, supra*, 174 F.3d at 1054. For this reason, the court has assessed the factors roughly in the order of their relative importance in this case.

a. Similarity Of The Marks

"Similarity of the marks is tested on three levels: sight, sound, and meaning." *Sleekcraft, supra*, 599 F.2d at 351. In judging similarity, trademarks should be considered as they are encountered in the marketplace, taking into account the normal circumstances surrounding purchase of the type of services they represent. *Id.*; *Walt Disney Productions v. Air Pirates*, 581 F.2d 751, 759 (9th Cir. 1978).

Here, the parties' marks are strikingly similar in appearance. Both utilize the word "Virgin" printed in white letters against a red background. The thin, cursive typeface used in the marks is also similar. [*20] Finally, both plaintiff and defendant print the word on an upwards slant, with the "V" positioned at a lower point on the left, and the "n" at a higher point on the right.

Because the parties' trade names are the same, their sound is not only similar, but identical. Likewise, the meaning is similar, because identical words are used.

Thus, the similarity of the marks strongly favors a finding of likelihood of confusion. n31

n31 Virgin Petroleum contends it has changed the format of its logo. In support of this claim, however, it has submitted only a copy of a fax that displays a "new proposed design for Virgin Petroleum." (Telalyan Decl., Ex. B (emphasis added).) A check on January 9, 2000 revealed that the actual signs at defendant's service station have not been changed. (Nelson Decl., PP 4-5, Ex. 1.) The proposed new letters are in a larger, blocked typeface, and "Virgin" is printed in the shape of a wave. Because Telalyan's fax is not in color, it is not possible to determine whether Virgin Petroleum also proposes to change the background color. The proposed design continues to utilize the word "Virgin," and is thus still identical to VEL's mark in sound and meaning. Also, VEL has registered VIRGIN in a plain block-letter format, thereby claiming rights to mark in any format or style. (Richardson Decl., Ex. 3 at 51.) Additionally, "it has often been held that as between a design and the word portion of a trademark, the word portion dominates and is the portion by which goods and/or services are called for." *In re Inspection Technology Inc.*, 223 U.S.P.Q. 46, 47 (TTAB 1984). Virgin Petroleum's proposed new design therefore remains similar to the VIRGIN mark used by VEL. Furthermore, "an infringer, 'once caught,' should have his conduct carefully scrutinized in any future operations so as to determine his intent in going as far as he does. He must 'be required to keep a safe distance away from the margin line.'" *Plough, Inc. v. Kreis Labs.*, 314 F.2d 635, 639 (9th Cir. 1963) (quoting *Broderick & Bascom Rope Co. v. Manoff*, 41 F.2d 353, 354 (6th Cir. 1930)). Accordingly, Virgin Petroleum's professed willingness to alter the format of its mark is not sufficient to prevent the entry of a preliminary injunction in this case.

[*21]

b. The Strength Of VEL's Mark

1. Distinctiveness

"The strength of a given mark rests on its distinctiveness." *Miss World (UK) Ltd. v. Mrs. America Pageants, Inc.*, 856 F.2d 1445, 1448 (9th Cir. 1988). Courts determining the distinctiveness of a mark examine the degree to which the public associates it with a particular source. *Id.* Typically, trademarks are classified in five categories of increasing distinctiveness: (1) generic; (2) descriptive; (3) suggestive; (4) arbitrary; or (5) fanciful. *Two Pesos*,

Inc. v. Taco Cabana, Inc., 505 U.S. 763, 768, 120 L. Ed. 2d 615, 112 S. Ct. 2753 (1992); *Kendall-Jackson Winery, Ltd. v. Gallo Winery*, 150 F.3d 1042, 1047, n. 7 (9th Cir. 1998).

The fact that the VIRGIN mark is registered is prima facie evidence that it is at least descriptive and has acquired secondary meaning. See *Qualitex Co. v. Jacobson Products Co., Inc.*, 13 F.3d 1297, 1301 (9th Cir. 1994) ("A certificate of registration is prima facie evidence of the validity of the mark and relieves the holder . . . of the burden of proving nonfunctionality and secondary meaning"), rev'd. on other grounds, 514 U.S. 159, 131 L. Ed. 2d 248, 115 S. Ct. 1300 (1995); [*22] *Americana Trading Inc. v. Russ Berrie & Co.*, 966 F.2d 1284, 1287 (9th Cir. 1992) ("Registration carries a presumption of secondary meaning"). Cf. *Miss World*, *supra*, 856 F.2d at 1448 (registration is evidence that a mark is not generic).

Here, however, the record establishes that the VIRGIN mark is more than descriptive — it is arbitrary. n32 "An arbitrary mark, such as Dutch Boy on a can of paint, uses common words in a fictitious and arbitrary manner to create a distinctive mark which identifies the source of the product." *Dreamwerks*, *supra*, 142 F.3d at 1131, n. 7. "Virgin" is in no way descriptive of any of the Virgin Group's various products and services. While the word may conjure up images of purity or newness, this in no way suggests the travel-related services and other businesses in which VEL's affiliates engage under the VIRGIN mark. Because it is arbitrary, the mark is entitled to broad protection. *Id.* at 1131 (finding "Dreamwerks" mark arbitrary for a company that organizes Star Trek conventions and holding that the "mark deserves broad protection" as a result); *Sleekcraft*, *supra*, 599 F.2d at 349 [*23] ("an arbitrary or fanciful mark . . . will be afforded the widest ambit of protection from infringing uses").

n32 It is not fanciful, however. A fanciful mark is a word or phrase that is coined solely for the purpose of functioning as a trademark. See *Dreamwerks*, *supra*, 142 F.3d at 1131 n. 7 ("[a] fanciful mark is a coined word or phrase, such as Kodak, invented solely to function as a trademark," citing *Official Airline Guides, Inc. v. Goss*, 6 F.3d 1385, 1390 (9th Cir. 1993)). The word "Virgin" can be found in the dictionary and has any number of meanings, including "free of impurity or stain." Webster's Third New International Dictionary (4th ed. 1976).

2. Commercial Strength

"Placement on the spectrum of distinctiveness does not end the inquiry as to the strength of a mark: it

is only the first step. The second step is to determine the strength of the mark in the marketplace. That is, its degree of recognition in the minds of the relevant customer class." *Miss World, supra*, 856 F.2d at 1449 [*24] (quoting 1 J. McCarthy, TRADEMARKS AND UNFAIR COMPETITION, § 11:1, p. 434 (2d ed. 1984)). See also *Petro Stopping Centers v. James River Petroleum, Inc.*, 130 F.3d 88, 93 (4th Cir. 1997) ("... the placement of a mark in either the suggestive or descriptive category is merely the first step in assessing the strength of a mark for purposes of likelihood of confusion test. . . . Courts must examine, in addition to the mark's characterization as suggestive or descriptive, the extent of secondary meaning a mark has acquired in the eyes of consumers"); *Fisons Horticulture, Inc. v. Vigoro Industries, Inc.*, 30 F.3d 466, 479 (3d Cir. 1994) ("Distinctiveness on the scale of trademarks is one measure of a mark's strength. . . . Commercial strength, or marketplace recognition of the mark, is another"); *John J. Harland Co. v. Clarke Checks, Inc.*, 711 F.2d 966, 975 (11th Cir. 1983) (distinctiveness of mark and extent of third-party use "both . . . should be considered when analyzing the strength of a particular trademark"); *Sun Banks of Florida, Inc. v. Sun Federal Savings & Loan Ass'n.*, 651 F.2d 311 (5th Cir. 1981) (after holding [*25] that plaintiff's mark was arbitrary, the court stated: "The ultimate strength of a mark, [however,] the key inquiry before us, is determined by a number of factors which establish its standing in the marketplace"); 2 J. McCarthy, TRADEMARKS AND UNFAIR COMPETITION, § 11.83, p. 11-141-42 (4th ed. 1999) ("While some courts have made the strong-weak evaluation solely upon the place of a term on the spectrum of marks, such an approach is incomplete. One must in addition look at the marketplace strength of the mark at the time of the litigation or at the time registration is sought").

The Ninth Circuit employs two tests in determining the strength of a mark in the marketplace. Under the first of these — the "imagination test" — a court "asks how much imagination a consumer must use to associate a given mark with the goods or services it identifies. . . . The more imagination required, the stronger the mark is." *Miss World, supra*, 856 F.2d at 1449. Under the second — the "need test" — the court "asks to what extent a mark is actually needed by competitors to identify their goods or services." *Id.* See also *Rodeo Collection, Ltd. v. West Seventh*, 812 F.2d 1215, 1218 (9th Cir. 1987) [*26] (same).

Applying these tests, the court is convinced that the VIRGIN mark is strong. Since the word "Virgin" is in no way descriptive of any of the Virgin Group's goods and services, it would require significant imagination to associate the VIRGIN mark with the products those businesses

offer. It also appears beyond question that the VIRGIN mark is not needed by Virgin Group competitors to identify their services, as the term does not describe or even suggest any particular product or service, including transportation services.

Thus, assessing the distinctiveness of the VIRGIN mark, and applying the "imagination" and "need" tests discussed in *Miss World, supra*, the court concludes for purposes of the present application that VEL's VIRGIN mark is strong. The strength of the mark factor, therefore, favors VEL.

c. Proximity Or Relatedness Of The Parties' Services

"Related goods are those 'products which would be reasonably thought by the buying public to come from the same source if sold under the same mark.'" *Sleekcraft, supra*, 599 F.2d at 348 n.10 (quoting *Standard Brands, Inc. v. Smidler*, 151 F.2d 34, 37 (2d Cir. 1945)); [*27] *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 314 F.2d 149, 159 (9th Cir. 1963) ("The use need not be the same as, nor one in competition with the original use. The question is, are the uses related so that they are likely to be connected in the mind of a prospective purchaser?"); see also 4 J. McCarthy, TRADEMARKS AND UNFAIR COMPETITION, § 24.24, p. 24-45 ("goods are 'related' if consumers are likely to mistakenly think that the infringer's goods come from the same source as the senior user's goods or are sponsored or approved by the senior user").

Virgin Petroleum operates a service station. The Virgin Group operates numerous businesses, none of which are service stations. VEL argues that its products and services are related to those offered by Virgin Petroleum because both parties sell branded consumer products to individual retail consumers. This interpretation of "related products" is extremely broad, and VEL proffers it perhaps because of the broad range of products and services the Virgin Group sells under the VIRGIN mark. It is sufficient for present purposes, however, to focus on VEL's involvement in a number of transportation-related businesses. VAA [*28] provides airline services, while Virgin Limousine offers limousine transportation. Other Virgin Group companies provide balloon services, additional aviation services, access to hotel properties, and rail service. n33 Perhaps for this reason, the PTO has registered the Virgin mark to VEL for the "transportation of goods and passengers by road."

n33 Richardson Decl., Ex. 2, at 39.

Given the wide diversity of businesses that operate un-

der the VIRGIN mark, and the number of Virgin Group companies that offer transportation services, consumers might mistakenly believe that defendant's gasoline station was connected in some fashion to VEL. Aware that VEL offers a diversified range of products and services, and that it has demonstrated a willingness to expand its product lines in the past, and cognizant of the fact that service stations are related to transportation, consumers might well conclude, upon seeing Virgin Petroleum, that VEL had expanded its operations into the petroleum industry. See *Fuji Photo Film Co., Inc. v. Shinohara Shoji Kabushiki Kaisha*, 754 F.2d 591 (5th Cir. 1985) [*29] (holding that complementary products are particularly susceptible to confusion when the senior user is diversified); *Armco Inc. v. Armco Burglar Alarm Co., Inc.*, 693 F.2d 1155, 1160 (5th Cir. 1982) ("diversification makes it more likely that a potential customer would associate the non-diversified company's services with the diversified company, even though the two companies do not actually compete"); *Carling Brewing Co. v. Philip Morris Inc.*, 297 F. Supp. 1330, 1337 (N.D. Ga. 1968) (enjoining use of BLACK LABEL for cigarettes where the senior user sold beer under the mark, and noting that "given the general situation where the public is generally unaware of the specific corporate structure of those whose products it buys, but is aware that corporate diversification, mergers, acquisitions and operation through subsidiaries is a fact of life, it is reasonable to believe that the appearance of 'Black Label' on cigarettes could lead to some confusion as to the sponsorship of either or both the cigarettes and the beer"); *R. J. Reynolds Tobacco Co. v. R. Seeling & Hille*, 201 U.S.P.Q. 856, 859 (TTAB 1978) (recognizing "the common practice [*30] which is so prevalent today for large corporations, not only to expand their present line of products, but also to diversify their business to include new fields of endeavor," and refusing registration of "Sir Winston" for teas where "Winston" was already in use in connection with cigarettes).

"It is important to note that the greater the degree of similarity in the marks, the lesser the degree of similarity that is required of the products or services on which they are being used in order to support a holding of likelihood of confusion. . . . If the marks are the same or almost so, it is only necessary that there be a viable relationship between the goods or services in order to support a holding of likelihood of confusion." *In re Concordia International Forwarding Corp.*, 222 U.S.P.Q. 355, 356 (TTAB 1983). See also *In re Whittaker Corp.*, 200 U.S.P.Q. 54, 55 (TTAB 1978) ("inasmuch as the marks . . . involved are identical, the question of likelihood of confusion . . . turns on whether the goods . . . are related in any viable manner and/or they are marketed under conditions and circumstances that enable common purchasers or users to

encounter them [*31] in an environment likely to cause these individuals to ascribe a common origin thereto because of the identity of the marks"). Here, the mark used by Virgin Petroleum is extremely similar, if not identical, to the VIRGIN mark used by Virgin Group companies. The wording is the same, and both marks employ the same background color and stylized script. n34 Thus, although the products offered by plaintiff and defendant are not identical and do not directly compete, they are sufficiently related that a consumer would likely believe Virgin Petroleum's gasoline station was sponsored or approved by VEL.

n34 Virgin Petroleum's proposed new design for its mark still uses the word "virgin," and it is unclear whether the background color will continue to be red. Only the style of the letters is changed.

d. Evidence Of Actual Confusion

Evidence of actual confusion is not necessary to prevail on an infringement claim or to merit injunctive relief. See *Academy of Motion Picture Arts & Sciences v. Creative House Promotions, Inc.*, 944 F.2d 1446, 1456 (9th Cir. 1991) [*32] ("actual confusion is not necessary to a finding of likelihood of confusion under the Lanham Act"). However, proof of actual confusion "is persuasive proof that future confusion is likely." *Sleekcraft, supra*, 599 F.2d at 352. See also *World Carpets, Inc. v. Dick Littrell's New World Carpets*, 438 F.2d 482, 489 (5th Cir. 1971) ("there can be no more positive or substantial proof of the likelihood of confusion than proof of actual confusion. Moreover, reason tells us that while very little proof of actual confusion would be necessary to prove the likelihood of confusion, an almost overwhelming amount of proof would be necessary to refute such proof."); *Dominion Bankshares Corp. v. Devon Holding Co., Inc.*, 690 F. Supp. 338, 347 (E.D. Pa. 1988) ("actual confusion is one of the most reliable indications of the likelihood of confusion"); *Jockey Int'l, Inc. v. Burkard*, 1975 U.S. Dist. LEXIS 13697, 185 U.S.P.Q. 201, 207 (S.D. Cal. 1975) ("since reliable evidence of actual confusion is difficult to obtain in trademark infringement cases, any such evidence is substantial evidence that confusion is likely").

Virgin Petroleum's [*33] use of a VIRGIN logo in a format similar to VEL's VIRGIN mark has already led to three or four known incidents of confusion. VEL received an unsolicited e-mail from a potential consumer who believed at first glance that Virgin Petroleum's gasoline station was a VEL business. The person stated that he was "surprised to see a Gasoline representation" in VEL's line. n35 Although the consumer subsequently re-

alized that the service station was not a VEL business, the Ninth Circuit "recognize[s] a brand of confusion called 'initial interest' confusion, which permits a finding of a likelihood of confusion although the consumer quickly becomes aware of the source's actual identity and no purchase is made as a result of the confusion." *Interstellar Starship Services, Ltd. v. EPIX Inc.*, 184 F.3d 1107, 1110 (9th Cir. 1999).

n35 Richardson Decl., Ex. 5.

Virgin Petroleum has admitted to two or three other incidents of confusion as well. According to Ambartsum Telalyan, two or three customers have asked [*34] him whether Virgin Petroleum is associated with Virgin Records. In each instance, the consumer has cited the similarity of the companies' names as his or her basis for assuming a relationship between the entities of some kind. While Virgin Petroleum has offered to alter its logo, it has not agreed to cease using the name "Virgin," and has not actually modified the sign and pumps at its service station. Thus, evidence of actual confusion weighs in favor of a finding of a likelihood of confusion as well.

e. Virgin Petroleum's Intent In Selecting The Mark

VEL asserts that defendant knew of the VIRGIN(R) mark, and intentionally adopted its trade name and stylized red and white logo in order to capitalize on the goodwill associated with it. Because the mark is well-known and the word "virgin" is arbitrary, VEL contends that Virgin Petroleum must have copied it knowingly and willfully with the intent to confuse consumers. n36 Virgin Petroleum does not claim that it was unaware of the VIRGIN mark, and its logo is quite similar, supporting a finding that it intended to adopt the VIRGIN mark and thereby take advantage of the goodwill associated with it. See, e.g., *Official Airline Guides, Inc. v. Goss*, 6 F.3d 1385, 1394 (9th Cir. 1993) [*35] ("when an alleged infringer knowingly adopts a mark similar to another's, courts will presume an intent to deceive the public"). See also *Daddy's Junky Music Stores, Inc., v. Big Daddy's Family Music Ctr.*, 109 F.3d 275, 286 (6th Cir. 1997) ("the use of a contested mark with knowledge of the protected mark at issue can support a finding of intentional copying"); 4 J. McCarthy, TRADEMARKS AND UNFAIR COMPETITION, § 23:115, p. 23-221 ("if a well-known and strong mark has been used in identical format by a junior user, it appears reasonable to require the junior user to carry the burden of explanation and persuasion as to his motive in adopting the mark").

n36 VEL also contends that defendant's willful intent to confuse consumers is demonstrated by

its failure to respond to two cease and desist letters sent prior to the commencement of litigation. While defendant failed to respond in a timely manner to the letters, it did offer to modify its logo the day before suit was filed. Moreover, "it must be recognized that this [argument] is a legal fiction, for defendant may well have considered that plaintiff's contention was legally wrong and continued use until a court stated otherwise. It is difficult to see how such continued use by defendant could be construed as an intent to deceive except in the case of a very clear and legally unambiguous infringement." 4 J. McCarthy, TRADEMARKS AND UNFAIR COMPETITION, § 23.120, p. 23-226.

[*36]

Virgin Petroleum responds that it never intended to copy the VIRGIN trademark. Instead, it insists that it chose "Virgin" after seeing Virgin Olive Oil on grocery store shelves and deciding that the word "virgin" associated with the word "oil" would attract customers. n37 Additionally, after being notified of its purported infringement, Virgin Petroleum designed a new logo, purportedly demonstrating its good faith. See *Sleekcraft, supra*, 599 F.2d at 354 (finding that defendant's good faith could not be questioned where it designed a distinctive logo after being informed of the alleged infringement). While defendant has not put the new logo to use, the evidence regarding its intent to copy VEL's mark is inconclusive on the present record, and the court evaluates this factor as neutral for purposes of the preliminary injunction proceeding.

n37 Telalyan Decl., P 4. Presumably defendant meant that the use of the words "virgin" and "petroleum" would have a similar effect as the word "virgin" used with "oil."

[*37]

f. Type Of Goods And The Degree Of Care Likely To Be Exercised By The Purchaser

Virgin Petroleum's service station is adjacent to a highway. Drivers will see the Virgin sign, and likely have only a few seconds to decide whether to patronize the station or pass by. There will thus be little chance for consumers to exercise care in deciding whether or not to purchase from Virgin Petroleum. Additionally, gasoline is a relatively low cost product and purchasers of such products are generally unlikely to exercise a high degree of care in their decision-making process. See *Dep Corp. v. Opti-Ray, Inc.*, 768 F. Supp. 710, 716 (C.D. Cal. 1991) ("the fact that the goods are not expensive goods, coupled

with the fact that the average purchasers are not experts, leads to the conclusion that the degree of care exercised by the purchasers will likely be low, increasing the likelihood of confusion"); see also 3 J. McCarthy, *TRADEMARKS AND UNFAIR COMPETITION*, § 23.95, p. 23-188 ("the ordinary prudent purchaser does not give much care or thought to the everyday purchase of relatively inexpensive items"). This factor thus weighs in favor of a finding of likelihood of confusion. [*38]

g. Marketing Channels

VEL contends that it and Virgin Petroleum use identical marketing channels, since the service station caters to the same type of consumers who shop in VIRGIN MEGASTORES(R), fly on VIRGIN(R) airlines, drink VIRGIN(R) cola, purchase VIRGIN(R) records and tapes, and read about VEL companies and their founder, Richard Branson. VEL asserts that these consumers likely drive gasoline-powered cars to reach the airport or go shopping. Taking this reasoning to its logical conclusion, one would have to conclude that any business that sells any product to consumers who drive cars utilizes the same marketing channels as a service station. In like fashion, one would have to find that any company that sells products to people who own homes employs the same marketing channels as a company that offers home mortgages. Such a broad interpretation of marketing channels is not supported by the case law.

Virgin Petroleum offers its gasoline for sale at a retail service station. There is no evidence that VEL sells products at such stations, or that the parties utilize similar advertising methods or channels. The marketing channels used by the parties converge only in the broadest [*39] sense of the word, and this factor does not weigh in favor of a finding of likelihood of confusion.

h. Likelihood Of Expansion Of The Product Lines

Neither party indicated that it has present plans to expand its product line. VEL contends that the parties' operations are already competitive since defendant's business targets consumers who buy services and products from Virgin Group companies. It also contends that its licensee, VAA, likely purchases petroleum from the same sources as Virgin Petroleum. Neither of these contentions, however, indicates that VEL has any plans to expand into retail gasoline sales. Consequently, this factor, while not extremely significant, weighs against a finding of likelihood of confusion.

i. Balancing The Factors

The balance of the *Sleekcraft* factors in this case clearly favors VEL. Most importantly, the parties' marks are extremely similar, and the VIRGIN mark is arbitrary,

strong, and entitled to broad protection. VEL, moreover, has proffered evidence of actual confusion. While the products offered by the parties are not closely related, they are sufficiently related that a consumer might well believe that Virgin Petroleum's service [*40] station was sponsored or approved by VEL. This is especially true given Virgin Petroleum's nearly identical use of the VIRGIN mark, and the diversity of Virgin Group businesses that operate under the VIRGIN mark. Finally, the degree of care exercised by potential customers of defendant's product will be minimal. While the remaining two factors — marketing channels and the likelihood that the parties will expand their product lines — weigh against a finding of likelihood of confusion, they are of minimal importance in this case.

The court is mindful of the fact that this matter is before it on a motion for preliminary injunction, and that VEL's showing at this stage of the proceedings need not be as strong as it will have to be at trial. See *University of Texas v. Camenisch*, 451 U.S. 390, 395, 68 L. Ed. 2d 175, 101 S. Ct. 1830 (1981) ("The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held. Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, a preliminary injunction is customarily granted on the basis of procedures that [*41] are less formal and evidence that is less complete than in a trial on the merits. A party is thus not required to prove his case in full at a preliminary injunction hearing"). See also *Sunbeam Products, Inc. v. West Bend Company*, 123 F.3d 246, 254-55 (5th Cir. 1997) (noting the difference between consideration of a preliminary injunction and review of a final judgment). n38 The court finds that VEL has met its burden in this regard, and concludes that it will probably be able to demonstrate a likelihood of consumer confusion at trial.

n38 On the other hand, "a preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." 11A Wright, Miller and Kane, *FEDERAL PRACTICE AND PROCEDURE*, § 2948 (2d ed. 1986).

C. Irreparable Harm

Where a trademark plaintiff has demonstrated that it is likely to succeed on the merits of its claim, irreparable harm is presumed. *Brookfield Communications, supra*, 174 F.3d at 1066; [*42] *Vision Sports, Inc. v. Melville Corp.*, 888 F.2d 609, 612, n. 3 (9th Cir. 1989). As VEL has demonstrated a likelihood of success on the merits, it is entitled to the benefit of this presumption, and prelimi-

nary injunctive relief is appropriate to prevent irreparable injury to VEL.

III. CONCLUSION

For the foregoing reasons, VEL's motion for a preliminary injunction is granted.

DATED: January 19, 2000

MARGARET M. MORROW

UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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VIRGIN ENTERPRISES LIMITED,

Opposer,

Opposition No. 91-161535

- v -

ROSENRUIST - GESTAO E SERVICOS SOCIEDADE
UNIPessoal LDA,

Applicant.
-----X

**MEMORANDUM IN SUPPORT OF
OPPOSER'S MOTION FOR SUMMARY JUDGMENT**

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04-19-2005

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #77

CERTIFICATE UNDER 37 C.F.R. § 2.198

767377169 I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail (Tracking Number ER
US) in an envelope addressed to: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451 on the date shown below:

Name: Carrie B. Kingsley
Signature:

Date: April 18, 2005

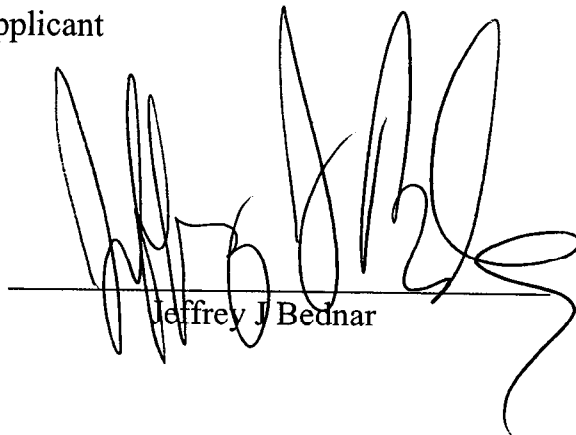
CERTIFICATE OF SERVICE

I certify under penalty of perjury pursuant to 28 U.S.C. § 1746 that on the 18th day of April, 2005 I caused to be served upon the following, by the methods described below, true copies of the Memorandum In Support Of Opposer's Motion For Summary Judgment; Declaration Of Mark James; Declaration of Lori Levin-Hymas; Declaration of Carrie Kingsley; Declaration of Christopher Rossi; Declaration of Robert Stohrer and Declaration of Mark Block.

First Class Mail:

Mark Lebow, Esq.
Young & Thompson
745 South 23rd Street
Arlington, Virginia 22202
Attorney for Applicant

Dated: New York, New York
April 18, 2005



Jeffrey J Bednar

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ESTTA Tracking number: **ESTTA30865**Filing date: **04/18/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91161535
Party	Plaintiff Virgin Enterprises Limited Virgin Enterprises Limited 120 Campden Hill Road London, W8 7AR UNITED KINGDOM
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Signature	/cbk/
Date	04/18/2005
Attachments	prot order motion.pdf (10 pages)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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VIRGIN ENTERPRISES LIMITED,	:
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Opposer,	:
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ROSENRUIST – GESTAO E SERVICOS SOCIEDADE	:
UNIPessoal LDA,	:
	:
Applicant.	:
	:
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Opposition No. 91-161535

OPPOSER’S MOTION FOR A PROTECTIVE ORDER

Opposer, Virgin Enterprises Limited (“VEL” or “Opposer”), hereby moves this Board, pursuant to 37 C.F.R. §2.126(d) and Rule 703.01(p) of the Trademark Trial and Appeal Board Manual of Procedure, for a protective order preserving the confidentiality of commercially sensitive, non-public sales, advertising, and other information relevant to this proceeding.

Opposer is filing a motion for summary judgment in this proceeding. In support of its motion, Opposer will be relying on commercially sensitive, non-public information such as amounts of money spent on advertising and marketing activities by Virgin Group companies acting under license from Opposer. Opposer thus seeks entry of this Board's standard form of Protective Order for preserving the confidentiality of such information.

On this date, April 18, 2005, counsel for Opposer attempted to contact counsel for Applicant to secure consent for a stipulated protective order, and left a telephone message stating the purpose of counsel’s contact. Counsel for Opposer will again try to secure such consent from Applicant’s counsel at the opening of business tomorrow, April 19, 2005.

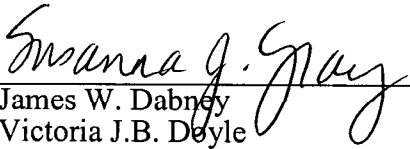
Opposer respectfully requests that the Board's standard protective order, which is attached as Exhibit 1 hereto, be executed and entered.

WHEREFORE, Opposer respectfully requests that the Board grant this motion for a protective order.

Dated: April 18, 2005

FRIED, FRANK, HARRIS, SHRIVER
& JACOBSON LLP

By:


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Attorneys for Opposer
VIRGIN ENTERPRISES LIMITED

EXHIBIT 1

VIRGIN ENTERPRISES LIMITED,

Opposer,

v.

Opposition

No. 91161535

**ROSENRUIST – GESTAO E SERVICOS
SOCEIDADE UNIPessoal LDA,**

Applicant.

**PROVISIONS FOR PROTECTING
CONFIDENTIALITY OF INFORMATION
REVEALED DURING BOARD PROCEEDING**

Information disclosed by any party or non-party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a party or witness. To preserve the confidentiality of the information so disclosed, **either** the parties have agreed to be bound by the terms of this order, in its standard form or as modified by agreement, and by any additional provisions to which they may have agreed and attached to this order, **or** the Board has ordered that the parties be bound by the provisions within. As used in this order, the term "information" covers both oral testimony and documentary material.

Parties may use this standard form order as the entirety of their agreement or may use it as a template from which they may fashion a modified agreement. If the Board orders that the parties abide by the terms of this order, they may subsequently agree to modifications or additions, subject to Board approval.

Agreement of the parties is indicated by the signatures of the parties' attorneys and/or the parties themselves at the conclusion of the order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of the order. If the parties have signed the order, they may have created a contract. The terms are binding from the date the parties or their attorneys sign the order, in standard form or as modified or supplemented, or from the date of imposition by a Board attorney or judge.

TERMS OF ORDER

1) Classes of Protected Information.

The Rules of Practice in Trademark Cases provide that all inter partes proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this order are not to be used to undermine public access to files. When appropriate, however, a party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

Confidential—Material to be shielded by the Board from public access.

Highly Confidential—Material to be shielded by the Board from public access and subject to agreed restrictions on access even as to the parties and/or their attorneys.

Trade Secret/Commercially Sensitive—Material to be shielded by the Board from public access, restricted from any access by the parties, and available for review by outside counsel for the parties and, subject to the provisions of paragraph 4 and 5, by independent experts or consultants for the parties.

2) Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party.

3) Access to Protected Information.

The provisions of this order regarding access to protected information are subject to modification by written agreement of the parties or their attorneys, or by motion filed with and approved by the Board.

Judges, attorneys, and other employees of the Board are bound to honor the parties' designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order. Court reporters, stenographers, video technicians or others who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of paragraph 4.

- **Parties** are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.
- **Attorneys** for parties are defined as including **in-house counsel** and **outside counsel**, including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.
- **Independent experts or consultants** include individuals retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys.
- **Non-party witnesses** include any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.

Parties and their **attorneys** shall have access to information designated as **confidential** or **highly confidential**, subject to any agreed exceptions.

Outside counsel, but not in-house counsel, shall have access to information designated as **trade secret/commercially sensitive**.

Independent experts or consultants, non-party witnesses, and any other individual not otherwise specifically covered by the terms of this order may be afforded access to **confidential or highly confidential** information in accordance with the terms that follow in paragraph 4. Further, **independent experts or consultants** may have access to **trade secret/commercially sensitive** information if such access is agreed to by the parties or ordered by the Board, in accordance with the terms that follow in paragraph 4 and 5.

4) Disclosure to Any Individual.

Prior to disclosure of protected information by any party or its attorney to any individual not already provided access to such information by the terms of this order, the individual shall be informed of the existence of this order and provided with a copy to read. The individual will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any protected information until the party or attorney proposing to disclose the information has received the signed certification from the individual. A form for such certification is attached to this order. The party or attorney receiving the completed form shall retain the original.

5) Disclosure to Independent Experts or Consultants.

In addition to meeting the requirements of paragraph 4, any party or attorney proposing to share disclosed information with an independent expert or consultant must also notify the party which designated the information as protected. Notification must be personally served or forwarded by certified mail, return receipt requested, and shall provide notice

of the name, address, occupation and professional background of the expert or independent consultant.

The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the expert or independent consultant. If objection is made, then the parties must negotiate the issue before raising the issue before the Board. If the parties are unable to settle their dispute, then it shall be the obligation of the party or attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the parties have made to settle their dispute. The party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

6) Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

7) Production of Documents.

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered protected during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

8) Depositions.

Protected documents produced during a discovery deposition, or offered into evidence during a testimony deposition shall be orally noted as such by the producing or offering party at the outset of any discussion of the document or information contained in the document. In addition, the documents must be prominently stamped or marked with the appropriate designation.

During discussion of any non-documentary protected information, the interested party shall make oral note of the protected nature of the information.

The transcript of any deposition and all exhibits or attachments shall be considered protected for 30 days following the date of service of the transcript by the party that took the deposition. During that 30-day period, either party may designate the portions of the transcript, and any specific exhibits or attachments, that are to be treated as protected, by electing the appropriate designation from paragraph 1. Appropriate stampings or markings should be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected.

9) Filing Notices of Reliance.

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the information, so as to maintain the protected status of the information.

10) Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss protected information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 12 of this order.

11) Handling of Protected Information.

Disclosure of information protected under the terms of this order is intended only to facilitate the prosecution or defense of this case. The recipient of any protected information disclosed in accordance with the terms of this order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

12) Redaction; Filing Material With the Board.

When a party or attorney must file protected information with the Board, or a brief that discusses such information, the protected information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when

only some small number of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. **Occasions when a whole document or brief must be submitted under seal should be very rare.**

Protected information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

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This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

13) Acceptance of Information; Inadvertent Disclosure.

Acceptance by a party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

14) Challenges to Designations of Information as Protected.

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

15) Board's Jurisdiction; Handling of Materials After Termination.

The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

The parties may agree that archival copies of evidence and briefs may be retained, subject to compliance with agreed safeguards. Otherwise, within 30 days after the final termination of this proceeding, the parties and their attorneys shall return to each

disclosing party the protected information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like, which discuss or in any way refer to such information. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned.

16) Other Rights of the Parties and Attorneys.

This order shall not preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the order preclude the filing of any motion with the Board for relief from a particular provision of this order or for additional protections not provided by this order.

By Agreement of the Following, effective _____

James W. Dabney
Victoria J.B. Doyle
Susanna J. Gray
Carrie B. Kingsley
Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, NY 10004-1980

Mark Lebow
Young & Thompson
745 South 23rd Street
Arlington, VA 22202

By Order of the Board, effective _____.

Cheryl A. Butler

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
VIRGIN ENTERPRISES LIMITED,

Opposer,

- v -

ROSENRUIST – GESTAO E SERVICOS SOCIEDADE
UNIPessoal LDA,

Applicant.
-----X

Opposition No. 91-161535

DECLARATION OF CARRIE B. KINGSLEY

1. My name is Carrie B. Kingsley. I am a member of the Bar of the State of New York and an associate with the law firm of Fried, Frank, Harris, Shriver & Jacobson LLP, attorneys for Opposer Virgin Enterprises Limited (“VEL”) in this proceeding. I make this declaration in support of VEL’s Motion for Summary Judgment.

2. On April 15, 2005, I viewed the Internet web site associated with the domain name www.virgincosmetics.com/Victory/Public/index.asp. Annexed hereto as Exhibit 1 are printouts dated April 15, 2005, from the www.virgincosmetics.com/Victory/Public/index.asp website.

3. On April 12, 2005, I viewed the Internet web site associated with the domain name www.figleaves.com. Annexed hereto as Exhibit 2 are printouts dated April 12, 2005, from the www.figleaves.com website.

4. On April 15, 2005, I viewed the Internet web site associated with the domain name www.virginbooks.com. Annexed hereto as Exhibit 3 are printouts dated April 15, 2005, from the www.virginbooks.com website.

5. On April 15, 2005, I viewed the Internet web site associated with the domain name www.virgincolas.com. Annexed hereto as Exhibit 4 is a true and correct copy of a web page accessed on April 15, 2005 from the www.virgincolas.com website.

6. On April 15, 2005, I viewed the Internet web site associated with the domain name www.virgindigital.com. Annexed hereto as Exhibit 5 are printouts dated April 15, 2005, from the www.virgindigital.com website.

7. On April 15, 2005, I viewed the Internet web site associated with the domain name www.radiofreevirgin.com. Annexed hereto as Exhibit 6 are printouts dated April 15, 2005, from the www.radiofreevirgin.com website.

8. Annexed hereto as Exhibit 7 is a printout showing the results of a search of "Gorda" I conducted on April 14, 2005, using the Yahoo! People Search search engine.

9. Annexed hereto as Exhibit 8 is a true and correct copy of page 980 from Webster's Third New International Dictionary Unabridged.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: New York, New York
April 18, 2005


Carrie B. Kingsley

EXHIBIT 1



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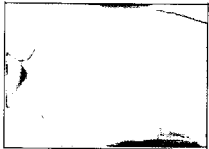
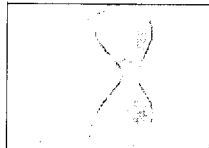

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All
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All

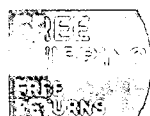
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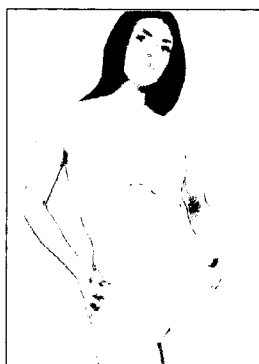
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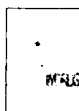
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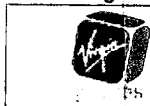
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We offer our UK customers a standard delivery service.

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The maximum delivery cost a UK customer will receive is GBP £4. Therefore if a customer orders more than 5 items for delivery to the UK they will not be charged more than a total of £4.00 for delivery.

Western Europe Delivery

Western Europe customers have two options for delivery of their orders - standard or courier service.

Western Europe Standard Delivery

- W. Europe Delivery within 5-10 working days
- W. Europe Delivery Charge GBP £3
- W. Europe Item Charge GBP £1.25 per item

Example - A customer ordering 2 items on the site for delivery to W. Europe, using the standard service will be charged GBP £3 delivery + GBP £2.50 items charge = a total delivery charge of GBP £5.50.

Western Europe Courier Service

- W. Europe Delivery within 1-2 working days
- W. Europe Delivery Charge GBP £16
- W. Europe Item Charge GBP £2.50 per item

Example - A customer ordering 2 items on the site for delivery to W. Europe, using the courier service will be charged GBP £16 delivery + GBP £5 items charge = a total delivery charge of GBP £21.

USA Delivery

USA customers have two options for delivery of their orders - standard or courier service.

USA Standard Delivery

- USA Delivery within 12-15 working days
- USA Delivery Charge GBP £3
- USA Item Charge GBP £2 per item

USA Courier Service

- USA Delivery within 1-2 working days
- USA Delivery Charge GBP £20
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Example - A customer ordering 2 items on the site for delivery to USA, using the priority service will be charged GBP £20 delivery + GBP £6 item charge = a total delivery charge of GBP £26.

Rest of World Customers

ROW customers have two options for delivery of their orders - standard or courier service.

Rest Of World Standard Delivery

- ROW Delivery within 15-22 working days
- ROW Delivery Charge GBP £3
- ROW Item Charge GBP £2.75 per item

Example - A customer ordering 2 items on the site for delivery to ROW, using the standard service will be charged GBP £3 delivery + GBP £5.50 item charge = a total delivery charge of £8.50.

Rest Of World Courier Service

- ROW Delivery within 3-6 working days
- ROW Delivery Charge GBP £25
- ROW Item Charge GBP £5 per item

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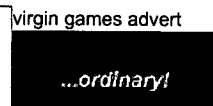
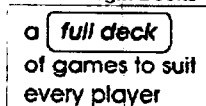
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EXHIBIT 4



Virgin COLAS



"You Googled Virgin Cola? What else
can we tell you? Virgin Cola. It's all
right there. Get one at 7-Eleven."

online sign up

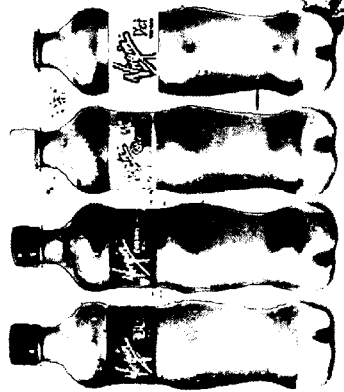
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Virgin Cola newsletter →

the AD gallery

Check out our latest ad spots →

press releases

Official announcements →



Silver Stays Cooler Longer



AD gallery

Print Ads



Cherry Lee



Blonde



Black



Jade

Video Spots



Cherry Lee



Blonde



Black



Jade

The video spots are available in [QuickTime](#) format.

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EXHIBIT 5



FREE DOWNLOAD

FAQ

COMPANY INFO

VIRGIN.COM

Introducing Virgin Digital

Own The Experience

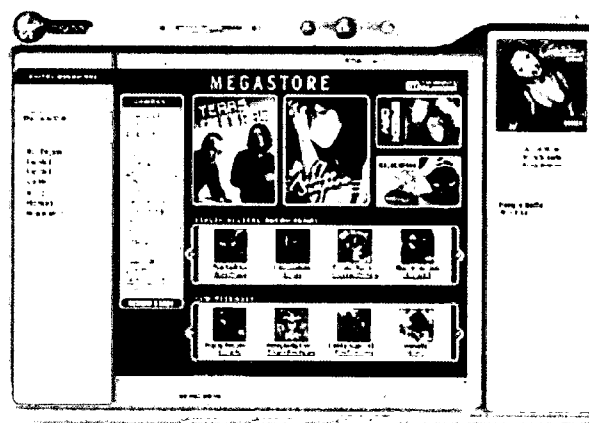
Digital music built just for you

For over 30 years, Virgin has delivered outstanding music entertainment. Now we've put it all into a digital music service that you'll swear we built JUST FOR YOU.

Bigger. Better. Easier.

And there's no need to break the bank! Experience the joy of listening to music again. Whenever you want. Whatever you want.

FREE: DOWNLOAD NOW



[DOWNLOAD] MUSIC

DIGITAL MEGASTORE

Over 1,000,000
(yes, one Million) tracks
to choose from for only
99¢ per track!

DIGITAL MUSIC CLUB

Unlimited downloads
and streams. Access
over **1,000,000 songs!**
14-Day FREE Trial!

RADIO FREE VIRGIN

60 + channels of highly
acclaimed digital radio,
from rock to classical,
country to hip-hop.

MEDIA MANAGEMENT

Manage your media.
Manage your devices.
Rip, burn and even build
your own playlists.

Virgin Digital requires a computer running Windows 2000 or XP, Internet Explorer 5.5 and up, an internet connection, a soundcard, ears, and a small talking loaf of cheese.

We love you. © 2005 Virgin Digital



FREE DOWNLOAD

FAQ

COMPANY INFO

VIRGIN.COM

FREQUENTLY ASKED QUESTIONS

Q: So, what the heck is Virgin Digital anyway?

A: Virgin Digital is a complete digital music store, a subscription music service, award winning digital radio, a music management tool, a CD ripper/burner, the best way to get digital music on your portable music player, a dessert topping, AND a floor wax. It also slices, dices twice as fast as any kitchen utensil on the market today!

Q: Is Virgin Digital available outside of America?

A: Currently, the Virgin Digital Megastore and Digital Music Club are only available to US customers. We hope to be in a country near you soon.

Q: Is Virgin Digital available for OS X?

A: Virgin Digital currently only supports Windows 2000 and XP.

Q: Why don't you have some music that I think you should have?

A: Some artists and publishers have not yet decided to license their music for inclusion into services such as ours. That said, we are always actively expanding our catalog. We'd love to hear what artists and albums are most important to you. Then, we'll camp out on the doorsteps of the most popular ones and pelt them with Snausages until they license us their content.

Q: Why are there some songs in the club that aren't in the store, or the other way around?

A: It is an extension of the previous question. Some publishers and artists have decided to only offer their content up for purchases or to only allow them to be listened to in the music club. We're working hard to have everything available in both places. Believe us, though, when we say that we are on the case. (By the way, ever eat a Snausage? They are not that bad...)

Q: Why can't I burn or transfer my downloaded tracks from the club?

A: Think of the Music Club as a music rental service. As long as your subscription is current, you can download and listen to as much as you would like. If you were to cancel your subscription or lose it in a drunken night of Texas Hold-Em Poker, you would no longer have the ability to play the content that you downloaded. In order to keep things forever, you need to own them. That is what the Digital Megastore is for. When you own a song, you have the innate right to be able to burn that track to a CD or transfer it to a supported portable device.

Q: I purchased a song and want to play it on another computer. How do I do that?

A: Currently, we're only supporting playback of material that you purchased on the computer that you purchased it on. Look for this to change in the very near future.

Q: I downloaded/purchased some music and I CAN'T FIND IT?!?!?!?

A: First, take a deep breath. Then, click on My Collection in the Media Bar. You will see all of your music in the Browse Area. If you want to narrow your choices, make sure "PURCHASED" is the only active button in the upper part of the screen (which shows you just the music that you have purchased). You should then be able to scroll and find the content. If you want to find a particular album and want to avoid scrolling, you can switch to "All" in the search and then type in a few words from the name of the album. It should immediately come up below. Either way, your music is just waiting for you. It likes to play. Visit it often.

Q: Why do you call the white noodle-thing in the Play Queue a "Digital Tone Arm?"

A: We would first like to thank you for making us feel old. Thanks. If you don't know or remember, the tone arm was the name for the thing that would hold the needle and track along the grooves of a LP on a record player. We've digitized this concept and put it to use in our play queue. If you want to see an actual picture of a real one, check this out: [this guy](#) decided to make one out of wood. Killer.

Q: I NEED HELP!

A: If it is an **emergency**-emergency (like if someone is bleeding profusely or you are stuck in a well), call your local emergency response service. Otherwise, click on the "Ask the Expert" button in the player and send us your query. If you are unable to get there because of problems you might be having, you can submit through this link to [Ask the Expert](#). Note: we would rather you submit through the player while you are logged in, if you can. Makes things a bit easier for our experts.

Q: Your player isn't perfect, it just did XXXXXXXXX!

A: And neither are we, if you were checking. Heck, I walked into a glass sliding door this morning. I'm a mess. I either need to get my glasses changed or some serious therapy. (Note to mom: The drinking had nothing to do with it.) That said, we're constantly working to make our product the best that it can be. Let us know when you are having troubles. We care. We are constantly improving, upgrading, enhancing, buffing, polishing, nipping, tucking, caramelizing, broiling, blending, and fixing up the software. Your comments and experiences are important to us. Just let our experts know via [Ask the Expert](#).

Q: Why would I want to be a member of the club?

A: The real question is this: why wouldn't you? Total access to over a million tracks for only \$7.99 a month? Plus, you

get Radio Free Virgin Royal (a \$4.95 value). To be brutally honest, we made this thing so that we could use it. Total selfishness. We're not proud of that fact, but you have to at least give us kudos for making it available at such a ridiculously low price to everyone. This thing literally changes the way that you think about music. Ignore the marketing hype for a second and think about this: there is no greater risk for you to try something out you have never listened to before in the club versus something you have heard a million times. Think about the world of excellent music that has been outside of your reach because you were too much of a tightwad to shell out the \$\$ for the CD because you were afraid it would suck or that you wouldn't like it. All of that great music is waiting for you in the club. Your passion for awesome music will know no bounds in the club. We think it is pretty radical. (By the way, sorry about the tightwad comment. We were just trying to make a point. We don't think you are a tightwad.)

Q: How much does the Digital Music Club cost?

A: The Digital Music Club is a single, flat-price of \$7.99 a month. In addition to making you cool, your Club membership grants you full access to our enormous music library. You can stream and download tracks to your heart's delight. There are no hidden fees or charges in the Club. If you want to play Britney Spears' *Oops, I did it Again* non-stop for an entire month, it is \$7.99. While you may need some serious help at the end of the month, your membership still costs the same.

Q: I'm confused about what my "Security Code" is for my credit card.

A: The security code is a collection of digits (the last three in the case of Visa and MasterCard) that are on the back of your credit card, usually near the signature box. Though the practice differs by card manufacturer, many times you will see all or a portion of the credit card number preceding it. American Express has four digits on the front of the card above your number. They like to be different.

Q: Why do you want the security code?

A: We ask you to put this code in so that it will be less likely for someone other than you to use your credit card. Those numbers do not generally show up on printed receipts (like the one you get at the grocery store). Thus, someone can't just take a receipt from, let's say, the bird supply store where you bought those tasty suet cakes and use your credit card to subscribe to our service. We don't allow that shoddy type of behavior around here and hope that you appreciate that fact.

Q: What if I want to share my account with my buddies?

A: Um, bad idea. Your account is for you, only. Sharing it is not only uncool, it's a potential big problem for you. Realize that by having your account information, these "buddies" can get into your personal account preferences and "royally" screw things up. Would you lend them your credit card and let them loose in a shopping mall? We didn't think so. We've created the ability to add users to your account so that you can give your wife, children, illegitimate children, pets, gardeners, and anyone else who you want to sponsor access to Virgin Digital through allowances and Club Memberships.

Q: Why does Virgin Digital keep logging me out?

A: You can only be logged in on one computer at a time. Logging in from multiple locations at the same time doesn't work. Thus, each subsequent login will cause the current person to be logged out. That's so that you can use the service wherever you want, at home or at work or even at your friend's girlfriend's sister's daughter's best-friend's houseboat. You just can't do it from two places at once -- cuz there's only one of you. This is a big reason why you wouldn't want to share your account (see the previous question).

Q: I remember some of those responses from Radio Free Virgin Royal. Are you plagiarizing them?

A: Give us a break. At least we changed a few words to make them more relevant.

Q: Can you give me the technical details for your audio files?

A: We could, but we'd have to kill you. Just kidding. Our audio files are optimized to deliver you the best quality available at a reasonable file size. They are encoded in Windows Media format using version 9. All files are use what is called "dual-pass" encoding, which makes them sound far superior to equivalent files at the same bitrate encoded with only a single pass. Songs purchased or downloaded from Virgin Digital are delivered at 128k. Virgin Digital Music Club content streams at 128k dual-pass as well, if your bandwidth can handle it. If it can't, the quality will downgrade until it is delivered at a rate that your connection can support. We think that you will find that Virgin Digital is the best sounding digital music service out there and are confident that you will be satisfied.

Q: I have my volume control ALL THE WAY UP but the music is very quiet. Help!

A: Sometimes, your system volume or "wave out" volume can get turned down and left down by other media software (whose names will remain nameless, or something like that.) If you go into your system volume control (usually the volume icon in the lower right hand corner of the screen) you can turn those puppies up to get things back to normal. If you can't find that volume control, try going to the control panel of Windows and then open up "Sounds and Audio Devices." The first screen should have an area for device volume. Click on "Advanced..." and you should see your volume control. The "Master Volume" or "Play Control" volume should be turned up as should the slider for "Wave/MP3."

Q: What devices does Virgin Digital Support?

A: We're working on an official list, but for the most part devices on the [Music Service Friendly Devices](#) list at Microsoft "should" work, but it is mostly up to the device manufacturer. Consider the "Plays for Sure" logo to be your best bet for compatibility.

Here are the devices that we have explicitly validated to work with Virgin Digital (in no particular order):

- Virgin Electronics SGB
- Motorola M500
- Rio Carbon
- Rio Karma
- Rio Nitrus
- Rio Forge
- Rio Cali
- Rio Chiba
- Creative Zen Family
- Creative MuVo^2
- Dell Jukebox Family
- Dell DJ Family
- iRiver iFP795

- Archos Gmini400
- RCA Lyra
- Samsung YH-920
- Samsung YP-910GS
- Samsung YEPP-75V/H

We'll be expanding this list as we gather and test more devices. Note: just because we didn't list a particular device, doesn't mean that it won't work. Always check with the manufacturer and validate that the device supports protected Windows Media content. If it does, you'll be in good shape.

Q: I have a device that should work but it doesn't show up. What do I do?

A: Always make sure that you have the latest drivers from your device manufacturer. This shouldn't be a problem with newer devices. However, with older devices, many manufacturers added protected content support after they shipped the device in a downloadable upgrade. In order to transfer protected content to your device, you need to be using the latest drivers and firmware from the manufacturer.

Q: I need some help with my Virgin Electronics hardware. Where to go?

A: For information specific to the Virgin Electronics 5GB player, please go to the [Virgin Electronics 5GB FAQ](#). If you are looking for information on other Virgin Electronics devices, go to their [main support page](#). If the problem is Virgin Digital related, go ahead and contact our Experts via the Ask the Expert button in the player.

Q: I wrote in to Ask the Expert, where's my response?

A: Responses from our experts arrive through the same email account that you registered for the service with (the same one you use to log in). Your response should arrive there shortly. Do note that the experts do sleep for a few hours each night, but will get to your questions promptly in the morning after they've had a bit of tea and a muffin.

DIGITAL MEGASTORE	DIGITAL MUSIC CLUB	RADIO FREE VIRGIN	MEDIA MANAGEMENT
Over 1,000,000 (yes, one Million) tracks to choose from for only 99¢ per track!	Unlimited downloads and streams. Access over 1,000,000 songs! 14-Day FREE Trial!	60 + channels of highly acclaimed digital radio, from rock to classical, country to hip-hop.	Manage your media. Manage your devices. Rip, burn and even build your own playlists.

**Virgin Digital requires a computer running Windows 2000 or XP, Internet Explorer 5.5 and up,
an internet connection, a soundcard, ears, and a small talking loaf of cheese.**

We love you. © 2005 Virgin Digital



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FAQ

COMPANY INFO

VIRGIN.COM

COMPANY INFORMATION

For Questions and Comments:

Contact a [Virgin Digital Expert](#).

Press Announcements:

- January 11, 2005 - [Virgin Digital and Foot Locker Team for Promotion to Offer Exclusive Digital Music Content from Island Def Jam Music Group Artists LL Cool J, Ludaris and Ja Rule](#)
- December 8, 2004 - [Virgin Digital Available in the Form of Prepaid Cards in Drugstores Nationwide](#)
- December 2, 2004 - [CDIGIX and Virgin Digital Team Up to Offer Digital Music to Graduating College Students](#)
- November 4, 2004 - [Virgin Digital Now Available in Virgin Megastores](#)
- September 27, 2004 - [Virgin Digital Launches Service](#)
- March 8, 2004 - [Virgin Digital Announcement](#)

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kdemarco@mprm.com / beckerson@mprm.com

For Business Development Inquiries:

bizdev@virgindigital.com

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RADIO FREE VIRGIN

60 + channels of highly
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country to hip-hop.

MEDIA MANAGEMENT

Manage your media.
Manage your devices.
Rip, burn and even build
your own playlists.

Virgin Digital requires a computer running Windows 2000 or XP, Internet Explorer 5.5 and up, an internet connection, a soundcard, ears, and a small talking loaf of cheese.

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EXHIBIT 6



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Virgin

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ROYAL

- 👑 OVER 60 COMMERCIAL-FREE CHANNELS
- 👑 CD-QUALITY SOUND
- 👑 AUDIO TOOLS
- 👑 SONG BOOKMARKING & HISTORY
- 👑 CHAT & INSTANT MESSAGING
- 👑 SEARCH FOR DETAILED INFORMATION ON OVER A MILLION SONGS AND ALBUMS!

NOW PLAYING ON A NEW

GARBAGERADIO



You'll find exclusive interviews with all four band members, songs from their latest release, *Bleed Like Me*, classic Garbage tracks, B-sides, and songs from their personal record collection.

[LISTEN NOW](#)

[GET RFV](#)

HIP HOP 101



The first stop in the evolution of hip-hop. A historical journey through hip-hop time.

[RFV ROYAL](#)

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POP SHOP



Pop till you drop, and then pop some more... the cutest boys and the hottest girls all in one place.

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HOT COUNTRY



Hotter than a kiss from Shania! Sizzlin' Southern hospitality without all the grits.

[LISTEN NOW](#)

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U2's ZOORADIO

Listen in for music from U2's latest release, *How to Dismantle an Atomic Bomb*, plus their entire catalogue of music. Also added are tracks compiled by members of the band, their collaborators and friends.

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SOUL CITY

Take in the soothing Urban Rhythms and fill your soul with the music of today's city beats. With the best of the new R&B along with the classic soul that keeps our spirits alive, make Soul City your hometown.

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RFV

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THE DIGITAL MUSIC STARTER KIT

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VIRGINMEGA.COM

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LISTEN NOW FOR INSTANT GRATIFICATION!

COMPANY OVERVIEW

Company Profile

Launched in early 1999, Radio Free Virgin is building a business on the power of its programming, innovative technology and resources of the Virgin Group businesses. Radio Free Virgin is committed to delivering an outstanding entertainment experience both on line and off.

A digital broadcasting company, Radio Free Virgin has established a network of over 40 genre-based channels of music, that represent a combination of well known brands as well as original Radio Free Virgin creations. Listeners tap into the Radio Free Virgin experience online through the free downloadable player that automatically updates new features. Eventually, listeners will be able to access Radio Free Virgin through set top boxes and wireless devices as well.

Well-known artists, celebrities, musicologists and DJs from around the world all program the many quality channels available through Radio Free Virgin, which consist of genre, lifestyle and location-based channels. Genre channels include In Rock We Trust (classic rock), Modern Rock, Pop Shop, Hip Hop 101, X-Groove (Electronica), Shaken Not Stirred (swinging oldies), Sax In The City (smooth jazz), Classical, and The Crossroads (Blues), among many others. Lifestyle channels like GameGoth (industrial, metal music), Guilty Pleasures (songs you hate to love), So Indie It Hurts, and Cinematique (movie scores), go beyond the experience found on AM, FM, or even Internet radio. Radio Free Virgin has also partnered with Playboy, the GRAMMY Foundation, and MuchMusic USA to create channels. In addition, Radio Free Virgin offers a glimpse into 6 major cities (New York, London, Hollywood, San Francisco, Paris, and Tokyo) where Virgin Megastore DJs spin what's hot in their corner of the world. There is no other place in the world that music lovers can get this breadth of programming free of charge.

The Radio Free Virgin Player offers many popular features: listeners can view album art and artist information for the track being played, access reviews and other information, and purchase the album through the Radio Free Virgin store as well as through digital downloads.

Radio Free Virgin offers listeners superior, CD-quality streaming audio over the Internet as PC users are online or off. The Radio Free Virgin player fits unobtrusively on the user's desktop, and can be quickly downloaded free of charge at www.radiofreevirgin.com. To date, over 2.3 million players have been downloaded. Radio Free Virgin recently launched a "Lite" version of its popular Player, offering users a pop-up window interface that allows listeners to sample twenty RFV channels before downloading the full player. Radio Free Virgin will soon launch features that include the ability to chat with other fans from around the world as well as the opportunity to participate in sweepstakes and special promotions exclusively for Radio Free Virgin listeners.

Alliances with industry leaders like Microsoft provide key access to technology and distribution. These partnerships enable the delivery of highly interactive and engaging streaming media - all with significant reliability and scalability to reach any audience size.

Radio Free Virgin has also signed distribution initiatives with hardware manufacturers that will place Radio Free Virgin programming in set-top boxes and is seeking deals with artist sites and other corporate partners to distribute its content via digital satellite devices and wireless applications. Radio Free Virgin will also be distributed and marketed through Virgin Megastores, one of the world's largest and most respected music retail chains, Virgin Atlantic Airlines and other Virgin Group businesses.

Company Highlights

Radio Free Virgin offers music to the masses yearning for freedom from conventional radio - and breaking the barriers of traditional radio in the process.

Radio Free Virgin...

- Offers a **rich, interactive user experience** not available on traditional radio. Listeners can view album art and artist information for the track being played, access reviews and other information, listen to additional tracks and even purchase the artist's music at the Radio Free Virgin Store.
- **Plays more music** than traditional radio. Simultaneously available channels break the bonds of time and space. Even in major cities worldwide, the traditional radio dial offers little variety or choice for consumers - channels are limited; play lists are narrow.
- Plays a **much more diverse range of music** than traditional radio. Because the Internet brings together like-minded music listeners from around the world, **niche channels** can succeed online that would typically never reach traditional radio.
- **Challenges traditional radio**, not just Internet radio, but traditional radio itself with the quality and credibility associated with the Virgin name.
- **Sounds better** than traditional radio, delivering audio quality far superior to terrestrial FM radio. With no interference or dropouts, **it beats both MP3 and FM quality** and **rivals CD sound**.



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RADIOFREEVIRGIN

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CHANNEL GUIDE

Radio Free Virgin offers over 60 channels of professionally programmed music. Our team of passionate music fans moonlight as respected musicologists, international DJs, and include a seal lynx Bengal named Luther.

To learn more about our channels, browse the list below - or directly link to a page in the Channel Guide by using the pull down menu.

ABOUT RFV ROYAL:

Channels marked with "RFV Royal" are available only to subscribers of the Radio Free Virgin Royal subscription service.

NOW PLAYING ON RADIO FREE VIRGIN:

Select a Channel

ARTISTRADIO

[BeckRadio](#)
[CaféTacubaRadio](#)
[CountingCrowsRadio](#)
[GarbageRadio](#)
[LiveRadio](#)
[MariahRadio](#)
[PeterGabrielRadio](#)
[SherylCrowRadio](#)
[SonicYouthRadio](#)
[U2's ZooRadio](#)

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BLUES

[The Crossroads](#)

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CLASSICAL

[The Conservatory](#)
[Mostly Modern](#)

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COUNTRY

[Country Classics](#)
[Hot Country](#)

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[GRAMMY - Smart Symphonies](#)
[JPFolks.com - Just Plain Folks](#)
[Playboy.com - Playboy Lounge](#)
[RollingStone.com - RS Editor's Picks](#)
[SugarHillRadio](#)

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[In Rock We Trust](#)
[Modern Rock](#)
[Pop Shop](#)
[StarPower](#)
[Top Rocks](#)

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[Absolutely Live](#)
[Burning Down the 80's](#)
[GameGoth](#)

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RFV

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LISTEN

It's about the MUSIC.

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EXPLORE.

Launch the Lite player
below, check out our
features, or learn more
about our channels.



LISTEN NOW

Instant access to 30+
RFV channels.

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YOUR FEATURES

Now featuring:

- [PeterGabrielRadio](#)
- [LiveRadio](#)
- [CaféTacubaRadio](#)

CHANNEL GUIDE

You've got options.

Take a look at the full
listing of all 60+ Radio
Free Virgin channels.

• [MORE](#)

FEATURED CHANNELS

Don't miss these
channels:

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- [Under the Covers](#)
- [Soul City](#)
- [Star Power](#)

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RADIO FREE
Royal

SUPERIOR SOUND
EXCLUSIVE FEATURES
COMMERCIAL FREE

NOW WITH MORE PLAYER FEATURES!

Introducing **Radio Free Virgin Royal**, the new subscription service from Radio Free Virgin. For a mere pittance you can become a member of the RFV Royal Family. That's right. No noble deeds required. Simply sign up and you can deem thyself royalty. We don't recommend using words like "hath" and "prithee" in day to day conversation after joining, though, as it may make your friends, family, and pets quite jealous.

Take a look at what RFV Royal has to offer over the free service:

	<i>Royal</i>	Standard
True CD-Quality Stereo Sound	✓	NO
60+ Channels of Incredible Music	✓	LIMITED
Exclusive Commercial-Free Channels	✓	NO
Audio Customization Tools	✓	NO
Song History	✓	NO
Favorites	✓	NO

How do you get it? It's easy! Run the Radio Free Virgin player and click "Sign Up" when it asks you if you would like to become a member. If you haven't downloaded the Radio Free Virgin player, do it now. For just a small subscription fee (\$4.95 a month) and a 7-day trial period, you have nothing to lose. For the cost of a magazine a month you'll have access to the hottest music available anywhere in full CD-Quality stereo (broadband connection required for CD-Quality stereo).

Download the player and sign up today!

Supported platforms and other software information can be found in our [download section](#).

If you have any additional questions about Radio Free Virgin Royal, please check out the [RFV Royal section](#) of our Help. It explains all of the new features and has additional information to help make you a better person.

Don't you love small print. Sometimes we feel that we can say just anything in the small print, cuz nobody actually reads it. We could say things like: Radio Free Virgin is not responsible if you get all tingly while listening to RFV Royal naked. Or, eating three boxes of high-fiber cereal while listening to RFV Royal may make you have to go to the restroom for quite a long time. Or, how about, side effects include: general feeling of well-being, tapping toes, singing along, confused looks in the CD-ROM drive by friends (looking for the source of the CD-Quality audio), desire to close eyes and listen all day, big-ol grin across your face, spontaneous singing-along, rhythmic typing of the keyboard, impulse to sign up for the service multiple times, and desire to watch old Lassie movies while covered head-to-toe in guacamole. We're not sure about that last one as it only happened once to someone that works here.



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**Radio Free Virgin offers listeners a chance to buy full albums.
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Name	ADVERTISEMENT	Address	Phone
Michael Gorda	Instant Background Check www.intelius.com	1205 Rhodes Rd Johnson City, NY Add to Address Book , Map	(607) 770-6399
Edward Gorda	Instant Background Check www.intelius.com	2001 Deerhead Lake Dr Forked River, NJ Add to Address Book , Map	(609) 971-6961
Diana Gorda	Instant Background Check www.intelius.com	2612 W 2nd St Brooklyn, NY Add to Address Book , Map	(718) 646-0622
Vladimir Gorda	Instant Background Check www.intelius.com	1311 Brightwater Ave Brooklyn, NY Add to Address Book , Map	(718) 646-2874
M Gorda	Instant Background Check www.intelius.com	91 Birch St Beachwood, NJ Add to Address Book , Map	(732) 244-7621
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Lois B Gorda	Instant Background Check www.intelius.com	1930 Hovsons Blvd Toms River, NJ Add to Address Book , Map	(732) 255-2209
R A Gorda	Instant Background Check www.intelius.com	5111 Beech Ct Monmouth Junction, NJ Add to Address Book , Map	(732) 355-1716
A Gorda	Instant Background Check www.intelius.com	15 Morningside Rd Colonia, NJ Add to Address Book , Map	(732) 381-3231
Wm Gorda	Instant Background Check www.intelius.com	1725 Westover Rd Clark, NJ Add to Address Book , Map	(732) 382-4852

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Name	ADVERTISEMENT	Address	Phone
Jos Gorda	Instant Background Check www.intelius.com	2321 Desisto Dr Rahway, NJ Add to Address Book, Map	(732) 382-5978
C A Gorda	Instant Background Check www.intelius.com	19 Hemingway Dr North Brunswick, NJ Add to Address Book, Map	(732) 422-9215
E Gorda	Instant Background Check www.intelius.com	36 Meadowbrook Rd Brick, NJ Add to Address Book, Map	(732) 477-1319
E Gorda	Instant Background Check www.intelius.com	1195 Bay Ave Toms River, NJ Add to Address Book, Map	(732) 506-9653
Michelle Gorda	Instant Background Check www.intelius.com	11 Hayes Ct North Brunswick, NJ Add to Address Book, Map	(732) 565-0905
Jos Gorda	Instant Background Check www.intelius.com	120 Westley Rd Old Bridge, NJ Add to Address Book, Map	(732) 591-0360
K Gorda	Instant Background Check www.intelius.com	1474 Pawnee Rd North Brunswick, NJ Add to Address Book, Map	(732) 729-4868
A Gorda	Instant Background Check www.intelius.com	44 Johnny Dr Farmingdale, NJ Add to Address Book, Map	(732) 938-2618
W C Gorda	Instant Background Check www.intelius.com	407 Birchwood Rd Linden, NJ Add to Address Book, Map	(908) 486-2430
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<u>Bernard L Gorda</u>	Instant Background Check www.intelius.com	9477 Battler Ct Columbia, MD Add to Address Book , Map	(410) 730-4241
<u>Robert F Gorda</u>	Instant Background Check www.intelius.com	917 Andrea Ct Pittsburgh, PA Add to Address Book , Map	(412) 462-5442
<u>R S Gorda</u>	Instant Background Check www.intelius.com	701 Priscilla Ave Duquesne, PA Add to Address Book , Map	(412) 466-1436
<u>Jeffrey Gorda</u>	Instant Background Check www.intelius.com	1038 Kensington Pkwy Forest, VA Add to Address Book , Map	(434) 534-6870
<u>Robert M Gorda</u>	Instant Background Check www.intelius.com	270 Dana St Kingston, PA Add to Address Book , Map	(570) 287-5118
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<u>Robert D Gorda</u>	Instant Background Check www.intelius.com	Milford, PA Add to Address Book , Map	(570) 686-1584
<u>T Gorda</u>	Instant Background Check www.intelius.com	226 E Center St Shavertown, PA Add to Address Book , Map	(570) 696-9792
<u>Peter B Gorda</u>	Instant Background Check www.intelius.com	Wellsboro, PA Add to Address Book , Map	(570) 724-1227

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<u>Peter Gorda</u>	Instant Background Check www.intelius.com	Welsh Settlement Wellsboro, PA Add to Address Book , Map	(570) 724-3035
<u>Paul Gorda</u>	Instant Background Check www.intelius.com	Wellsboro, PA Add to Address Book , Map	(570) 724-4041
<u>Phillip Gorda</u>	Instant Background Check www.intelius.com	Wellsboro, PA Add to Address Book , Map	(570) 724-5143
<u>John W Gorda</u>	Instant Background Check www.intelius.com	21500 Foche Ter Ashburn, VA Add to Address Book , Map	(703) 729-6921
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<u>Lynn R Gorda</u>	Instant Background Check www.intelius.com	525 Pebble Pt Salisbury, NC Add to Address Book , Map	(704) 638-9786
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<u>Paul Gorda</u>	Instant Background Check www.intelius.com	4880 San Pablo Ct Naples, FL Add to Address Book , Map	(239) 254-9751
<u>Barbara Gorda</u>	Instant Background Check www.intelius.com	4880 San Pablo Ct Naples, FL Add to Address Book , Map	(239) 254-9751
<u>Raymond Gorda</u>	Instant Background Check www.intelius.com	226 Waterway Ct Marco Island, FL Add to Address Book , Map	(239) 389-1658

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<u>Mari Gorda</u>	Instant Background Check www.intelius.com	1031 Turtle Creek Dr Augusta, GA Add to Address Book , Map	(706) 228-4684
<u>J Gorda</u>	Instant Background Check www.intelius.com	2575 Bramblewood Dr E Clearwater, FL Add to Address Book , Map	(727) 736-6484
<u>Wilma Gorda</u>	Instant Background Check www.intelius.com	38700 Cew Dr Zephyrhills, FL Add to Address Book , Map	(813) 788-8643
<u>Hubert A Gorda</u>	Instant Background Check www.intelius.com	10146 Montague St Tampa, FL Add to Address Book , Map	(813) 792-5579
<u>Daniel Gorda</u>	Instant Background Check www.intelius.com	10812 Preservation View Dr Tampa, FL Add to Address Book , Map	(813) 854-1366
<u>Marianne Gorda</u>	Instant Background Check www.intelius.com	514 S Church St Chatham, IL Add to Address Book , Map	(217) 483-1118
<u>Ken Gorda</u>	Instant Background Check www.intelius.com	514 S Church St Chatham, IL Add to Address Book , Map	(217) 483-1118
<u>Brandy Gorda</u>	Instant Background Check www.intelius.com	601 E Route 125 Pleasant Plains, IL Add to Address Book , Map	(217) 626-1112
<u>Kenneth Gorda</u>	Instant Background Check www.intelius.com	601 E Route 125 Pleasant Plains, IL Add to Address Book , Map	(217) 626-2422

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Name	ADVERTISEMENT	Address	Phone
<u>Rudy Gorda</u>	Instant Background Check www.intelius.com	447 Grand St Morgantown, WV Add to Address Book , Map	(304) 292-0359
<u>Barb Gorda</u>	Instant Background Check www.intelius.com	447 Grand St Morgantown, WV Add to Address Book , Map	(304) 292-1749
<u>Julianne Gorda</u>	Instant Background Check www.intelius.com	18807 Dow Knob Rd Borden, IN Add to Address Book , Map	(812) 923-6930
<u>B Gorda</u>	Instant Background Check www.intelius.com	Freeport, IL Add to Address Book , Map	(815) 235-0930
<u>Donavan Gorda</u>	Instant Background Check www.intelius.com	294 Washington St Lander, WY Add to Address Book , Map	(307) 335-8753
<u>Charles Gorda</u>	Instant Background Check www.intelius.com	1 Brubaker Rd Glenrock, WY Add to Address Book , Map	(307) 436-9984
<u>Patricia Gorda</u>	Instant Background Check www.intelius.com	1 Brubaker Rd Glenrock, WY Add to Address Book , Map	(307) 436-9984
<u>Karuna Gorda</u>	Instant Background Check www.intelius.com	10450 W 116th Ter Overland Park, KS Add to Address Book , Map	(913) 906-9218
<u>Marcie Gorda</u>	Instant Background Check www.intelius.com	2410 Cinco Woods San Antonio, TX Add to Address Book , Map	(210) 494-3884
<u>Jared Gorda</u>	Instant Background Check www.intelius.com	8793 E Cheryl Dr Prescott Valley, AZ Add to Address Book , Map	(928) 772-4955

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<u>M Gorda</u>	Instant Background Check www.intelius.com	Smartville, CA Add to Address Book , Map	(530) 639-2222
<u>B Gorda</u>	Instant Background Check www.intelius.com	Smartville, CA Add to Address Book , Map	(530) 639-2222
<u>Bonnie Gorda</u>	Instant Background Check www.intelius.com	Marysville, CA Add to Address Book , Map	(530) 741-0658
<u>C Gorda</u>	Instant Background Check www.intelius.com	El Cajon, CA Add to Address Book , Map	(619) 442-2667
<u>Mason Gorda</u>	Instant Background Check www.intelius.com	218 Holly Fern St Henderson, NV Add to Address Book , Map	(702) 263-2915
<u>M Gorda</u>	Instant Background Check www.intelius.com	Henderson, NV Add to Address Book , Map	(702) 837-5733
<u>Ron Gorda</u>	Instant Background Check www.intelius.com	Oceanside, CA Add to Address Book , Map	(760) 630-8724
<u>B Gorda</u>	Instant Background Check www.intelius.com	Vista, CA Add to Address Book , Map	(760) 726-6024
<u>K Gorda</u>	Instant Background Check www.intelius.com	Vista, CA Add to Address Book , Map	(760) 726-6024
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Name	ADVERTISEMENT	Address	Phone
<u>Rhett Gorda</u>	Instant Background Check www.intelius.com	Fairbanks, AK Add to Address Book, Map	(907) 455-4640
<u>Jeannette Gorda</u>	Instant Background Check www.intelius.com	Fairbanks, AK Add to Address Book, Map	(907) 455-4640

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6



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ISBN 0-87779-201-1 (blue sturdite).—ISBN 0-87779-202-X
(carrying case).—ISBN 0-87779-206-2 (imperial buckram).
I. English language—Dictionaries. I. Gove, Philip Babcock,
1902–1972. II. Merriam-Webster, Inc.
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423–dc20

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

-----X
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Opposer,

- v -

ROSENRUIST - GESTAO E SERVICOS SOCIEDADE
UNIPessoal LDA,

Applicant.
-----X

Opposition No. 91-161535

DECLARATION OF LORI LEVIN-HYAMS

1. My name is Lori Levin-Hyams. I am Vice President of Corporate Affairs for Virgin Management Ltd. ("VML"), the parent company of Opposer Virgin Enterprises Limited ("VEL"). My responsibilities include the management of public relations for VEL licensees (the "Virgin Group") and the group's founder, Sir Richard Branson, in the United States. I have had and exercised such responsibilities for Virgin Group companies since 1985. I make this declaration in support of VEL's motion for summary judgment. I have personal knowledge of the matters stated in this declaration.

2. Annexed hereto as Exhibit 1 is a DVD containing film footage that has been broadcast on one or more television media outlets in the United States. Exhibit 1 is used by Virgin Group companies in presentations to existing and potential employees, investors, and business associates in the United States.

3. The VIRGIN brand has been a subject of a number of books distributed in the United States. These include (a) "Richard Branson, Losing My Virginity" by Richard Branson, (b) "Richard Branson, The Authorized Biography" by Mick Brown, (c) "Business the Richard

Branson Way, Ten Secrets of the World's Greatest Brand-BUILDER" by Des Dearlove, and (d) "The New Global Leaders, Richard Branson, Percy, Barnevik, David Simon, and the Remaking of International Business" by Manfred Kets De Vries and Elizabeth Florent-Treacy. Excerpts from these books are annexed hereto as Exhibits 2-5.

4. Sir Richard Branson has written forwards for books relating to branding that have been distributed in the United States including "Emotional Branding" by Daryl Travis and "4-D Branding, Cracking the Corporate Code of the Network Economy" by Thomas Gad. Excerpts from these books are annexed hereto as Exhibits 6-7.

5. Annexed hereto as Exhibit 8 is a DVD containing national television coverage of the VIRGIN MEGASTORE retail store opening in Times Square, New York in 1994. The store opening received coverage throughout the United States on major national television and cable networks including NBC, ABC, CBS, and CNN and their affiliates.

6. Annexed hereto as Exhibit 9 is a DVD containing various clips of television coverage of the July 30, 2002 launch of VIRGIN MOBILE wireless telecommunication services in the United States.

7. The Virgin Group recently publicly announced the start of a new business offering commercial flights to space under the mark VIRGIN GALACTIC. Over four million people have already visited the www.virgingalactic.com website and approximately 4,000 people have already signed up for space flights. VIRGIN GALACTIC space flights have received extensive national media coverage in the United States.

8. The VIRGIN brand received significant media attention in connection with the FOX reality television series, "The Rebel Billionaire: Branson's Quest for the Best." I was the executive producer of this series. The series debuted on the FOX national television network on

November 9, 2004, and aired weekly for the remainder of the year 2004. Promotional commercials for the series were regularly broadcast during the 2004 World Series of Major League Baseball, the American League and National League Championship Series that preceded the 2004 World Series, and various NFL football games broadcast by Fox in October and November 2004. Annexed hereto as Exhibit 10 is a DVD containing true and correct copies of television commercials that Fox broadcast in October 2004, including during the World Series.

9. Annexed hereto as Exhibit 11 is a print-out showing the results of a search of the terms "Richard Branson Virgin" that I conducted on October 12, 2004, using the Google Internet information service. As shown in Exhibit 11, Google reported on October 12, 2004, that a search of the terms "Richard Branson Virgin" yielded more than 100,000 "hits."

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

April 14, 2005

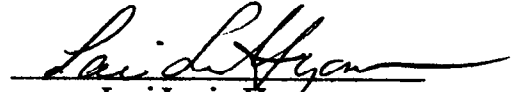

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EXHIBIT 1

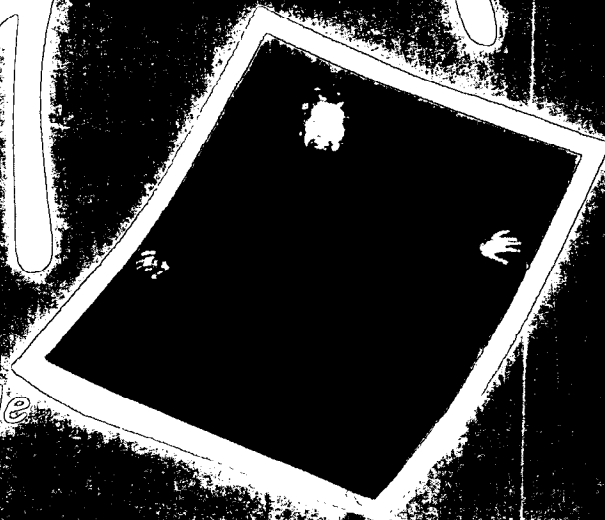


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Co-founder of Virgin Atlantic Airways, Virgin Music, and Much More

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*How I've Survived,
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RICHARD BRANSON

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Design by Helen Wald-Bernsky



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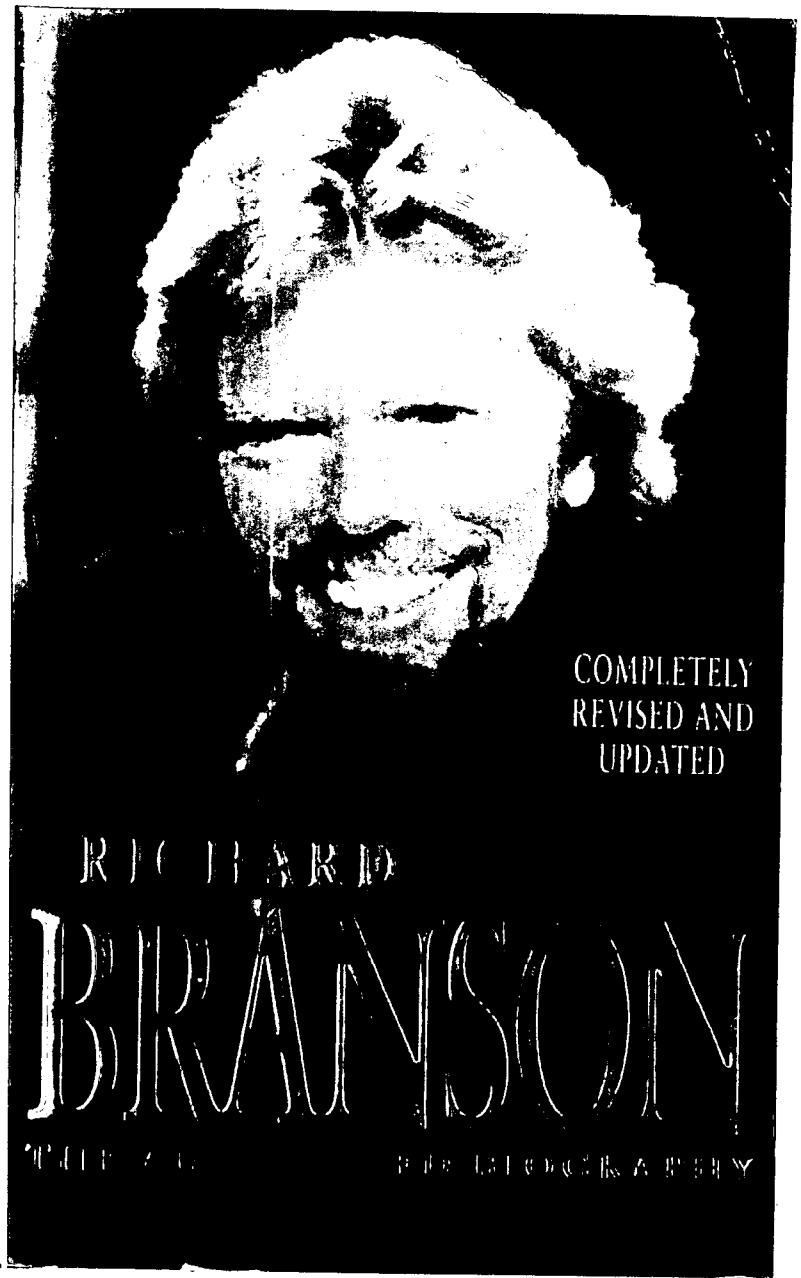
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WITH A FOREWORD BY

Richard Branson

The Authorised Biography

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3. Success in Business—Great Britain—Case studies. 4. Brand name
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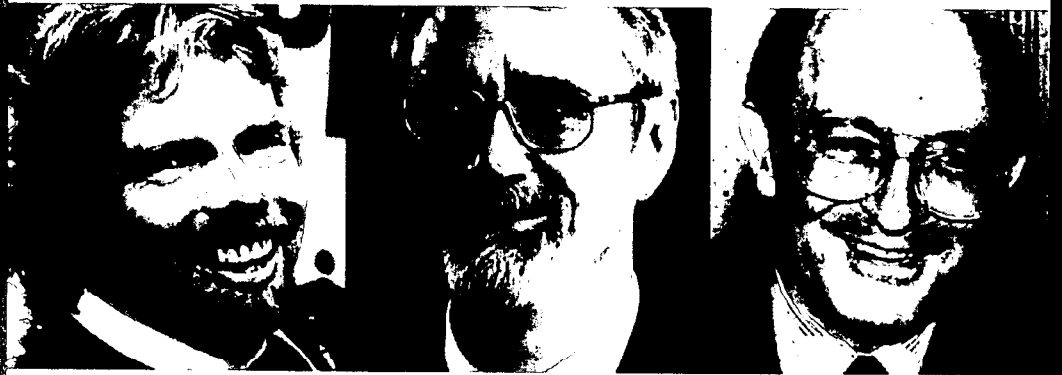
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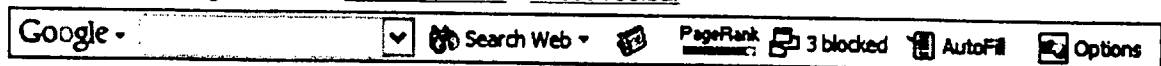
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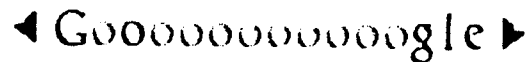
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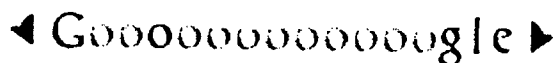
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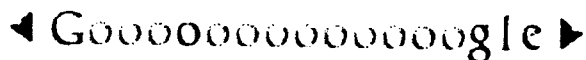
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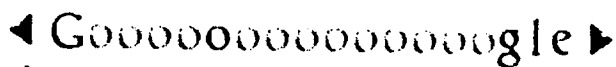
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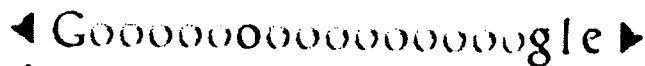
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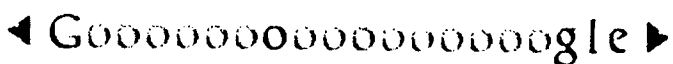
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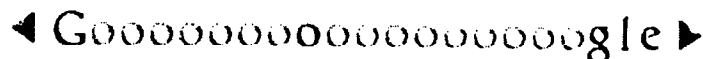
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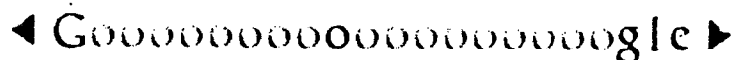
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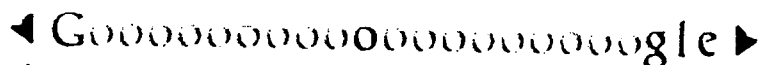
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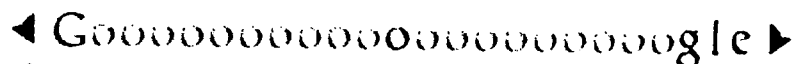
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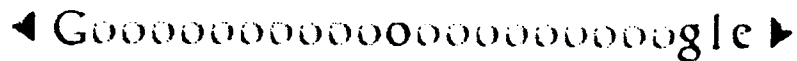
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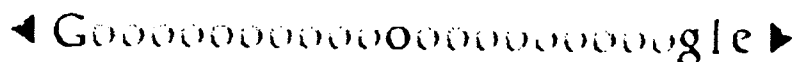
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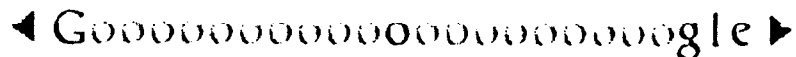
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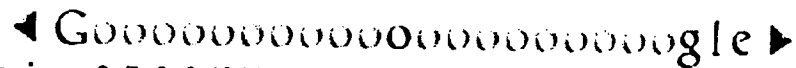
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