

## **ADMINISTRATIVE PANEL DECISION**

Spyder Active Sports, Inc. v. Domain Admin, Whoisprotection.cc / Kristin Pfeffer, kristin pfeffer  
Case No. D2022-1007

### **1. The Parties**

The Complainant is Spyder Active Sports, Inc., United States of America, represented by Authentic Brands Group, United States of America.

The Respondent is Domain Admin, Whoisprotection.cc, Malaysia / Kristin Pfeffer, kristin pfeffer, Germany.

### **2. The Domain Name and Registra**

The disputed domain name <spydertakkisuomi.com> is registered with Mat Bao Corporation (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 23, 2022. On March 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 26, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 30, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on March 30, 2022.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 29, 2022.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on May 27, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a leader in the winter sports products. It owns more than 150 trademark registrations for the trademark SPYDER and its design, which is used in connection with sports apparel, outerwear, and other sporting goods

The Complainant owns, amongst others, the European Union Trade Mark Registration No. 017255274 registered on January 15, 2018, for the word & design mark SPYDER.

The disputed domain name was registered on September 10, 2021. The disputed domain name resolves to a webpage that sells purportedly counterfeits of the Complainant's products.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark SPYDER. The disputed domain name reproduces the trademark SPYDER. The terms "takki" and "suomi" do not prevent a finding of confusing similarity. In Finnish, "takki" means jacket and "suomi" refers to Finland.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not authorized by the Complainant to use its trademark nor has the Complainant ever acquiesced to such use. There is no evidence that the Respondent is known by the disputed domain name nor is there evidence of fair use. There is no evidence of use or preparation to use the disputed domain name in connection with a *bona fide* offering of goods or services. The Respondent is not making a legitimate noncommercial use of the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent was aware of the Complainant's trademark SPYDER as it is a well-known trademark and the Respondent registered the disputed domain name after the Complainant had acquired rights in the trademark SPYDER. The Complainant sent a cease-and-desist letter to the Respondent but the latter did not respond nor did he stop using the Complainant's trademark. The Respondent is selling counterfeit SPYDER branded goods through a website that mirrors the Complainant's website in order to attract Internet users to its website for commercial gain. The Respondent used a privacy shield.

##### **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

#### **6. Discussion and Findings**

##### **A. Identical or Confusingly Similar**

The Complainant owns trademark registrations for the trademark SPYDER. The Panel is satisfied that the Complainant has established its ownership of the trademark SPYDER.

The disputed domain name comprises the Complainant's trademark SPYDER in its entirety. The words "takki" and "suomi" do not prevent the fact that the disputed domain name is confusingly similar to the Complainant's trademark.

The generic Top-Level Domain ("gTLD") ".com" should generally be ignored when assessing confusing similarity as established by prior UDRP decisions.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

A complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts that the Respondent is not authorized by the Complainant to use its trademark. Therefore, the Complainant has established a *prima facie* case and the burden of production shifts to the Respondent to show that it has rights or legitimate interests.

The Panel finds it necessary to assess whether there is a *bona fide* offering of goods or services as the disputed domain name resolves to a website through which products bearing the Complainant's trademark are being sold.

The Complainant contends that the disputed domain name is being used to sell purportedly its counterfeit products. The Complainant has not provided any evidence that the products being offered are indeed counterfeit. The Panel cannot conclude that the products are counterfeit without there being some showing that they in fact are counterfeit. Prior UDRP panels have explained that "a complainant must allege facts sufficient to establish each of the three elements of the Policy, and must ensure that those facts are well pleaded. Conclusory allegations are unlikely to be sufficient; rather, the allegations should be specific and, if not burdensome, supported with appropriate evidence. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Chunhai Zhang*, WIPO Case No. [D2012-0136](#)."

The Panel notes that a simple comparison of prices should be sufficient to assess whether the products being offered through the website at the disputed domain name are counterfeit. The Panel took as an example, women jackets, and compared the prices. On the Complainant's website, the prices for such products are above USD 161 and can reach USD 875. Similar products are offered on the website to which the disputed domain name resolves for prices ranging between Euro 69 to Euro 123. Noting the significant difference in pricing, it is only reasonable to conclude that these are counterfeit products. As a result, the Panel finds that the website to which the disputed domain name resolves offers counterfeits of the Complainant's products.

Even if the products offered were of a genuine nature, the disputed domain name would fail to pass the criteria found in the "Oki Data test" established in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), noting the lack of any prominent disclosure of the website's relationship with the Complainant. Moreover, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Consequently, the Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

## **C. Registered or Used in Bad Faith**

There are many indications that the disputed domain name is registered and is being used in bad faith. The nature of the disputed domain name suggests affiliation with the Complainant as it incorporates the

Complainant's trademark in full. The use of the term "takki" reinforces the impression that the website at the disputed domain name is the Complainant's website for selling its products online as the word "takki" means "jacket" in Finnish and it is one of the products that the Complainant sells.

Furthermore, the disputed domain name resolves to a website, which offers counterfeits of the Complainant's products. As such, the disputed domain name suggests affiliation with the Complainant in order to attract Internet users for the Respondent's presumed commercial gain. It has been found by prior UDRP panels that the use of a website for offering counterfeit goods is bad faith use. "The Panel accepts that the Respondent's website is in English and targets the US public with prices in dollars and that The Domain Name is used in bad faith because the website offers counterfeit goods for sale thereby competing with Complainant and disrupting Complainant's business." (See *Mattel, Inc. v. Magic 8 ball factory*, WIPO Case No. [D2013-0058](#)). Lastly, there has been no response to the cease and desist letter sent by the Complainant and the Respondent has engaged the use of a privacy service to mask its identity.

Such conduct falls squarely within the meaning of paragraph 4(b)(iv) of the Policy, and accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <spydertakkisuomi.com>, be transferred to the Complainant.

*/Nayiri Boghossian/*

**Nayiri Boghossian**

Sole Panelist

Date: June 7, 2022