

## **ADMINISTRATIVE PANEL DECISION**

Spyder Active Sports, Inc. v. Linda Myers  
Case No. D2022-4329

### **1. The Parties**

Complainant is Spyder Active Sports, Inc., United States of America (“United States”), represented by Authentic Brands Group LLC, United States.

Respondent is Linda Myers, United States.

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

The disputed domain name <spyder-australia.com> is registered with NETIM SARL (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 14, 2022. On November 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 16, 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 Complainant on November 18, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on November 18, 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 Respondent of the Complaint, and the proceedings commenced on November 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 20, 2022.

The Center appointed Michael A. Albert as the sole panelist in this matter on January 13, 2023. 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

Complainant is the owner of the well-known SPYDER brand. For over forty years, Complainant has promoted and sold sports apparel, outerwear, and other sporting goods globally and has spent millions of dollars promoting its products through extensive advertising, as well as through its sponsorships of the United States Ski Team and professional skiers, as well as other sports, including race-car driving.

SPYDER is one of the world's largest winter sports brands. Its products are sold in more than 40 countries, as well as on Complainant's official website, "www.spyder.com". Complainant is the owner of a global trademark portfolio that includes more than 150 trademark registrations worldwide for SPYDER, the Spyder Design, and the stylized SPYDER logos. In particular, Complainant owns the following trademark registrations in Australia:

- SPYDER – Australia Registration No. 1039391, registered from January 27, 2005; and
-  (the "Spyder Design") – Australia Registration No. 1008037, registered from June 24, 2004.

The disputed domain name was registered on January 25, 2021, and resolves to a website that mirrors Complainant's website that offers goods bearing the SPYDER trademark.

#### 5. Parties' Contentions

##### A. Complainant

Complainant contends that the disputed domain name is confusingly similar to trademarks in which Complainant has rights, in accordance with paragraph 4(a)(i) of the Policy.

There is no evidence of Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with any *bona fide* offering of goods or services. Respondent has not been commonly known by the disputed domain name, nor is Respondent making legitimate noncommercial or fair use of the disputed domain name.

Respondent registered and used the disputed domain name in bad faith.

##### B. Respondent

Respondent did not reply to Complainant's contentions.

#### 6. Discussion and Findings

##### A. Identical or Confusingly Similar

The disputed domain name consists of Complainant's well-known trademark SPYDER, the additional term "-australia", and the generic Top-Level Domain ".com". Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, or otherwise) does not prevent a finding of confusing similarity. See, e.g., *Rakuten, Inc. v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Matthew Connor, No Company*, WIPO Case No. [D2019-2983](#); *Advance*

*Magazine Publishers Inc. v. Marcellod Russo*, WIPO Case No. [D2001-1049](#) (finding the domain name <vogueaustralia.com> confusingly similar to the VOGUE mark); *Yahoo! Inc. v. Microbiz, Inc.*, WIPO Case No. [D2000-1050](#) (finding <yahooflorida.com> and <yahoousa.com> confusingly similar to the YAHOO! mark).

Here, the SPYDER trademark is clearly recognizable in the disputed domain name. Therefore, the disputed domain name is confusingly similar to Complainant's registered trademarks.

Accordingly, the Panel finds that Complainant has satisfied paragraph 4(a)(i) of the Policy.

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

Respondent has not been licensed, contracted, or otherwise permitted by Complainant to use the SPYDER trademark or to apply for any domain name incorporating the SPYDER trademark, nor has Complainant acquiesced in any way to such use or application of the SPYDER trademark by Respondent.

Additionally, there is no evidence that "spyder-australia" is the name of Respondent, nor is there any evidence of fair use. There is no evidence that Respondent is using or plans to use the disputed domain name, incorporating the SPYDER trademark, for a *bona fide* offering of goods or services.

Rather, Respondent has been actively using the SPYDER trademarks to promote its website, which mirrors the Complainant's website, for commercial gain. Such unauthorized use of the SPYDER trademarks, without any explanation of the lack of relationship between the Parties, is likely to confuse consumers into erroneously believing that Complainant is somehow affiliated with Respondent or endorses Respondent's commercial activities, while in fact, no such relationship exists. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.8.

The Panel finds that Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

The disputed domain name resolves to a website where Complainant contends Respondent is selling counterfeit SPYDER goods. The website mirrors Complainant's website in an attempt to pass it off as an official SPYDER website. Moreover, Complainant contends Respondent has no good-faith reason to use the mark in the disputed domain name; its sole purpose appears to be to attract Internet users to its site for commercial gain that results from confusion regarding whether it is a dealer in genuine SPYDER goods. While it is possible that the offered goods are counterfeit products, no specific evidence has been put forward to support this contention. In any event, the Panel need not come to a determination about the specific nature of the goods on the website, noting it is clear that the Respondent was aware of the Complainant's trademarks when registering the disputed domain names and intentionally sought to take advantage of these marks in the domain name and the website resolving from the domain name, for its own commercial benefit.

Accordingly, the Panel finds that Respondent registered the disputed domain name with the bad faith intent to deceive consumers, and that it intentionally has used the disputed domain name to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's website and products. See [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds that 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, <spyder-australia.com>, be transferred to Complainant.

*/Michael A. Albert/*

**Michael A. Albert**

Sole Panelist

Date: January 27, 2023