

## **ADMINISTRATIVE PANEL DECISION**

Spyder Active Sports, Inc. v. Client Care, Web Commerce Communications Limited

Case No. D2022-4393

### **1. The Parties**

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

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

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

The disputed domain name <spdaoutlet.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 17, 2022. On November 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 22, 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 November 22, 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 the same day.

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 November 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 19, 2022.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on January 6, 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**

The Complainant promotes and sells sports apparel, outerwear, and other sporting goods globally under the SPYDER brand, having a 40-year history of such activities. The Complainant's brand is prominent in its field of activity due to its sponsorships of the United States Ski Team, various professional skiers, and certain professional racing car drivers. The Complainant's brand is sold in more than 40 countries and on the Complainant's official website at "www.spyder.com".

The Complainant is the owner of a global trademark portfolio in respect of the SPYDER mark including, for example, Australian Registered Trademark no. 1039391 for the word mark SPYDER, registered on June 5, 2006, in Class 25 (clothing and footwear).

The disputed domain name was registered on June 17, 2022. Little is known regarding the Respondent, which has not participated in this proceeding. The disputed domain name resolves to a website which features the use of the Complainant's logo and displays assorted styles of sports outerwear under the name "Spyder". According to a screenshot of said website produced by the Complainant, said site bears no identifying information apart from referencing "Spyder", including for example in a newsletter signup invitation which states "Follow Spyder".

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

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

In summary, the Complainant contends as follows:

##### **Identical or confusingly similar**

The Complainant relies on its extensive range of registered trademarks for SPYDER. The disputed domain name consists of the abbreviation "spd", the geographic indicator "au" for Australia, the descriptive word "outlet" and the generic Top-Level Domain ("gTLD") suffix ".com". Panels under the Policy have found that additional elements incorporated in domain names that are generic terms, descriptive terms, numbers, and/or abbreviations, are not sufficiently distinctive or unique as to dispel a likelihood of consumer confusion. Combining a trademark with abbreviations to form a domain name also does not avoid a likelihood of confusion.

##### **Rights or legitimate interests**

The Respondent has not been licensed, contracted, or otherwise permitted by the Complainant to use its SPYDER trademark or to apply for any domain name incorporating this, nor has the Complainant acquiesced in any way to such use of the SPYDER trademark by the Respondent. There is no evidence that "spd au outlet" is the Respondent's name, nor is there any evidence of fair use. There is no evidence that the Respondent is using or plans to use the SPYDER trademark or the disputed domain name for a *bona fide* offering of goods or services.

The Respondent has been actively using the SPYDER trademark in the disputed domain name and on the corresponding website to promote said website for illegitimate commercial gain. Such unauthorized use of the SPYDER trademark is likely to trick consumers into erroneously believing that the Complainant is somehow affiliated with the Respondent or endorsing the Respondent's commercial activities, while in fact,

no such relationship exists. The Complainant can affirm in good faith that there is no evidence of the 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, that the Respondent has not been commonly known by the disputed domain name, and that the Respondent is not making legitimate fair use or legitimate noncommercial use thereof.

### **Registered and used in bad faith**

In the present case, the Respondent has engaged in strategic typosquatting by abbreviating the SPYDER mark. The likelihood of confusion with the trademark in such a case is higher, as the disputed domain name is virtually phonetically similar to the mark. It is now well-established that domain names have been held to be confusingly similar to trademarks when some letters have been interchanged or replaced with a phonetically similar letter in order to create confusion in the minds of users.

The Respondent was aware of the Complainant's trademark at the time that the Respondent registered the disputed domain name on June 17, 2022. The Complainant's trademarks are well-known around the world. A gap of several years between registration of a complainant's trademark and a respondent's registration of a domain name (containing the trademark) can indicate bad faith registration. In this case, the Respondent registered the disputed domain name at least 40 years after the Complainant established registered trademark rights in the SPYDER mark. The Respondent is selling counterfeit SPYDER goods via a website that mirrors the Complainant's website in an attempt to pass the Respondent's website off as the Complainant's official website, constituting blatant cybersquatting. The Respondent has no reason to use the Complainant's mark in the disputed domain name other than to attract Internet users to its site for commercial gain, being paradigmatic bad faith. The Respondent intends to deceive Internet users with counterfeit goods and intentionally to use the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website and products.

The Respondent has used a privacy shield to mask its identity, which makes it difficult for the Complainant to contact the Respondent and amicably settle the dispute. The use of privacy shields or similar services which mask a respondent's identity are an indication of bad faith where the main purpose for which a respondent has used a privacy service is to cause the Complainant difficulty in identifying other domain names registered by the same registrant or otherwise to frustrate the purposes of the Policy.

### **B. Respondent**

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

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

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

The first element assessment under the Policy is usually made in two parts. First, the Complainant must demonstrate that it has UDRP-relevant rights in a trademark. Secondly, such trademark is compared to the

disputed domain name, typically on a straightforward side-by-side comparison, to determine identity or confusing similarity. If the trademark is identical to the disputed domain name, identity will generally be found. If the trademark is otherwise recognizable in the disputed domain name, confusing similarity will usually be found. The gTLD (in this case “.com”) may be disregarded for the purpose of the comparison exercise, on the basis that it is merely a technical requirement of registration.

In the present case, the Panel finds that the Complainant has UDRP-relevant rights in its SPYDER registered trademark. Turning to the comparison exercise, the Complainant contends that the composition of the disputed domain name includes an abbreviated form of its trademark, “spd”, together with a geographical term for Australia, “au”, and the term, “outlet”. This is a very similar composition to the domain name <spdcashop.com>, which was the subject of a recent case under the Policy, *Spyder Active Sports, Inc. v. Name Redacted*, WIPO Case No. [D2022-0309](#), a case that also involved the same Complainant. The panel in that case noted that the composition of <spdcashop.com> represented an abbreviation of the Complainant’s SPYDER trademark, “spd”, together with a geographical term, “ca” for Canada, and a descriptive term “shop”.

The panel in said case also noted that an abbreviation of a registered trademark incorporated into a domain name may constitute confusing similarity under the specific facts of the case, adding that the website associated with the domain name concerned had copied the content from the Complainant’s official website and logo. Accordingly, the panel held that the combination of an abbreviation of the Complainant’s SPYDER trademark together with two other terms did not prevent a finding of confusing similarity between the domain name concerned and the Complainant’s trademark, particularly noting that the website at the disputed domain name confirmed the confusing similarity.

The facts and circumstances of the present case, including the composition of the disputed domain name, are broadly analogous to those in *Spyder Active Sports, Inc. v. Name Redacted*, *supra*. Here, the same alleged abbreviation of the Complainant’s mark has been used, together with a two character geographical term, “au” for Australia, and the term “outlet”, which has the same meaning as “shop”. Similarly, the disputed domain name here also points to a website designed to look like the Complainant’s site in terms of logo, look and feel, and content. In these circumstances, the Panel adopts the same reasoning on this topic as the panel in said previous case, notably the conclusion that the Respondent’s website contains features that affirm the confusing similarity identified in the comparison between the Complainant’s mark and the disputed domain name (see also section 1.15 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Panel notes furthermore that similar reasoning has been adopted by another panel in the recent case of *Spyder Active Sports, Inc. v. Web Commerce Communications Limited, Client Care*, WIPO Case No. [D2022-4304](#), in which the domain name concerned was <spdcasale.com>, likewise a similar composition to the disputed domain name.

The Respondent did not participate in this proceeding. It therefore did not oppose the Complainant’s contentions or make any relevant submissions regarding the first element assessment.

In all of these circumstances, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark and that the Complainant has carried its burden under the requirements of paragraph 4(a)(i) of the Policy.

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

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The consensus of previous decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. Where the panel finds that a complainant has made out such a *prima facie* case, the burden of production shifts to the respondent to bring forward evidence of such rights or legitimate interests.

In the present case, the Panel finds that the Complainant has made out the necessary *prima facie* case on the basis of its various submissions. The Complainant notes that it has not permitted the Respondent to use its SPYDER trademark (abbreviated or otherwise), that there is no evidence that “spdaoutlet” is the Respondent’s name, that there is no evidence of fair use of the disputed domain name, and that there is no evidence that the Respondent is using or plans to use the disputed domain name for a *bona fide* offering of goods or services. Furthermore, the evidence on the record shows that the Respondent’s website appears to be deliberately designed to look very similar if not identical to the Complainant’s official website.

The Complainant asserts that the Respondent is using said website to sell counterfeit material but offers no evidence or explanation as to why it has reached this conclusion. Accordingly, the Panel does not base the present decision on this assertion. Nevertheless, even if the items offered for sale on said website were the Complainant’s genuine products, the Respondent would not pass the “Ok! Data” test (see section 2.8.1 of the [WIPO Overview 3.0](#)) in that the Respondent’s site fails to disclose accurately and prominently the Respondent’s relationship with the trademark holder.

In light of the establishment of the Complainant’s *prima facie* case on this topic, the burden of production shifts to the Respondent to bring forward evidence of any rights or legitimate interests which it might have in the disputed domain name. The Respondent has not replied to the Complainant’s contentions and has therefore failed to take the opportunity to rebut the Complainant’s *prima facie* case. In these circumstances, the Panel finds that the Respondent has no rights and legitimate interests in the disputed domain name and that the Complainant has carried its burden under the requirements of paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- “(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

In the present case, the Complainant's assertions are focused on the alleged paradigmatic bad faith that is inherent in the Respondent's use of the disputed domain name to pass the Respondent's website off as the Complainant's official website. The Panel is satisfied that the content of the Respondent's website demonstrates that it cannot have registered the disputed domain name without knowledge of the Complainant, given that said site has adopted a very similar look and feel to the Complainant's official website, including in particular its logo and general design. Furthermore, the Respondent uses a newsletter signup invitation which states "Follow Spyder" without any indication that it is in fact an unaffiliated third party. In these circumstances, the Respondent is effectively using the disputed domain name to impersonate the Complainant.

The abbreviation of the Complainant's mark to "spd" together with the use of the country code "au" and the term "outlet" in the disputed domain name (being the various elements of the disputed domain name as set out in the Complainant's unopposed submissions) are likely to mislead Internet users by creating a likelihood of confusion between the Complainant's mark and the disputed domain name. That this confusion was the Respondent's original intent is demonstrated by the use of the disputed domain name to feature an online shop which passes itself off as the Complainant's official website. The Panel therefore finds that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of said website.

The Respondent has not filed a Response in this matter, and it has therefore failed to provide any alternative explanation for its registration and use of the disputed domain name. The Panel has been unable to identify any possible good faith motivation on the Respondent's part based on the record in this case. Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

The Complainant has therefore carried its burden under the requirements of 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 <spdaoutlet.com> be transferred to the Complainant.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: January 20, 2023