

## **ADMINISTRATIVE PANEL DECISION**

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

Case No. D2022-4395

### **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 <spydercanadasale.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 20, 2022.

The Center appointed Knud Wallberg as the sole panelist in this matter on January 5, 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 is the owner of the SPYDER brand and the Complainant has promoted and sold sports apparel, outerwear, and other sporting goods globally under that brand for more than 40 years and has spent millions of dollars promoting its products through extensive advertising, as well as through its sponsorships.

SPYDER is now one of the world's largest winter sports brands and its products are sold in more than 40 countries, as well as on the Complainant's official website at "www.spyder.com".

The Complainant owns trademark registrations in various jurisdictions, including the Canadian trademarks SPYDER (word), reg. no. TMA646360, registered on August 23, 2005 for goods in international classes 12, 20, 25, and 28, SPYDER (figurative), reg. no. TMA344573, registered on September 9, 1988, for goods in international classes 18 and 25, and the "Bug Logo" (figurative), reg. no. TMA629307, registered on January 4, 2005 for various types of clothing and footwear.

The disputed domain name was registered on September 9, 2021, and at the time of the filing of the Complaint it resolved to an active website that purportedly sold goods under the SPYDER trademark.

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

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

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's mark, since it consists of the Complainant's well-known trademark and name, "SPYDER", the additional terms "canada" and "sale", and the generic suffix ".com."

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not been licensed, contracted, or otherwise permitted by the Complainant to use the SPYDER trademarks or to apply for any domain name incorporating the SPYDER trademark, nor has the Complainant acquiesced in any way to such use or application of the SPYDER trademark by the Respondent. Additionally, there is no evidence that "Spyder Canada Sale" is the name of the Respondent's corporate entity, nor is there any evidence of fair use. Furthermore, there is no evidence that the Respondent is using or plans to use the SPYDER trademark or the disputed domain name incorporating the SPYDER trademark for a *bona fide* offering of goods or services. On the contrary, the Respondent has been actively using the SPYDER trademarks in the disputed domain name and on the physical website to promote its website for illegitimate commercial gains. Such unauthorized use of the SPYDER trademarks 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 further contends that the Respondent registered and is using the disputed domain in bad faith. The Respondent must thus have been aware of the Complainant's well-known trademark at the time the Respondent registered the disputed domain name. Furthermore, the disputed domain name is being used for a website that mirrors the Complainant's website in an attempt to pass it off as an official SPYDER and on which the Respondent is selling counterfeit SPYDER goods.

The Complainant finally contends, that the fact that the Respondent used a privacy shield to mask its identity, is an indication of bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the statements and documents submitted by the parties. In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements are satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

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

The Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark because it contains the mark in its entirety. The addition of the terms "canada" and "sale" as suffixes to the trademark to form the disputed domain name does not, to this Panel, prevent a finding of confusing similarity. It has also long been held by UDRP panels that the generic Top-Level Domain ("gTLD") is disregarded under the first element confusing similarity test, see section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

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

According to the Complaint, the Complainant has not licensed or otherwise permitted the Respondent to use its trademark.

Given the circumstances of this case, the Panel is of the opinion that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not rebutted this and the way the Respondent has been and is using the disputed domain name (see below in Section C) does not support a finding of rights or legitimate interests.

In addition, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Consequently, the Panel finds that the conditions in paragraph 4(a)(ii) of the Policy are also fulfilled.

### C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides an example of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or
- ii) the respondent has registered the disputed 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 the respondent has engaged in a pattern of such conduct; or
- iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv) by using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 the holder's website or location or of a product or service on the holder's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, in particular the distinctive nature of the Complainant's trademark and the long-time use of the mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. Further, due to the nature and use of the disputed domain name, the Panel finds that the Respondent could not have been unaware of the fact that the disputed domain name it chose could attract Internet users in a manner that is likely to create confusion for such users.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name is being used for a website which, *inter alia* by reproducing the Complainant's trademark and logo gives Internet users the impression that the website is an official website of the Complainant or its licensee and that the Respondent is an authorised reseller of the Complainant's products. Even if the products were genuine (the Complainant claims the Respondent is selling counterfeit SPYDER goods), the lack of any disclaimer on the disputed domain name as to the registrant's relationship with the trademark owner or the lack thereof, would falsely suggest to Internet users that the disputed domain name is owned or at least affiliated to the Complainant. The Panel therefore finds that the Respondent by registration and use of the disputed domain name intentionally creates a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the disputed domain name with the purpose of attracting Internet users to the website for commercial gain as per paragraph 4(b)(iv) of the Policy.

Noting that the disputed domain name incorporates a registered and well-established trademark, that no response has been filed, and that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name, and considering all the facts and evidence, the Panel therefore finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

## 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 <spydercanadasale.com> be transferred to the Complainant.

*/Knud Wallberg/*

**Knud Wallberg**

Sole Panelist

Date: January 18, 2023