

## ADMINISTRATIVE PANEL DECISION

### Spyder Active Sports, Inc. v. Song Yujing Case No. D2023-2998

#### 1. The Parties

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

The Respondent is Song Yujing, China.

#### 2. The Domain Name and Registrar

The disputed domain name <shredspyder.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

#### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 12, 2023. On July 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 14, 2023, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 14, 2023, 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 in English on July 24, 2023.

On July 14, 2023, the Center sent an email communication to all Parties in Chinese and English regarding the language of the proceeding. On July 16, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on July 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 22, 2023.

The Center appointed Sok Ling MOI as the sole panelist in this matter on August 25, 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 in the business of selling sports apparel and has been using the SPYDER brand in connection with its business for more than 40 years. The Complainant promotes its products through extensive advertising globally and sponsorship of the US Ski Team and professional skiers as well as other sports professionals. Today, SPYDER is one of the world's largest winter sports brands and the Complainant's products are sold in more than 40 countries.

The Complainant operates its official website at "www.spyder.com". The Complainant owns numerous trade mark registrations for SPYDER in various jurisdictions worldwide, including the following:

- United States Trade Mark Registration No. 2,934,105 for SPYDER in Class 25, registered on March 15, 2005.

The disputed domain name was registered on October 8, 2022. According to the evidence submitted by the Complainant, the disputed domain name resolves to a website, which reproduces the Complainant's SPYDER mark, and purports to offer for sale goods and services identical to those offered by the Complainant.

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

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

The Complainant contends that the disputed domain name is confusingly similar to its trade mark.

The Complainant contends that as the Complainant has not licensed or otherwise authorized the Respondent to use its trade mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant contends that the disputed domain name has been registered and used to create confusion and mislead Internet users into believing that the Respondent's website is in some way connected with or endorsed by the Complainant. The Complainant therefore contends that the Respondent has registered and is using the disputed domain name in bad faith.

For all of the above reasons, the Complainant requests for the transfer of the disputed domain name to the Complainant.

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

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

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

##### **6.1 Language of the Proceeding**

Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the proceeding takes place with due expedition and that the Parties are treated equitably and given a fair opportunity to present their respective cases.

The language of the Registration Agreement for the disputed domain name is Chinese. From the evidence on record, no agreement appears to have been entered into between the Complainant and the Respondent regarding the language issue. The Complainant filed its Complaint in English and has requested that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Panel finds persuasive evidence in the present proceeding to suggest that the Respondent has sufficient knowledge of English. In particular, the Panel notes that:

- (a) the disputed domain name is registered in Latin characters, rather than Chinese scripts;
- (b) the disputed domain name comprises the English word “shred”; and
- (c) according to the evidence submitted by the Complainant, the contents of the website to which the disputed domain name resolves are entirely in English, with words such as “alpine skis”, “apparel”, “sale”, “discount”, “free delivery”, “Spyder Men Jacket”, and “Spyder Men Pants”.

Additionally, the Panel notes that:

- (a) the Center has notified the Respondent of the language of the proceeding and commencement of the proceeding in both Chinese and English;
- (b) the Respondent has been given the opportunity to present his or her case in this proceeding and to respond to the issue of the language of the proceeding; and
- (c) the Center has informed the Respondent that it would accept a Response in either English or Chinese. But none was filed by the Respondent.

Considering the above circumstances, the Panel finds that the choice of English as the language of the present proceeding is fair to all Parties and is not prejudicial to any of the Parties in their ability to articulate the arguments for this case. The Panel has taken into consideration the fact that to require the Complaint to be translated into Chinese would, in the circumstances of this case, cause an unnecessary cost burden to the Complainant and would unnecessarily delay the proceeding.

In view of all the above, the Panel determines under paragraph 11(a) of the Rules that it shall accept the Complaint as filed in English, that English shall be the language of the proceeding, and that the decision will be rendered in English.

## **6.2 Substantive Findings**

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following three elements to obtain an order for the domain name to be cancelled or transferred:

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

On the basis of the arguments and evidence introduced by the Complainant, the Panel concludes as follows:

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

The Panel accepts that the Complainant has rights in SPYDER by virtue of its use and registration of the same as a trade mark.

The disputed domain name incorporates the Complainant's trade mark SPYDER in its entirety. The addition of the word "shred" does not prevent a finding of confusing similarity especially since the Complainant's trade mark is clearly recognisable within the disputed domain name. The addition of the generic Top-Level Domain ".com" is a standard registration requirement and is usually disregarded under the confusing similarity assessment.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark.

Accordingly, the Complainant has satisfied the requirements of the first element under paragraph 4(a) of the Policy.

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

Under paragraph 4(a)(ii) of the Policy, a complainant bears the burden of establishing that the respondent lacks rights or legitimate interests in the domain name. However, once the complainant makes out a *prima facie* showing under paragraph 4(a)(ii) of the Policy, the burden of production shifts to the respondent to establish its rights or legitimate interests in the domain name. It may do so by demonstrating any of the following, without limitation, under paragraph 4(c) of the Policy:

- (i) before any notice to it of the dispute, the respondent's 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) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

See *Taylor Wimpey PLC, Taylor Wimpey Holdings Limited v. honghao Internet foshan co, ltd*, WIPO Case No. [D2013-0974](#).

The Complainant has confirmed that the Respondent is not in any way affiliated with the Complainant or otherwise authorized or licensed to use the SPYDER trade mark or to seek registration of any domain name incorporating the trade mark. The Respondent appears to be an individual by the name of "Song Yujing". There is no evidence suggesting that the Respondent is commonly known by the disputed domain name or that the Respondent has any rights in the term "spyder" or "shredspyder".

According to the evidence submitted by the Complainant, the Respondent is using the disputed domain name to publish a website, which reproduces the Complainant's SPYDER mark, and purports to offer for sale goods and services identical to those offered by the Complainant, featuring images and information that evoke a connection to the Complainant. Without any accurate and prominent disclaimer of non-affiliation, the Respondent's website also conveys an impression that it is an official website of the Complainant or endorsed by the Complainant. Irrespective of whether the Respondent is selling genuine or counterfeit goods, such use would not be a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use.

The Panel is satisfied that the Complainant has made out a *prima facie* showing that the Respondent lacks rights or legitimate interests in the disputed domain name. The burden of production thus shifts to the Respondent to establish his or her rights or legitimate interests in the disputed domain name. Since the Respondent has failed to respond, the *prima facie* case has not been rebutted.

Consequently, the Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied the requirements of the second element under paragraph 4(a) of the Policy.

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

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the domain name in bad faith, namely:

- (i) circumstances indicating that the respondent has registered or 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 trade mark or service mark or to a competitor of the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trade mark 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 domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the 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 respondent's website or location or of a product or service on the respondent's website or location.

The Complainant has used SPYDER as a trade mark for more than 40 years. The Panel accepts that the Complainant's SPYDER trade mark is a well-known mark which also enjoys a strong Internet presence. A presumption therefore arises that the Respondent was aware of the Complainant's trade mark when he or she registered the disputed domain name on October 8, 2022, especially since he or she is using the disputed domain name to publish a website which reproduces the Complainant's SPYDER mark, and purports to offer for sale goods and services identical to those offered by the Complainant.

The Panel is satisfied that the Respondent's purpose of registering the disputed domain name was to trade on the reputation of the Complainant and its trade mark by diverting Internet users seeking the Complainant's products to his or her own website for financial gain. The Panel therefore determines that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his or her website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website. As such, the Panel finds that the circumstances referred in paragraph 4(b)(iv) of the Policy are applicable to the present case.

The Respondent has not filed a response to deny the Complainant's allegations of bad faith. Taking into account all the circumstances, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

Accordingly, the Complainant has satisfied the requirements of the third element under paragraph 4(a) 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 <shredspyder.com> be transferred to the Complainant.

*/Sok Ling MOI/*

**Sok Ling MOI**

Sole Panelist

Date: September 8, 2023