

## **ADMINISTRATIVE PANEL DECISION**

Wolfspeed, Inc. v. Dawn Dearborn  
Case No. D2024-1136

### **1. The Parties**

The Complainant is Wolfspeed, Inc., United States of America (“United States”), represented by SafeNames Ltd., United Kingdom.

The Respondent is Dawn Dearborn, United States.

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

The disputed domain name <wolfspeed.com> (the “Disputed Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2024. On March 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On March 18, 2024, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 19, 2024, 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 amended Complaint on March 19, 2024.

The Center verified that the Complaint together with the amended 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 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 15, 2024.

The Center appointed Lynda M. Braun as the sole panelist in this matter on April 19, 2024. 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 an American-based company founded in 1987 as Cree, Inc., operating as a marketer and manufacturer of lighting-class LED's, lighting products and products for power and radio frequency applications. The Complainant is also a leading supplier of silicon carbide semiconductors to the automotive industry. The Complainant was initially used as a subsidiary brand for Cree, Inc., from 2015 to 2021, before becoming its principal brand. The Complainant has over 4,500 employees and has offices located in 15 jurisdictions worldwide.

The Complainant owns the following trademarks, among others: WOLFSPEED, United States Trademark Registration No. 5,530,599, registered on July 31, 2018, in international classes 9, 40 and 42, WOLFSPEED, European Union Trademark Registration No. 014730683, registered on April 15, 2016, in international classes 9, 40 and 42; and WOLFSPEED, India Trademark Registration No. 3087239, registered on October 27, 2015, in international classes 9, 40 and 42 (hereinafter collectively referred to as the "WOLFSPEED Mark").

The Complainant owns the domain name <wolfspeed.com> that resolves to its official online website at "www.wolfspeed.com" and on which the Complainant advertises its services and provides information for investors. In addition to its official website, the Complainant has registered multiple domain names featuring the WOLFSPEED Mark, using various generic Top-Level Domain ("gTLD") and country code Top-Level Domain ("ccTLD") extensions.

The Disputed Domain Name was registered on September 25, 2023, and resolves to an inactive landing page that states, "This site can't be reached. wolfspeed.com's server IP address could not be found." Thus, the Respondent is using the Disputed Domain Name passively. The Complainant alleges that the Respondent connected the Disputed Domain Name to mail exchanger ("MX") servers, purportedly to use the Disputed Domain Name as part of a phishing scheme to defraud the Complainant or its clients, although the Complainant has not submitted any evidence of phishing by the Respondent.

The Complainant's counsel submitted a contact request form as a cease-and-desist letter through the Registrar but received no response.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the Disputed Domain Name. Notably, the Complainant contends that:

- the Disputed Domain Name is confusingly similar to the Complainant's trademark as it incorporates a misspelling of the WOLFSPEED Mark, specifically switching the letters "l" and "f" in the trademark, and then adding the gTLD ".com", which misspelling does not prevent a finding of confusing similarity;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because the Complainant has not authorized the Respondent to register a domain name containing the WOLFSPEED Mark, the Respondent was not making a bona fide offering of goods or services, and the Respondent has never been commonly known by the WOLFSPEED Mark, or any similar name; and

- the Disputed Domain Name was registered and is being used in bad faith because, among other things, the Respondent uses typosquatting in the Disputed Domain Name, and the overall circumstances of the case support a finding of bad faith use under the passive holding doctrine.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

## **B. Respondent**

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

## **6. Discussion and Findings**

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

(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.

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

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the WOLFSPEED Mark.

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Disputed Domain Name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

It is uncontroverted that the Complainant has established rights in the WOLFSPEED Mark based on its several years of use as well as its registered trademarks for the WOLFSPEED Mark in the United States and the European Union, among other jurisdictions worldwide. The consensus view is that registration of a mark is prima facie evidence of validity. The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the WOLFSPEED Mark.

The Disputed Domain Name consists of the WOLFSPEED Mark in its entirety, albeit misspelled by switching the letters "l" and "f" in the trademark. Such a minor modification to a disputed domain name is commonly referred to as "typosquatting" and seeks to wrongfully take advantage of errors by a user in typing a domain name into a web browser. The misspelling of "wolfspeed" to "woflspeed" does not prevent a finding of confusing similarity to the WOLFSPEED Mark. See [WIPO Overview 3.0](#), section 1.9 ("A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element"); see also *Express Scripts, Inc. v. Whois Privacy Protection Service, Inc. / Domaindeals, Domain Administrator*, WIPO Case No. [D2008-1302](#); *Singapore Press Holdings Limited v. Leong Meng Yew*, WIPO Case No. [D2009-1080](#).

Finally, the addition of a gTLD such as ".com" in a domain name is a technical requirement. Thus, it is well established that, as here, such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*,

WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's WOLFSPEED Mark.

Based on the available record, the Panel finds that the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which a respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

The Complainant's prima facie case includes the fact that the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its WOLFSPEED Mark, that the Complainant does not have any type of business relationship with the Respondent, that there is no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, and that there is no evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services. See Policy, paragraph 4(c). Moreover, based on the circumstances of the case and the use made of the Disputed Domain Name to resolve to an inactive landing page, the Panel finds that the Respondent is not making a bona fide offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Name.

Based on the available record, the Panel finds that the second element of the Policy has been established.

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

The Panel finds that, based on the record, the Complainant has demonstrated the Respondent's bad faith registration and use of the Disputed Domain Name pursuant to paragraph 4(b) of the Policy.

First, the renown of the WOLFSPEED Mark in its industry, which was used and registered by the Complainant in advance of the Respondent's registration of the Disputed Domain Name, renders it wholly implausible that the Respondent created the Disputed Domain Name independently. The Disputed Domain Name was registered several years after the Complainant first began using the WOLFSPEED Mark. Therefore, the Panel finds it likely that the Respondent had the Complainant's WOLFSPEED Mark in mind when registering the Disputed Domain Name, especially since the mark is recognizable despite its misspelling, demonstrating bad faith. Therefore, based on the use of the WOLFSPEED Mark worldwide, it strains credulity to believe that the Respondent had not known of the Complainant or its trademark when registering the Disputed Domain Name. In sum, UDRP panels have found that the registration of a disputed domain name that is confusingly similar to a well-known trademark (particularly domain names comprising typos) by an unaffiliated entity can create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Second, based on the circumstances here, the Panel concludes that the Respondent's registration and use of the Disputed Domain Name had been done for the specific purpose of trading on the name and reputation of the Complainant and its WOLFSPEED Mark. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark for commercial gain").

Third, the Complainant alleged that Respondent activated Mail Exchange ("MX") records associated with the Disputed Domain Name, possibly in an attempt to perpetuate a fraudulent phishing scheme to acquire personal and confidential information from users searching for the Complainant's website. However, the Complainant did not submit any evidence that a phishing scheme had already taken place.

Fourth, inactive or passive holding of the Disputed Domain Name by the Respondent may amount to bad faith. See *Advance Magazine Publishers Inc. and Les Publications Condé Nast S.A. v. ChinaVogue.com*, WIPO Case No. [D2005-0615](#); *Société pour l'Oeuvre et la Mémoire d'Antoine de Saint Exupéry – Succession Saint Exupéry – D'Agay v. Perlegos Properties*, WIPO Case No. [D2005-1085](#). It has long been held in UDRP decisions that the passive holding of a disputed domain name that incorporates a well-known or distinctive trademark without a legitimate purpose does not prevent a finding that the disputed domain name is being used in bad faith under paragraph 4(a)(iii) of the Policy. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#). Specifically, UDRP panels have frequently found that the lack of active use of a disputed domain name (i.e., passive holding) does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3.

From the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark; (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use; (iii) the respondent's concealment of its identity, or use of false contact details (noted to be in breach of its registration agreement); and (iv) the implausibility of any good faith use to which the disputed domain name may be put.

Based on the above, the Panel has taken into consideration the following factors in arriving at a finding of bad faith registration and use: (i) the Complainant's trademark is well-known; (ii) the Respondent appears to have taken pains to conceal its identity by using a privacy protection service; and (iii) the Respondent has not submitted a response in the proceeding. The Panel therefore finds that the Disputed Domain Name has been used passively, and thus, registered and used the Disputed Domain Name in bad faith.

Based on the available record, the Panel finds that the third element of the Policy has been established.

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

/Lynda M. Braun/

**Lynda M. Braun**

Sole Panelist

Date: May 3, 2024