

ADMINISTRATIVE PANEL DECISION

Spyder Active Sports, Inc. v. Zhang Fei
Case No. D2024-3097

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 Zhang Fei, China.

2. The Domain Name and Registrar

The disputed domain name <spdchoutlets.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 July 29, 2024. On July 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 31, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 31, 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 amendment to the Complaint on August 1, 2024.

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 August 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 26, 2024.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on August 28, 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 the owner of the SPYDER brand, under which it has been promoting and selling sports apparel, outerwear and other sporting goods globally for more than 40 years. Today, the SPYDER brand is one of the world's largest winter sports brands and its products are sold in more than 40 countries.

The Complainant owns trademark registrations in various jurisdictions for its SPYDER brand and a logo consisting of a spider, including Switzerland Trademark Registration No. P-515744, SPYDER, word mark, registered on November 3, 2003, in Class 25; and Switzerland Trademark Registration No. P-515963, for a figurative mark consisting of a spider, registered on November 6, 2003, in Class 25, (hereinafter referred as the "SPYDER mark", and the "SPYDER logo", respectively). Prior decisions under the Policy have recognized the international well-known character or, at least, reputation within its sector, of the SPYDER mark.¹

The Complainant further owns the domain name corresponding to its brand, <spyder.com> (registered on August 4, 1995), which resolves to its corporate website and international online store.

The disputed domain name was registered on March 20, 2023, and it is currently apparently inactive resolving to an Internet browser error message. According to the evidence provided by the Complainant, the disputed domain name previously resolved to a website, in German language, which reproduced at its heading the SPYDER mark and the SPYDER logo, and purportedly commercialized sports apparel, outerwear and other sporting goods of the Complainant's brand.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its trademark, as it includes the abbreviation of the SPYDER mark, "spd", together with the geographic abbreviation for Switzerland, "ch", which are not sufficiently distinctive to dispel a likelihood of consumer's confusion.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name because the Respondent has no authorization to use the Complainant's trademarks. There is no evidence indicating the Respondent's is commonly known by term "spyder", nor is there any evidence of fair use or use in connection with a bona fide offering of goods or services. The Respondent has illegitimately used the SPYDER mark in the disputed domain name, and both the SPYDER mark and the SPYDER logo on the website to which it resolved to generate confusion and false affiliation with the Complainant.

The Complainant further alleges the disputed domain name was registered and is being used in bad faith.

¹See, e.g., *Spyder Active Sports, Inc. v. Domain Admin, Whoisprotection.cc*, WIPO Case No. [D2022-3964](#); *Spyder Active Sports, Inc. v. Web Commerce Communications Limited*, WIPO Case No. [D2022-1006](#); and *Spyder Active Sports, Inc. v. Client Care, Web Commerce Communications Limited*, WIPO Case No. [D2023-0298](#).

Due to the long use (over 40 years), and worldwide reputation of the Complainant and its trademarks, a simple search over the Internet would disclose its prior rights, and good faith due diligence requires more than a scintilla of research. The use of a privacy shield is a further indication of bad faith, and, although the Respondent's website is currently blocked, at one point in time the Respondent tried to pass off the disputed domain name as the Complainant's website to sell competing and unauthorized goods. The Respondent was intentionally trying to generate a likelihood of confusion or affiliation with the Complainant and its trademarks as to the source, sponsorship, affiliation, or endorsement, for commercial gain.

B. Respondent

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

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, inter alia, in paragraph 10 of the Rules.

A. Identical or Confusingly Similar

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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds that the disputed domain name includes sufficiently recognizable aspects of the SPYDER mark. Moreover, prior panels have considered the letters "spd" as an abbreviation of the SPYDER mark (see, e.g., *Spyder Active Sports, Inc. v. Ames Scalzo*, WIPO Case No. [DCO2023-0060](#); *Spyder Active Sports, Inc. v. Name Redacted*, WIPO Case No. [D2022-0309](#); or *Spyder Active Sports, Inc. v. Client Care, Web Commerce Communications Limited*, WIPO Case No. [D2022-4393](#)). Accordingly, the Panel finds the mark is recognizable within the disputed domain name, and the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel further notes the letters "spd" (possible abbreviation of the SPYDER mark) are combined with a geographical term, the letters "ch", abbreviation of Switzerland, and a term related to the field where the mark is reputed, "outlets", which the Panel finds do not prevent a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.8.

Additionally, the Panel finds the conclusion on confusing similarity is confirmed by the content of the website that was linked to the disputed domain name, which, according to the evidence in the record, incorporated the SPYDER mark and the SPYDER logo, and reproduced the design, color combination, and general look and feel of the Complainant's corporate website at "www.spyder.com". [WIPO Overview 3.0](#), section 1.15.

Therefore, the Panel finds 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 the 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 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 Panel notes the Respondent’s name, provided by the Registrar verification, does not share any similarities with the letters “spd”, so these letters cannot be the abbreviation of the Respondent’s name.

The Panel further notes the composition and prior use of the disputed domain name indicate a targeting of the Complainant. The letters “spd”, which can be considered an abbreviation of the SPYDER mark, are combined with a geographical term (“ch”), and a term related to the field where the Complainant’s trademarks are reputed (“outlets”). The prior website at the disputed domain name reproduced at its heading the Complainant’s SPYDER mark and the SPYDER logo, and reproduced the design, color combination, and general look and feel of the Complainant’s corporate website at “www.spyder.com”. All of which suggested that the disputed domain name was owned, affiliated, or somehow endorsed by the Complainant.

The Panel further notes apparently the Respondent’s reaction to the Complaint has been taking down the website that was linked to the disputed domain name, and this website mimicked the Complainant’s corporate website, and incorporated the SPYDER mark and the SPYDER logo with no indication of its lack of relationship with the Complainant and its trademarks. The Panel finds such use cannot be considered a bona fide offering of goods and services under the Policy, as it generates confusion or affiliation with the Complainant and its trademarks. [WIPO Overview 3.0](#), section 2.8.

Accordingly, the Panel finds nothing in the record indicates the disputed domain name is used in connection with any bona fide offering of goods or services or any other fair use, and both the composition and the use of the disputed domain name indicate targeting of the Complainant and of its reputed SPYDER mark and generates confusion.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, according to the Complainant’s allegations and previous panels, the SPYDER mark is internationally well-known,² and, in this respect, the Panel finds that this trademark, at least, enjoys reputation within its relevant field of activity related to sports apparel, outerwear and other sporting goods.

The Panel further notes nothing in the record indicates the Respondent has rights or legitimate interests in

² See, e.g., footnote number 1.

respect of the disputed domain name, and the letters “spd” share no similarities with the Respondent’s name.

The Panel thus finds that the Respondent likely knew of the Complainant and its trademark and deliberately registered the disputed domain name in bad faith.

Furthermore, the fact the Respondent associated the disputed domain name with a website that incorporated the Complainant’s trademarks, reproduced the design, color combination (white and blue) and general look and feel of the Complainant’s corporate website, and purportedly offered for sale the Complainant’s goods, confirms the above conclusion. It is a clear indication of the Respondent’s knowledge of the Complainant’s trademarks at the time of the registration of the disputed domain name, and a clear indication of targeting to the Complainant and its well-known trademarks for a commercial gain.

The Panel further notes the Respondent has not come forward and has not provided any evidence that may justify any rights or legitimate interests, nor has the Respondent rebutted the Complainant’s allegations of bad faith. Apparently, the Respondent’s reaction to the Complainant has been to take down the website linked to the disputed domain name.

Therefore, based on the evidence presented, the Panel finds the Respondent registered and is using the disputed domain name in bad faith, to intentionally generate confusion or a false affiliation with the Complainant and its trademarks to attempted to attract traffic to his website for commercial gain, which constitutes bad faith under paragraph 4(b)(iv) of the Policy. The current passive holding of the disputed domain name does not prevent a finding of bad faith.

The Panel finds that the Complainant has established the third element 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 <spdchoutlets.com> be transferred to the Complainant.

/Reyes Campello Estebaranz/

Reyes Campello Estebaranz

Sole Panelist

Date: September 11, 2024