

ADMINISTRATIVE PANEL DECISION

The Indie Stone Ltd v. Jason King, Shenzhen Yunnuotaifeng Tech Co., Ltd.
Case No. D2024-3164

1. The Parties

Complainant is The Indie Stone Ltd, United Kingdom, represented by Wiggin LLP, United Kingdom.

Respondent is Jason King, Shenzhen Yunnuotaifeng Tech Co., Ltd., China.

2. The Domain Name and Registrar

The disputed domain name <spiffoplush.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 1, 2024. On August 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 2, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email to Complainant on August 6, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on August 9, 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 Respondent of the Complaint, and the proceedings commenced on August 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 1, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 2, 2024.

The Center appointed Robert A. Badgley as the sole panelist in this matter on September 6, 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

Founded in 2013, Complainant describes itself as “a UK company which provides video game development services and produces computer/video games”.

Complainant’s leading computer game is called “Project Zomboid”, which was released on macOS and Windows in November 2013. According to Complainant, “Project Zomboid is currently available for purchase by users via Complainant’s ‘store’ on the market-leading video game distribution service ‘Steam’”.

Complainant asserts that Project Zomboid has received over 306,000 reviews on “Steam”, with an overall rating of “very positive” and overall rating of 4 out 5 stars on “gogcom”, and that Project Zomboid has a fan page on the social media forum “Reddit”, with over 393,000 members.

Complainant annexes various screenshots and other documentation to the Complaint to corroborate the foregoing allegations.

Complainant uses a mascot in the Project Zomboid game, called “Spiffo” which is an animated racoon. According to Complainant, “‘Spiffo’ is used in many forms [...] on Complainant’s website [...] and in the Project Zomboid game”. In the Project Zomboid game, Complainant states, “‘Spiffo’ acts as the guide for the game’s tutorial, with images and catchy slogans being shown to help guide the player, as well as references made to the character Spiffo in the game, such as in restaurants”.

Complainant’s use of SPIFFO on its website and in connection with its Project Zomboid game are annexed to the Complaint.

Complainant owns a registered trademark with the United States Patent and Trademark Office for SPIFFO, Reg. No. 7,324,501, registered on March 12, 2024, as well as United Kingdom Reg. No. UK00003769350, registered on August 5, 2022.

Complainant has also sold “Spiffo Plush” toys.

The Domain Name was registered on December 10, 2023. The Domain Name resolves to a website purporting to sell “Spiffo Plush” toys. This site bears the header, “Official Spiffo Stuffed Animal Store”. The site makes extensive use of Complainant’s PROJECT ZOMBOID and SPIFFO trademarks. According to Complainant, Respondent has no relationship with Complainant, and no authorization from Complainant to use SPIFFO as a mark, in a domain name or otherwise. Complainant asserts that Respondent is impersonating Complainant in order to sell unauthorized SPIFFO plush toys. According to materials annexed to the Complaint, at least one version of the SPIFFO dolls sold at Respondent’s site is identical to Complainant’s original version.

Respondent has not disputed any of the foregoing allegations or evidence.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

A. Identical or Confusingly Similar

The Panel finds that Complainant has rights in the mark SPIFFO through registration and use demonstrated in the record. The Panel also finds that the Domain Name is confusingly similar to the SPIFFO mark. Notwithstanding the additional word "plush", the SPIFFO mark is clearly recognizable within the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] 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 [Respondent] (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 [Respondent] 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 Panel concludes that Respondent lacks rights or legitimate interests in connection with the Domain Name. Respondent has not come forward in this proceeding to refute any of the plausible allegations made by Complainant, or challenge any of the evidence put forth by Complainant.

It is undisputed that Respondent has no relationship with, or license from, Complainant. It is clear from this undisputed record that Respondent targeted Complainant's SPIFFO mark to derive income by impersonating Complainant and creating the false impression that Respondent's website is actually Complainant's site. The fact that Respondent's site not only uses the SPIFFO mark and displays plush toys identical to Complainant's, but also makes reference to Complainant's "Project Zomboid" game (for which "Spiffo" is the mascot), makes it clear beyond doubt that Respondent was aware of Complainant's mark and sought to free-

ride on it for commercial gain. Such conduct obviously does not invest Respondent with rights or legitimate interests vis-à-vis the Domain Name.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation”, are evidence of the registration and use of the Domain Name in “bad faith”:

- (i) circumstances indicating that Respondent has registered or has acquired the 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 its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Respondent registered and used the Domain Name in bad faith under the Policy. The Panel incorporates its discussion above in the “Rights or Legitimate Interests” section. On this record, the Panel finds it clear that Respondent targeted Complainant’s mark when registering the Domain Name and has used the Domain Name for illegitimate commercial gain by seeking to divert Internet traffic by impersonating Complainant. This constitutes bad faith registration and use within the meaning of the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

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 Domain Name <spiffoplush.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: September 18, 2024