

## ADMINISTRATIVE PANEL DECISION

### Spyder Active Sports, Inc. v. Name Redacted Case No. D2022-0309

#### 1. The Parties

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

The Respondent is Name Redacted<sup>1</sup>.

#### 2. The Domain Name and Registrar

The disputed domain name <spdcashop.com> is registered with NETIM SARL (the “Registrar”).

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 28, 2022. On January 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 1, 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 February 3, 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 February 3, 2022.

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 February 14, 2022. In accordance with the Rules,

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<sup>1</sup> The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

paragraph 5, the due date for Response was March 6, 2022. The Respondent did not submit any Response within this deadline. Accordingly, the Center notified the Respondent's default on March 7, 2022. On March 7, 2022, a letter was received by the Center from a third party sharing the Respondent's name by post only claiming that registration of the disputed domain name has been made without his knowledge or authorization by the Respondent using his identity.

The Center appointed Tobias Zuberbühler as the sole panelist in this matter on March 28, 2022. 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, including the United States trademark SPYDER (Reg. No. 2934105, registered on March 15, 2005), the United States trademark SPYDER (Reg. No. 2750548, registered on August 12, 2003) and the United States trademark SPYDER (Reg. No. 4991541, registered on July 5, 2016).

The Complainant further holds the domain name <spyder.com> under which the official website of the Complainant is available. The Complainant advertises and sells its services through its <spyder.com> domain name.

The disputed domain name was registered on February 22, 2021 and resolves to a website copying content from the Complainant's official website and purportedly offering products under the SPYDER brand as a Canadian SPYDER shop.

Before initiating the present proceedings, the Complainant sent two cease-and-desist letters to the Respondent. The Respondent did not reply to the Complainant's contact attempts.

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

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

The Complainant alleges that it has satisfied all elements of the Policy, paragraph 4(a).

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

The Respondent did not reply to the Complainant's contentions within the time limit set for the Response.

In the letter received on March 7, 2022 in German, the third party mainly stated that he neither knows nor has created the disputed domain name and would prefer German as language of the proceedings.

In line with the Panel's authority pursuant to the Rules, paragraph 10, the Panel has considered the assertions, and notes that this submission does not alter the outcome of the case.

## 6. Discussion and Findings

Based on the facts and evidence introduced by the Complainant, and with regard to paragraphs 4(a), (b) and (c) of the Policy, the Panel concludes as follows:

### A. Language of Proceedings

Since English is the language of the registration agreement, the language of the proceedings is English.

### B. Identical or Confusingly Similar

The Complainant has submitted sufficient evidence to demonstrate its registered rights in the SPYDER trademark.

The SPYDER trademark is abbreviated in the disputed domain name (“spd”), together with a geographical term (“ca” for Canada) and a descriptive term (“shop”).

A domain name is “identical or confusingly similar” to a trademark for the purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, regardless of other terms in the domain name (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). As stated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8, “[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements”.

Further, the UDRP panels have found that an abbreviation of a registered trademark incorporated into a domain name may constitute confusing similarity under the specific facts of the case (*Banque Saudi Fransi v. ABCIB*, WIPO Case No. [D2003-0656](#)). In this case, the Respondent has abbreviated the Complainant’s SPYDER trademark (“spd”) and combined it with a geographical term (“ca”) and a descriptive term (“shop”).

In addition, the Respondent has copied the content from the Complainant’s official website as well as the Complainant’s logo to the website available under the disputed domain name. Hence, the Panel holds that the combination of an abbreviation of the Complainant’s SPYDER trademark together with two other terms does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark under the specific circumstances of this case, particularly noting that the website at the disputed domain name confirms the confusing similarity. See [WIPO Overview 3.0](#), section 1.15.

The Complainant has thus fulfilled the requirements of paragraph 4(a)(i) of the Policy.

### C. Rights or Legitimate Interests

There are no indications before the Panel of any rights or legitimate interests of the Respondent in respect of the disputed domain name. The Complainant contends that the Respondent is neither affiliated with the Complainant nor making any *bona fide* use of the disputed domain name. Furthermore, the Respondent has not advanced any legitimate use pertaining to the term “spdcashop” or the disputed domain name.

The Respondent uses the disputed domain name to purportedly advertise the same products as offered on the Complainant’s official website and protected by the Complainant’s trademark registrations. The Complainant has credibly alleged that the Respondent uses the disputed domain name for generating revenue while taking advantage of the Complainant’s trademark notoriety. This cannot be considered as a *bona fide* offering of goods or services or a noncommercial use.

The Panel finds that the Complainant, having made out a *prima facie* case which remains un rebutted by the Respondent, has fulfilled the requirements of paragraph 4(a)(ii) of the Policy.

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

Under the circumstances of this case, including the composition of the disputed domain name, the content of the website available under the disputed domain name and the reputation of the Complainant's trademark, it can be inferred that the Respondent was aware of the Complainant's trademark when registering the disputed domain name, registering it to take unfair advantage of its similarity with the Complainant's trademark.

The Panel finds that the abbreviation of the Complainant's trademark along with the two terms "ca" and "shop" is susceptible of misleading Internet users by creating a likelihood of confusion between the Complainant's trademark and the disputed domain name. Such composition of the disputed domain name, corroborated by infringing website content, reflects an intention on the part of the Respondent of taking unfair advantage of the Internet users seeking the Complainant (*cf.* [WIPO Overview 3.0](#), section 1.9).

The evidence and allegations submitted by the Complainant support a finding that the Respondent is engaged in an attempt to pass himself off as the Complainant by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of his website for his own commercial benefit. The Respondent therefore uses the disputed domain name in bad faith (see *Claudie Pierlot v. Yinglong Ma*, WIPO Case No. [D2018-2466](#)).

Accordingly, the Complainant has also fulfilled paragraph 4(a)(iii) 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 <spdcashop.com> be transferred to the Complainant.

*/Tobias Zuberbühler/*

**Tobias Zuberbühler**

Sole Panelist

Date: April 8, 2022