

ADMINISTRATIVE PANEL DECISION

Spyder Active Sports, Inc. v. Client Care, Web Commerce Communications Limited

Case No. D2023-4187

1. The Parties

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

The Respondent is Client Care, Web Commerce Communications Limited, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <spyderusaoutlet.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 October 9, 2023. On October 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 12, 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/Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 12, 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 on October 12, 2023.

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 October 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 14, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on November 17, 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

For more than 40 years the Complainant has promoted and sold sports apparel, outerwear, and other sporting goods globally and has spent significant funds promoting its products through extensive advertising, as well as through its sponsorships of the US Ski Team and professional skiers, like Chris Davenport, Julia Mancuso, Julian Carr, Tommy Moe and others, as well as other sports, including race-car drivers Patrick Dempsey, James Hinchcliffe and Andrew Palmer.

The Complainant runs its business under SPYDER brand, which is registered as a trademark in numerous jurisdictions, including for instance the US trademark registration No. 2934105 registered on March 15, 2005.

The Complainant sells its products via its website at “www.spyder.com”.

The disputed domain name was registered on August 22, 2022, and resolves to a website prominently featuring the Complainant’s trademark and logo and purportedly offering for sale goods branded with the Complainant’s trademark.

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 the Complainant’s trademark. The disputed domain name consists of the Complainant’s well-known trademark SPYDER, the geographic indicator “usa”, the descriptive word “outlet” and the generic Top-Level Domain (“gTLD”) “.com”. The additional elements incorporated in the disputed domain name that are generic terms, descriptive terms, numbers, and/or abbreviations, are not sufficiently distinctive or unique as to dispel a likelihood of consumer confusion.

Also, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not been licensed, contracted, or otherwise permitted by the Complainant in any way to use the Complainant’s trademark or to apply for any domain name incorporating the Complainant’s trademark, nor has the Complainant acquiesced in any way to such use or application of the Complainant’s trademark by the Respondent. Additionally, there is no evidence that “Spyder USA Outlet” is the name of the Respondent’s corporate entity, nor is there any evidence of fair use. Furthermore, there is no evidence that the Respondent is using or plans to use the Complainant’s trademark or the disputed domain name incorporating the Complainant’s trademark for a *bona fide* offering of goods or services. On the contrary, the Respondent has been actively using the Complainant’s trademark in the disputed domain name and on the physical website to promote its website for illegitimate commercial gain. Such unauthorized use of the Complainant’s trademark is likely to trick consumers into erroneously believing that the Complainant is somehow affiliated with the Respondent or endorsing its commercial activities, while in fact, no such relationship exists. Therefore, the Complainant can affirm with good faith that there is no evidence of any use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name by the Respondent in connection with any *bona fide* offering of goods or services; the Respondent has not been commonly known by the disputed domain name, and the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent was well aware of the Complainant's trademark at the time the Respondent registered the disputed domain name. The Complainant's trademarks are well known around the world. The Complainant relies on the extensive range of its registered trademarks. This is proof of bad faith at the time of registration. The Respondent is selling counterfeit SPYDER goods at the website that mirrors the Complainant's website in an attempt to pass it off as an official website of the Complainant. The Respondent has no reason to use the Complainant's trademark in the disputed domain name other than to attract Internet users to its site for commercial gain. The exploitation of consumer confusion for the purpose of selling counterfeit goods, with evident knowledge of the Complainant's rights in its trademarks is bad faith. The Respondent used a privacy shield to mask its identity, which makes it difficult for the Complainant to contact the Respondent and amicably settle a domain dispute, which is bad faith.

B. Respondent

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

6. Discussion and Findings

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.

Based on the available record, the Panel finds 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 the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms here, "usa" and "outlet", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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.

While 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 often impossible 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. 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 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 available evidence does not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent. According to section 2.8.1 of the [WIPO Overview 3.0](#), resellers, distributors using a domain name containing a complainant's trademark to undertake sales related to the complainant's goods may be making a *bona fide* offering of goods and thus have a right or legitimate interest in such domain name. Outlined in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (the "Oki Data Test"), the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods at issue;
- (ii) the respondent must use the site to sell only the trademarked goods;
- (iii) the site must accurately and prominently disclose the registrant's relationship with trademark holder; and
- (iv) the respondent must not try to "corner the market" in domain names reflecting trademark.

The Panel finds that the Respondent failed to satisfy at least the third above requirement and did not in any way disclose its actual relationship with the Complainant, and thus failed to pass the Oki Data Test. The Respondent's use of the disputed domain name misleads consumers into thinking that the website is operated by or affiliated with the Complainant. As such, the Respondent's use of the disputed domain name cannot be considered *bona fide*.

Moreover, the nature of the disputed domain name carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. Section 2.5.1 of the [WIPO Overview 3.0](#).

Based on the available record, 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, the Panel notes that the Respondent's use of the disputed domain name to purport to sell the Complainant's products shows that at the time of the registration of the disputed domain name the Respondent clearly knew and targeted the Complainant's prior registered and known trademark, which confirms bad faith (see, e.g., *The Gap, Inc. v. Deng Youqian*, WIPO Case No. [D2009-0113](#)).

According to paragraph 4(b)(iv) of the Policy the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location. In this case, the disputed domain name resolves to a website featuring the Complainant's trademark and logo purportedly offering for sale the Complainant's goods to intentionally attract Internet users by creating a likelihood of confusion with the Complainant's trademark as to the source of the website and its products. The Panel finds the above confirms the disputed domain name was registered and is being used in bad faith.

Based on the available record, the Panel finds 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 <spyderusaoutlet.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: December 1, 2023