

ADMINISTRATIVE PANEL DECISION

Spyder Active Sports, Inc. v. Louise Walleneit, Client Care, Web Commerce Communications Limited, and Mignote YAYNISHET
Case No. D2023-1282

1. The Parties

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

The Respondents are Louise Walleneit, Germany, Client Care, Web Commerce Communications Limited, Malaysia, and Mignote YAYNISHET, Norway.

2. The Domain Names and Registrars

The disputed domain names <spdscliitaly.com>, and <spdskiuk.com> are registered with Alibaba.com Singapore E-Commerce Private Limited (the "First Registrar").

The disputed domain name <spydercanadaski.com> is registered with registered with Web Commerce Communications Limited dba WebNic.cc (the "Second Registrar").

The disputed domain name <spyderitalia.com> is registered with NETIM SARL (the "Third Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 24, 2023. On March 24, 2023, the Center transmitted by email to each Registrar a request for registrar verification in connection with the disputed domain names. On March 24, 2023, the Second 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. On March 27, 2023, the First and Third 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 March 27, 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 amended Complaint on the same day.

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 April 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 2, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on May 5, 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

The Complainant is a company located in New York, United States. It is a provider of sports apparel, outerwear and sporting goods with a particular emphasis on winter sports.

The Complainant is the owner of numerous trademark registrations comprising or incorporating the mark SPYDER, combined on some occasions with a stylized spider design (“the Spyder Logo”). These registrations include, for example:

- Canada trademark registration number TMA646376 for the word mark SPYDER, registered on August 23, 2005, in International Class 25; and
- European Union Trade Mark registration number 017255274 for a figurative mark comprising the Spider Logo and the stylized text SPYDER, registered on January 15, 2018, in International Classes 18 and 25.

The disputed domain names were registered on the following dates:

<spdscciitaly.com> on November 11, 2021;
<spydercanadaski.com> on November 20, 2020;
<spyderitalia.com> on May 12, 2021; and
<spdskiuk.com> on October 8, 2022.

Each of the disputed domain names have resolved to a website which prominently displays a version of the Complainant’s figurative trademark referred to above, includes other instances of the name SPYDER and appears to offer winter sporting goods for sale online.

5. Parties’ Contentions

A. Complainant

The Complainant submits that it has traded for over 40 years, promoting and selling its goods globally and spending millions of dollars on advertising, promotion and sponsorship. It claims to be the world’s largest winter sports brand with products on sale in over 40 countries as well as on its own website at “www.spyder.com”. It submits that it undertakes extensive efforts diligently to protect its trademarks including the SPYDER name and the SPYDER Logo.

The Complainant submits that each of the disputed domain names is confusingly similar to its SPYDER trademark. It contends that the mark SPYDER appears in full in the disputed domain names

<spydercanadaski.com>, and <spyderitalia.com> and is abbreviated to “spd” (followed by “sci” or “ski”) in the other two disputed domain names.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain names. It states that it has no relationship with the Respondent and has never authorized it to use its SPYDER trademarks including the SPYDER Logo, that the Respondent has not commonly been known by the disputed domain names and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain names. The Complainant submits that, instead, the Respondent is using the disputed domain names to trick Internet users into believing that the Complainant is in some way affiliated with the Respondent or endorsing its commercial activities.

The Complainant submits that the disputed domain names have been registered and are being used in bad faith. The Complainant contends in particular that the Respondent must have been aware of the Complainant’s SPYDER trademarks when it registered the disputed domain names and that it is trying to pass off the disputed domain names as representing the Complainant’s own websites, which offer competing and unauthorized goods.

The Complainant requests the transfer of the disputed domain names.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Matter – Consolidation of Multiple Respondents

The Complainant requests the consolidation of the proceedings in respect of each of the four disputed domain names on the basis that they are all in common control.

As discussed in section 4.11.2 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)):

“Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.”

According to the verification information disclosed by the respective Registrars, the disputed domain names <spdscliitaly.com> and <spdscliuk.com> have a common registrant, Web Commerce Communications Limited, which is sufficient in itself to point to consolidation. The Complainant also provides evidence that the disputed domain name <spyderitalia.com> redirects to a website at “www.spdscliitaly.com”, which is persuasive to the Panel that that disputed domain name is under common control with the first two. As to the disputed domain name <spydercanadaski.com>, the Complainant points to notable similarities between the layout and content of the website to which that disputed domain name relates and the other websites in question. It also provides evidence that each of the four disputed domain names appears to have the same IP address and geographical location.

In the circumstances, including the absence of any objection by any registrant of any of the disputed domain names, the Panel finds that the conditions for consolidation are satisfied and that all four of the disputed domain names shall remain subject to this proceeding.

6.2 Substantive Issues

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established that it is the owner of registered trademark rights for the mark SPYDER.

Two of the disputed domain names, <spydercanadaski.com> and <spyderitalia.com>, incorporate the Complainant's mark SPYDER in full, together with the additional terms "canadaski" and "italia" respectively, neither of which additions prevent the Complainant's trademark from being recognizable within those disputed domain names.

Concerning the disputed domain names <spdscliitaly.com> and <spdskiuk.com>, the Complainant submits that the letters "spd" are in each case an abbreviation for SPYDER, linked to further terms suggestive of skiing in Italy and the United Kingdom respectively. While accepting that "spd" could be an abbreviation of SPYDER, the Panel is not convinced that, on a straight side-by-side comparison between these two disputed domain names and the Complainant's trademark alone, confusing similarity is necessarily established. However, the Panel has regard in this case to section 1.7 of [WIPO Overview 3.0](#), which states:

"In specific limited instances, while not a replacement as such for the typical side-by-side comparison, where a panel would benefit from affirmation as to confusing similarity with the complainant's mark, the broader case context such as website content trading off the complainant's reputation, or a pattern of multiple respondent domain names targeting the complainant's mark within the same proceeding, may support a finding of confusing similarity."

Section 1.7 of [WIPO Overview 3.0](#) goes on to say:

"In this context, panels have also found that the overall facts and circumstances of a case (including relevant website content) may support a finding of confusing similarity, particularly where it appears that the respondent registered the domain name precisely because it believed that the domain name was confusingly similar to a mark held by the complainant."

The Panel finds that all the above considerations mentioned in section 1.7 of [WIPO Overview 3.0](#) are engaged in this case, such that (as further discussed below) the Respondent's websites clearly seek to trade unfairly off the Complainant's reputation, multiple offending domain names have been employed for this purpose and the Respondent itself clearly believed (based on its websites' content) that the abbreviation "spd" would call the Complainant's SPYDER trademark in mind.

In these circumstances, the Panel finds that each of the disputed domain names is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant's submissions set out above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. However, the Respondent has failed to file a Response in this proceeding and has not submitted any explanation for its

registration and use of the disputed domain names, or evidence of rights or legitimate interests on its part in the disputed domain names, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise.

In certain limited circumstances, a reseller of trademarked goods or services may legitimately incorporate that trademark into a domain name used for the resale of the goods or services in question (see, e.g., section 2.8 of [WIPO Overview 3.0](#)). However, those circumstances do not include those where the domain name is inherently deceptive, where the respondent's website creates a false impression of an association with the trademark owner or where the respondent fails prominently to disclose its relationship (or lack of any such relationship) with the Complainant.

In this case, the Panel has no hesitation in finding that the Respondent's use of the disputed domain names is deliberately deceptive, as further discussed below. In these circumstances the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

C. Registered and Used in Bad Faith

It is clear to the Panel from the Respondent's use of the disputed domain names that it was aware of the Complainant's business and SPYDER trademarks at the time of registration of the disputed domain names and that it registered them with the intention of taking unfair advantage of the Complainant's commercial goodwill.

The Panel also finds at least two of the disputed domain names, <spydercanadaski.com> and <spyderitalia.com> to be inherently misleading, as inevitably implying an association with the Complainant.

With regard to all four of the disputed domain names, the Complainant has provided evidence that each of these resolves to a website which makes prominent use of the Complainant's SPYDER trademark and the SPYDER Logo and purports to offer winter sports clothing for sale. The websites include images labelled, for example, "Spyder Ski" and "Spyder Jacket" and are clearly intended, in the view of the Panel, to mislead Internet users into believing they are owned or operated by, or in some other authorized manner affiliated with, the Complainant. The websites do not appear to include any disclaimers making clear the lack of any such affiliation.

The Panel finds in the circumstances that, by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its websites by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its websites (paragraph 4(b)(iv) of the Policy).

The Panel therefore finds that each of the disputed domain names has been registered and is being used in bad faith.

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 names, <spdscliitaly.com>, <spdskiuk.com>, <spydercanadaski.com>, and <spyderitalia.com>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: May 19, 2023