

ADMINISTRATIVE PANEL DECISION

Spyder Active Sports, Inc. v. Ames Scalzo
Case No. DCO2023-0060

1. The Parties

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

Respondent is Ames Scalzo, United States.

2. The Domain Name and Registrar

The disputed domain name <spdespana.co> (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 July 7, 2023. On July 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 7, 2023, 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 (John Doe) and contact information in the Complaint. The Center sent an email to Complainant on July 10, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on July 10, 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 Respondent of the Complaint, and the proceedings commenced on July 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 8, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on August 11, 2023.

The Center appointed Robert A. Badgley as the sole panelist in this matter on August 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

Complainant has manufactured and sold sports apparel, outerwear, and related goods for more than 40 years under the mark SPYDER. Complainant's SPYDER products are sold in more than 40 countries, including Spain. According to Complainant, "SPYDER is one of the world's largest winter sports brands". Complainant sponsors the United States Ski Team and several prominent professional skiers, as well as several race car drivers.

Complainant holds more than 150 trademark registrations in various countries, including several registered marks applicable to Spain. For instance, Complainant holds European Union Reg. No. 002342178, registered November 25, 2002, as well as European Union Reg. No. 017255274, registered on January 15, 2018.

Complainant's main commercial website is located via the domain name <spyder.com>.

The Domain Name was registered on September 22, 2022. The Domain Name resolves to a website which, according to Complainant, is used "to sell competing and unauthorized goods". Respondent's website features Complainant's SPYDER mark and logo, and purports to offer for sale various SPYDER merchandise. There are no disclaimers of affiliation between the website and Complainant or the SPYDER mark.

Respondent has not denied any of the foregoing allegations.

5. Parties' Contentions

A. Complainant

Complainant contends that it has established all three 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 concludes that Complainant has rights in the trademark SPYDER through widespread registration and longstanding use demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to that mark. The letters "SPD" may be recognized as an abbreviation of SPYDER, and the addition of the geographical reference "Espana" ("Spain") does not overcome the fact that the mark is recognizable within the Domain Name.

The Panel also notes that the content of the website associated with the Domain Name confirms Panel's finding on confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.15.

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 articulate or prove any *bona fide* basis for registering the Domain Name. Nor has Respondent denied any of Complainant's factual allegations or questioned any of the documentary evidence annexed to the Complaint.

On this undisputed record, the Panel finds that Respondent targeted Complainant's SPYDER trademark (which is obvious by Respondent's liberal use of the SPYDER mark and logo on his website), and did so in order to trade off the renown of Complainant's mark and sell "competing and unauthorized goods". Such a use of the Domain Name plainly does not vest Respondent with a legitimate interest 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. As discussed above, on this undisputed record, the Panel finds that Respondent clearly had Complainant’s mark in mind when registering the Domain Name, and sought to create a website falsely suggesting an affiliation with or endorsement by Complainant. The Panel further concludes that Respondent’s use of the Domain Name is a clear instance of bad faith 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 <spdespana.co> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: August 31, 2023