

ADMINISTRATIVE PANEL DECISION

Spyder Active Sports, Inc. v. Web Commerce Communications Limited Case No. D2022-0659

1. The Parties

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

The Respondent is Web Commerce Communications Limited, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <spyderaushop.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 February 24, 2022. On February 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 28, 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 March 1, 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 March 2, 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 March 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 4, 2022.

The Center appointed Dr. Clive N.A. Trotman as the sole panelist in this matter on April 29, 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 has a history of more than 40 years of trading internationally in sports apparel, outerwear, and other sporting goods. The Complainant is well promoted through sports sponsorships and endorsements by well-known skiers, race-car drivers, and other sports identities.

The Complainant states that it holds more than 150 trademarks, of which the following are sufficiently representative for the purposes of this proceeding:

SPYDER, Australian registered Trade mark, registration No. 1039391, in Class 25, registered on June 5, 2006;

SPYDER, Australian registered Trade mark, registration No. 469083, in Class 18, registered on July 16, 1987;

SPYDER LOGO, design, Australian registered Trade mark, registration No. 1008037, in Class 25, registered on June 24, 2004.

The Complainant does business through the website “www.spyder.com”.

Nothing of significance is known about the Respondent except for the contact details provided for the purpose of registration of the disputed domain name on September 13, 2021. The disputed domain name has resolved to a website (the “Respondent’s website”) displaying assorted styles of sports outerwear.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s registered trademark, which is heavily advertised internationally and is well-known. The disputed domain name comprises the Complainant’s trademark together with the geographic identifier “au” for Australia and the word “shop”. The generic Top-Level Domain (“gTLD”) is “.com”. The additional generic and descriptive terms increase the likelihood that consumers would confuse the disputed domain name with the Complainant.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant says it has not in any way permitted the Respondent to use the Complainant’s trademark or logo. There is no evidence the Respondent is using or making demonstrable preparations to use the disputed domain name for a *bona fide* offering of goods or services. It is in use for the purposes of a website that may mislead consumers into believing that it belongs to or has the endorsement of the Complainant, for commercial gain. There is no evidence the Respondent’s business is known as “spyderaushop” and no evidence of any fair use of the disputed domain name.

The Complainant further contends that the disputed domain name was registered and is being used in bad faith.

The Complainant asserts that its trademark is well known internationally and the Respondent was well aware of it at the time of registration of the disputed domain name. The Complainant's earliest trademark registrations considerably pre-date the registration of the disputed domain name.

On October 28, 2021, the Complainant sent a cease-and-desist letter, *via* the Registrar, to the Respondent. The Complainant says the lack of a reply and continued use of the disputed domain name are further indicative of the Respondent's bad faith.

The Complainant says the disputed domain name has resolved to a website on which the Respondent has displayed counterfeit goods in an attempt to pass them off as the Complainant's, and has displayed the Complainant's trademark. The Respondent has intentionally used the disputed domain name to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark for commercial gain.

The Complainant also says the Respondent's use a privacy shield to conceal its identity, in the circumstances of having registered a well-known trademark, is further indicative of registration in bad faith.

The Complainant has cited a number of previous decisions under the Policy that it considers relevant to the present case.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy states that the Respondent is required to submit to a mandatory administrative proceeding in the event that the Complainant asserts to the applicable dispute-resolution provider, in compliance with the Rules, that:

"(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith".

The Complainant has made the relevant assertions as required by the Policy. The dispute is properly within the scope of the Policy and the Panel has jurisdiction to decide the dispute.

A. Identical or Confusingly Similar

The Panel has verified that the Complainant is the holder of the trademark SPYDER. The disputed domain name may be read as "spyder", being the Complainant's trademark, followed by "au", being a recognised abbreviation for Australia, and "shop", implying in the context an Internet sales outlet. The Panel finds that, within the meaning of paragraph 4(a)(i) of the Policy, the reproduction of the Complainant's trademark renders the disputed domain name confusingly similar to the Complainant's trademark, regardless of the additional entities. The Panel finds for the Complainant under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant says, *prima facie*, that it has not in any way permitted the Respondent to use the Complainant's trademark or logo and that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides for the Respondent to contest the Complainant's *prima facie* case under paragraph 4(a)(ii) of the Policy and to establish rights or legitimate interests in a disputed domain name by demonstrating, without limitation:

- “(i) before any notice to you 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 (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 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 Respondent has not responded formally and has not asserted rights or legitimate interests in the disputed domain name with reference to paragraphs 4(c)(i), (ii) or (iii) of the Policy or otherwise. The Complainant states it has found no evidence the Respondent's business is known as “spyderaushop”. The screen captures of the Respondent's website show it to be in use for the purpose of selling items of clothing that the Complainant states are counterfeit copies of its own products, and the Panel finds such use of the disputed domain name cannot therefore be *bona fide*. Even if the products offered at the disputed domain name are to be genuine, the nature of the disputed domain name is such to imply an association with the Complainant, contrary to the fact, that cannot constitute fair use. Moreover, this implied association is exacerbated by the impersonating nature of the content found at the disputed domain name, which is bereft of any clarifying statement as to the website's affiliation, or lack thereof, to the complainant. There is no evidence of any fair or noncommercial use of the disputed domain name.

Accordingly the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name and finds for the Complainant under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove under paragraph 4(a)(iii) of the Policy that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four alternative circumstances, without limitation, that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

- “(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line 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".

The screen capture of the Respondent's website made on February 23, 2022, had the headline "our guide to our three tiers of outerwear", and displayed pictures of sports clothing marked "silver", "men's", "women's", "kids", and "outlet", with a "learn more" box and an arrow. Some items of clothing display a spider design similar to the Complainant's trademarked logo. A screen capture made on March 11, 2022, had a number of pages with the page title "Spyder Jackets Australia - Ski Jackets/Ski Gear Outlet AU". On the evidence, and on the balance of probabilities, it may reasonably be concluded that the Respondent's website has been constructed with the intention of misleading Internet users into believing it to be an authentic website of the Complainant, and that the goods offered or intended to be offered for sale through the website are products of, or are endorsed by, the Complainant, which the Complainant refutes. The purpose of the Respondent's website is evidently commercial gain by trading on the reputation and goodwill of the Complainant's trademark, constituting use of the disputed domain name in bad faith.

On the totality of the evidence, the Panel further finds the disputed domain to have been registered by the Respondent for the bad faith purpose for which it has been used. Registration and use of the disputed domain name in bad faith are found therefore in the terms of paragraph 4(a)(iii) of the Policy.

The Respondent's failure to reply to or to act upon the Complainant's cease and desist email *via* the Registrar dated October 28, 2021, in all the circumstances, is found to be a compounding factor in bad faith (*Ebay, Inc. v. Ebay4sex.com and Tony Caranci*, WIPO Case No. [D2000-1632](#)).

The use of a privacy shield may be entirely legitimate and there can be good reasons for doing so. However, in all the circumstances of the present case, it would appear to be more probable than not that the Respondent's primary purpose in placing its registration details behind a privacy shield was to frustrate or delay the bringing of proceedings against it, which the Panel finds to be additional evidence of 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 name <spyderaushop.com> be transferred to the Complainant.

/Dr. Clive N.A. Trotman/

Dr. Clive N.A. Trotman

Sole Panelist

Date: May 13, 2022