

## **ADMINISTRATIVE PANEL DECISION**

Spyder Active Sports, Inc. v. Client Care, Web Commerce  
Communications Limited  
Case No. D2023-0298

### **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 Client Care, Web Commerce Communications Limited, Malaysia.

### **2. The Domain Name and Registrar**

The disputed domain name <spydersciitalia.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 January 23, 2023. On January 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 28, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 7, 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 February 7, 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 February 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 2, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on March 8, 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 sold sports apparel, outerwear, and other sporting goods globally, and has spent considerable money promoting its products through extensive advertising and important sponsorship in the ski and car race fields. Due to this widespread and longstanding activity, the Complainant has become one of the world's largest winter sports brands, and its products are sold in more than 40 countries, as well as on the Complainant's official website at "www.spyder.com".

The Complainant is the owner of a global portfolio, which includes the following European Union Trade Marks:

- SPYDER (word mark), registration No. 002342178, of November 25, 2002, for goods in classes 9, 25 and 28;
- SPYDER (figurative mark), registration No. 017255274, registered on January 15, 2018, for goods in classes 18 and 25;
- SPYDER (logo), registration No. 003235769, registered on May 11, 2005, for goods in class 25;
- SPYDER (logo), registration No. 014513394, registered on December 29, 2005, for goods in classes 14 and 25, and services in class 35.

The disputed domain name was registered on September 13, 2021 and leads to a website displaying the Complainant's trademarks and promoting the sale of the Complainant's goods.

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

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

The Complainant maintains that the disputed domain name is confusingly similar to its earlier SPYDER trademarks as it entirely includes this trademark followed by the term "sci", which is a misspelling of the term "ski", and the geographic indicator "Italia". The addition of these two terms to the trademark SPYDER cannot prevent a finding of confusing similarity as the trademark remains recognizable within the disputed domain name.

The Complainant further maintains that the Respondent lacks rights or legitimate interests in the disputed domain name. In particular, the Complainant has not licensed the SPYDER trademark to the Respondent, nor has authorized the Respondent to make use of this trademark in any way whatsoever. Additionally, there is no evidence that the Respondent is known by the name "spydersciitalia", nor is the Respondent using the disputed domain name in a legitimate, noncommercial or fair manner. Moreover, there is no evidence that the Respondent is using or plans to use the disputed domain name for a *bona fide* offering of goods or services. On the contrary, the Respondent has been actively using the SPYDER trademarks, in the disputed domain name and on the associated website, for an illegitimate commercial gain. This unauthorized use of the Complainant's mark is likely to trick the consumers into erroneously believing that the Complainant is somehow affiliated with the Respondent, or is endorsing its commercial activity.

Lastly, the Complainant argues that the Respondent has registered and is using the disputed domain name in bad faith. The Respondent was well aware of the Complainant's trademark when it registered the disputed domain name. The Complainant's SPYDER trademarks are internationally well known. Moreover, a simple search on Google would have disclosed the Complainant's trademarks and its business. Furthermore, a gap of several years from the registration of the Complainant's trademarks and the

registration of the disputed domain name can indicate bad faith registration. The Respondent has used a privacy shield to mask its identity; the use of privacy shields or similar services which mask the Respondent's identity are an indication of bad faith. The Respondent is trying to pass off the disputed domain name as the Complainant's website, to sell competing and unauthorized goods. The Respondent has no reason to use the Complainant's trademarks other than to attract Internet users to its website for commercial gain. The Respondent is trying to create a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Panel finds that the disputed domain name is confusingly similar to the Complainant's earlier trademark SPYDER, as it incorporates it entirely. The addition of the word "sci", which is the Italian version of "ski", and the geographical term "Italia", cannot prevent a finding of confusing similarity. According to section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") "[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".

Therefore, the Panel is satisfied that the first condition under the Policy is met.

### **B. Rights or Legitimate Interests**

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the case at issue, the Panel finds that the Respondent is not authorized to reflect the Complainant's trademark in the disputed domain name, and that the Respondent does not appear to have been commonly known by the name "spydersciitalia". The disputed domain name is used to sell ski clothing bearing the Complainant's trademarks. The Complainant does not indicate whether these goods are genuine or not. However, the Complainant states that it has not licensed its trademarks to the Respondent and that it is not linked to the Respondent in any manner whatsoever. The Respondent has not rebutted this argument. The Panel, in accordance with the general powers conferred by paragraph 10 of the Rules, has visited the website linked to the disputed domain name in order to obtain more information about the Respondent and its use of the disputed domain name. As such, the Panel has noticed that nowhere in the Respondent's website is there an indication of the fact that the Respondent is an official distributor or reseller of the Complainant's goods. The Panel has further noticed that the Respondent's website does not include any reference to the company or individual selling the goods online, in full contrast with the general duty of information provided for by the e-commerce regulations. Lastly, despite the relevant website is clearly directed to the Italian public (the disputed domain name includes the Italian word "sci" and the geographical term "Italia", and the website is in Italian), the Italian text of the website contains various mistakes. All these circumstances induce the Panel to believe that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, or is 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.

Moreover, noting the construction of the disputed domain name, which consists of the Complainant's trademark along with a term that is descriptive of the Complainant's activity and the indication of a geographic area in which the Complainant operates, the nature of the disputed domain name is such to carry a risk of implied affiliation to the Complainant. This kind of use cannot constitute fair use (see section 2.5.1 of the [WIPO Overview 3.0](#)).

In light of all these circumstances, the Panel is satisfied that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that also the second requirement under the Policy is met.

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

The Complainant contends that its trademark SPYDER enjoys wide reputation. Previous Panels have acknowledged the reputation of the SPYDER mark (see *Spyder Active Sports, Inc. v. Web Commerce Communications Limited*, WIPO Case No. [D2022-1006](#); *Spyder Active Sports, Inc. v. Domain Admin, Whoisprotection*, WIPO Case No. [D2022-3964](#)). The Panel tends to agree that the SPYDER trademark enjoys a certain reputation in the relevant field of activity. Moreover, the fact that the disputed domain name associates the term "sci" ("ski" in English) with the Complainant's trademark is a further indication of the fact that the Respondent knew the Complainant and its business under the SPYDER trademark at the time of the registration of the disputed domain name. The use of the disputed domain name, to access a website reproducing the Complainant's trademarks, including the SPYDER logo, and offering for sale alleged Complainant's goods is a clear indication of the Respondent's knowledge of the Complainant's trademarks at the time of the registration of the disputed domain name. The mere registration of a domain name that is confusingly similar to a third party's trademark, being aware of such trademark and without rights or legitimate interests in the domain name, is evidence of bad faith.

With respect to use in bad faith, the disputed domain name leads to a website displaying prominently the Complainant's trademarks and offering for sale goods bearing these trademarks. Although the Panel cannot say whether these goods are original or not, the Panel noted some inconsistencies that suggest an illegitimate use of the Complainant's trademarks. In particular, the Panel noted that the Respondent's website does not include any indication of the company or individual selling the advertised products online. Furthermore, the website contains various errors in Italian, even gross ones, despite the fact that the site is clearly aimed at the Italian public and is written in that language. These circumstances do not appear in line with the quality standards to which the Complainant certainly aspires, considering that its SPYDER mark has been on the market for over 40 years and enjoys recognition among the relevant public. Moreover, it seems at least curious that an Italian website like the one at issue is managed by a Malaysian entity (the Respondent is from Malaysia) and not by an Italian, European, or United States entity (being the Complainant from the United States).

For all the reasons set out above, the Panel believes that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of a product on that website.

Accordingly, the Panel is satisfied that the third and last condition under the Policy is met.

## **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 <spydersciitalia.com> be transferred to the Complainant.

*/Angelica Lodigiani/*

**Angelica Lodigiani**

Sole Panelist

Date: March 22, 2023