

## **ADMINISTRATIVE PANEL DECISION**

Spyder Active Sports, Inc. v. Jing Miao  
Case No. D2023-0939

### **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 Jing Miao, China.

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

The disputed domain name <spyderstores.com> is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 2, 2023. On March 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 2, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. In response to the Center’s email, the Complainant clarified its selection of Mutual Jurisdiction on March 13, 2023.

The Center verified that 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 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 5, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on April 12, 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 owns various trademark registrations containing the term Spyder in the United States, *inter alia*:

- United States Trademark Registration No. 2,934,105, SPYDER (word), registered March 15, 2005, in Int. class 25;
- United States Trademark Registration No. 2,750,548, SPYDER (design), registered August 12, 2003, in Int. class 25 (Annexes 5.1 – 5.7 to the Complaint).

The Complainant provides its official website under the domain name <spyder.com> where it offers especially outerwear clothing, e.g., winter Jackets (Annex 4 to the Complaint).

The disputed domain name was registered on September 16, 2022 (Annex 1 to the Complaint).

The disputed domain name resolves to a website with outerwear clothing on special offer, branded with the Complainant's trademark SPYDER (Annex 6 to the Complaint).

#### 5. Parties' Contentions

##### A. Complainant

The Complainant is the owner of the world-famous SPYDER brand. For more than 40 years, the Complainant has promoted and sold sports apparel, outerwear, and other sporting goods globally and has spent millions of dollars promoting its products through extensive advertising, as well as through its sponsorships of the United States Ski Team and professional skiers, as well as other sports, including race-car drivers. Today, the Complainant is 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 addressed by the domain name <spyder.com>.

The Complainant holds various United States trademark registrations containing the term Spyder and the famous and distinctive Spyder Logo. The disputed domain name is identical or confusingly similar to the Complainant's registered trademarks, because it entirely comprises the Complainant's trademark SPYDER and only adds the descriptive term "stores", as well as the suffix ".com".

The Respondent has no rights or legitimate interests in respect of the disputed of the domain name. The Respondent has not been licensed, contracted, or otherwise permitted by the Complainant in any way to use the SPYDER trademark or Spyder Logo or to apply for any domain name incorporating the SPYDER trademark, nor has the Complainant acquiesced in any way to such use or application of the SPYDER trademark by the Respondent. Additionally, there is no evidence that Spyder 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 SPYDER trademark or Spyder Logo or the disputed domain name incorporating the SPYDER trademark for a *bona fide* offering of goods or services. Moreover, there is no evidence of the Respondent's use of, or demonstrable preparations to use of, the disputed domain name or a name corresponding to the disputed domain name 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 disputed domain name was registered and is being used in bad faith: The Complainant's trademarks are well known around the world. The Respondent registered the disputed domain name many years after the Complainant established trademark rights in the SPYDER mark. Moreover, 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 mark in the disputed domain name other

than to attract Internet users to his site for commercial gain, especially since the Complainant's official website is addressed by the domain name <spyder.com>. Thus, the Respondent is intentionally trying to create a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

### **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. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the mark SPYDER.

In the present case, the disputed domain name is confusingly similar to the SPYDER mark in which the Complainant has rights since the Complainant's SPYDER mark is clearly recognizable in the disputed domain name. It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name, the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). This is the case at present. The addition of the term "stores" in the disputed domain name does not prevent a finding of confusing similarity.

Finally, it has also long been held that generic or country-code Top-Level Domains are generally disregarded when evaluating the confusing similarity under the first element.

Therefore, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

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

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 (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

The Panel also notes that the disputed domain name resolves to a website with outerwear clothing on special offer, branded with the Complainant's trademark SPYDER, without accurately and prominently disclosing the Respondent's relationship with the Complainant. Such use does not constitute a *bona fide* offering of goods or services (see section 2.8 of the [WIPO Overview 3.0](#)).

Furthermore, the nature of the disputed domain name, comprising the Complainant's mark in its entirety together with the term "stores", cannot be considered fair use as it effectively suggests an affiliation with the Complainant that does not exist (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Noting the above and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

As stated in many decisions rendered under the Policy (e.g., *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has established rights in the registered trademark SPYDER, long before the registration of the disputed domain name. Further, the Complainant has a strong Internet presence under its domain name <spyder.com> for years and the Respondent offers products marked with the Complainant's trademark for sale on its website addressed by the disputed domain name.

It is therefore inconceivable for this Panel that the Respondent registered the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's registered trademark entirely, together with the suffix "stores" which clearly refers to the Complainant's e-commerce business. All of which in fact indicate that the Respondent must have been aware of the Complainant's business and trademark when registering the disputed domain name.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The Complainant has put forward evidence that the disputed domain name resolves to a website which contains clothing branded with the Complainant's registered trademark and where the Respondent offers these for sale, without accurately and prominently disclosing the Respondent's relationship with the Complainant. In doing so, the Respondent has intentionally attempted to attract Internet users to his website for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of his website according to paragraph 4(b)(iv) of the Policy – this constitutes bad faith registration and use of the disputed domain name.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain name has been registered and is being used in bad faith under paragraph 4(a)(iii) of the Policy.

## 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 <spyderstores.com> be transferred to the Complainant.

*/Peter Burgstaller/*

**Peter Burgstaller**

Sole Panelist

Date: April 26, 2023