

ADMINISTRATIVE PANEL DECISION

Fox Factory, Inc. v. Christopher Rosch
Case No. DAU2025-0023

1. The Parties

The Complainant is Fox Factory, Inc., United States of America ("US"), represented by Patterson + Sheridan, LLP, US.

The Respondent is Christopher Rosch, Australia.

2. The Domain Name and Registrar

The disputed domain name <bds-suspension.com.au> is registered with Web Address Registration Pty Ltd (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 17, 2025. On June 18, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 20, 2025, 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.

The Center verified that the Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the "Policy" or ".auDRP"), the Rules for .au Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 30, 2025. In accordance with the Rules, paragraph 5(a), the due date for Response was July 20, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 24, 2025.

The Center appointed Rebecca Slater as the sole panelist in this matter on July 30, 2025. 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 US corporation. The Complainant provides products for vehicles (including vehicle suspension systems). It advertises and promotes its products in various jurisdictions, including Australia.

The Complainant holds Australian Trade Mark Registration No. 2057221 (registered July 20, 2020) for “BDS” word mark (the “Trade Mark”). The Complainant also holds Australian trade mark registrations for FOX (both as a word mark and as a logo mark), including Trade Mark Registration No. 2210199 (registered on March 1, 2023, with a priority date of March 15, 2021) (the “FOX Mark”). The Complainant uses the domain name <bds-suspension.com> for its main website.

The Respondent is an individual located in Australia. The Respondent operates a website that sells off-road suspension products. The Respondent did not submit a formal response, and consequently little additional information is known about the Respondent.

The disputed domain name was registered on November 6, 2022. The disputed domain name currently resolves to a website that references the Complainant’s trade marks, advertises products branded with the Trade Mark and with the FOX Mark, and advertises itself with the header “Australia’s Premium Dealer” next to the Complainant’s logos.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- The disputed domain name is confusingly similar to the Trade Mark. The disputed domain name includes the entirety of the Trade Mark with the descriptor “-suspension”.
- The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not and does not currently permit, license, authorize or give permission to the Respondent to use the Trade Mark. The Respondent has not been commonly known by the disputed domain name. The Respondent has not utilized the disputed domain name for a legitimate business purpose.
- The Respondent uses the disputed domain name for the purpose of disrupting the Complainant’s business. The use of the disputed domain name by the Respondent is an intentional attempt to attract Internet users to the disputed domain name by creating a likelihood of confusion. The Respondent uses the Complainant’s trade marks on the website at the disputed domain name and is selling suspension systems from the website at the disputed domain name. The Trade Mark is well-known in the relevant industry, and it is inconceivable that the Respondent was not aware of the Complainant’s trade marks.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights; and

- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered or subsequently used in bad faith.

The onus of proving these elements is on the Complainant even though the Respondent has not filed a response.

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 trade mark and the disputed domain name (see Overview of Panel Views on Selected auDRP Questions, Second Edition ("auDRP Overview 2.0"), section 1.7).

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy (see auDRP Overview 2.0, section 1.7.1).

The entirety of the Trade Mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Trade Mark for the purposes of the Policy (see auDRP Overview 2.0, section 1.7.1).

Although the addition of other terms (here, "-suspension") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the Trade Mark for the purposes of the Policy (see auDRP Overview 2.0, section 1.8).

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy provides that the Complainant must establish that the Respondent has no rights or legitimate interests in the disputed domain name. Paragraph 4(c) non-exhaustively lists circumstances that can demonstrate the Respondent's rights or legitimate interests in the disputed domain name.

In the Panel's view, the following establish a prime facie case against the Respondent:

- the Complainant has not licensed or otherwise authorized the Respondent to use the Trade Mark;
- there is no evidence to suggest that the Respondent might be commonly known by the disputed domain name; and
- the Respondent has not been making a bona fide use of the disputed domain name (for the reasons set out below).

The principles set out in *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) can be applied to unauthorized resellers to determine whether a respondent's commercial use of a domain name is a "fair use" (see section 2.8.6 of the auDRP Overview 2.0). Under the *Okidata* principles, a reseller or distributor can be making a bona fide offering of goods and services, and therefore have a legitimate interest in the domain name, if its use meets these requirements:

1. The respondent must actually be offering goods or services related to the trade mark or name in respect of which the domain name is confusingly similar.
2. The respondent must offer only those goods or services in connection with the domain name.
3. The respondent must have disclosed its true relationship with the owner of the trade mark or name to which the domain name is identical or confusingly similar, prior to notice of the dispute.
4. The respondent must not have attempted to "corner the market" in domain names that reflect the complainant's trade mark/name.

Applying these principles here:

1. The Respondent appears to be actually offering goods related to the Trade Mark.
2. The Respondent offers goods other than those related to the Trade Mark at the website to which the disputed domain name resolves. There are unbranded products for sale on the website. Additionally, the top righthand corner of the website states “BAJAKITS Coming Soon”. Baja Kits is a third party manufacturer of suspension systems.
3. The Respondent has not disclosed its true relationship with the Complainant. The Respondent's website does not state that the Respondent is not authorized to sell the Complainant's products. On the contrary, the website states “Rugged USA imports is the home of BDS Fox Aust.” thereby falsely implying a relationship or affiliation with the Complainant.
4. There is only a single disputed domain name at issue in this proceeding.

Due to the Respondent's failure to satisfy principles 2 and 3 above, the Panel finds that the Respondent has not established rights or legitimate interests in the disputed domain name.

The burden of production shifts to the Respondent to provide evidence of its rights or legitimate interests under paragraph 4(c) of the Policy (see, e.g., *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd*, WIPO Case No. [DAU2002-0001](#)). The Respondent has not provided any evidence to demonstrate its rights or legitimate interests in the disputed domain name.

Under these circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. The second element of the Policy is satisfied.

C. Registered or Subsequently Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the disputed domain name has been registered or subsequently used in bad faith.

Paragraph 4(b)(iv) of the Policy provides that using the domain name to intentionally attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that website or location or of a product or service on that website or location may be evidence of bad faith.

The Panel finds it highly unlikely that the disputed domain name was registered without knowledge of the Complainant and the Trade Mark, given the reputation of the Complainant, the content on the Respondent's website, and the composition of the disputed domain name. The Respondent's goal in registering and using the disputed domain name appears to be to attract Internet users by taking unfair advantage of the Trade Mark for potential gain. This finding is reinforced by: (a) the Respondent's use of the disputed domain name to host a website offering products which compete with the Complainant's products; and (b) the extensive use of the Trade Mark and the FOX Mark (in text and as logos) on that website. This amounts to “opportunistic bad faith” under the Policy.

The Panel finds the above constitutes registration and use of the disputed domain name in bad faith.

The Complainant succeeds on the third element of the Policy.

7. Decision

For all the foregoing reasons, in accordance with Paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name <bds-suspension.com.au> be transferred to the Complainant.

/Rebecca Slater/

Rebecca Slater

Sole Panelist

Date: August 7, 2025