Decision for dispute CAC-UDRP-106996

Case number	CAC-UDRP-106996
Time of filing	2024-11-08 15:53:16
Domain names	spidershoodies.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	King Spider LLC

Complainant representative

Organization	IP Law and Justice

Respondent

Name	Zahid KW

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has a US registered trade mark, no Reg. No. 6,681,320, for a figurative mark with the stylised word element, “SP5DER”, registered in int. class 25 for Coats; Dresses; Hats; Headbands; Jeans; Sandals; Shirts; Shoes; Shorts; Slacks; Suits; Sweatshirts; T-shirts; Bucket hats; Jackets; Sweat pants; Track suits. It was applied for on 27 November 2021 and granted on 22 March 2022.

It has a domain name that has been in use in trade and is <kingspider.co>.

FACTUAL BACKGROUND

The Complainant, King Spider LLC., was founded in 2019. Its website says “SP5DER is a lifestyle brand based out of Los Angeles by way of Atlanta. The brand is a visual commentary on the pulse of the south. A loud, boisterous sense of self-expression inspired by Atlanta and the community that shapes it. Designed from a luxury perspective with a punk spirit, Sp5der stands at the juxtaposition of nostalgia and invention. KingSpider.Co is the only official website of the Sp5der brand. Our Instagram handle is @sp5derworldwide. Beware of the many websites selling inauthentic Sp5der products.” It seems its website is at https://kingspider.co.

The Registrar has confirmed that the disputed domain name, <spidershoodies.com>, was registered on 29 June 2024 and that the

Respondent is a Zahid KW of 611 Parkway F15, 611 Parkway F15, Gatlinburg, TN, US, 37738. No further information is available.

The Panel visited the disputed domain name on 31 December 2024 and it resolved to https://sp5dershoodies.us/. That has the following company name: Company name. ROPAFINA, S.L.CIF: B 16384638, Address: Carrer de Teulada número 2. Planta 4.Piso 3. 08019 Barcelona Spain, E-mail: ropafina1@gmail.com and E-mail: support@sp5dershoodies.us.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

All domain name registrants must agree to resolve disputes under the UDRP (the Policy) if they are “Applicable Disputes.” This is a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that “(i) [the] domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and (ii) [you/the respondent has/] have no rights or legitimate interests in respect of the domain name; and (iii) [you/the respondent’s] domain name has been registered and is being used in bad faith.” In the administrative proceeding, the complainant must prove that each of these three elements are present.

As to the first element, the Complainant says it has registered rights and rights arising from use in the stylised word element being “SP5DER.”

As the WIPO overview v.3 explains, the test at this first limb of the Policy is “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 domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. (This may also include recognizability by technological means such as search engine algorithms.) In some cases, such assessment may also entail a more holistic aural or phonetic comparison of the complainant’s trademark and the disputed domain name to ascertain confusing similarity.”

Here for the similarity analysis, we are comparing SP5DER and spidershoodies.com. Identity is a very strict test and is not met. The suffix is always ignored so the .com is not relevant. So, we are looking at SP5DER and spidershoodies. However, the term “hoodies”

is generic or descriptive and not strictly relevant to the analysis so the focus is on SP5DER and spider. They are visually similar, the only difference being the character 5 instead of i. One can distinguish between them. Both use the common word. They are conceptually similar. They are phonetically similar. The Panel finds the Complainant has rights in a name or mark that is confusingly similar to the disputed domain name.

As to the second factor, although there is no response, we must still consider the issues. There is no default judgment under the Policy. On the face of it, as Spider is a common term, others will have a legitimate interest in using it for its informational value. While trade marks are badges of origin that enable the public to identify the goods and services of a trader so they can make a repeat purchase safe in the knowledge that the quality should be the same the second time around, an ordinary word or number cannot function in that way for obvious reasons. That is, unless they have what we call “acquired distinctiveness” or secondary meaning so that it is the brand that the relevant public bring to mind and not the common word or dictionary term. In their original meaning, they remain the property of and available to, all. This forms the basis of the prohibition on descriptive and generic marks which recognises that many traders want to use descriptive terms for their informational values and that no one trader should be able to monopolise them. Those selecting such terms as marks have to tolerate confusion and the Policy reflects this by protecting such as fair or legitimate use. Furthermore, consumers are not easily confused by such terms as they understand they are common ordinary terms, employed by many undertakings, with a low degree of distinctiveness.

So here the issue is whether the Respondent is fairly using the word in and for its original meaning, or whether he is unfairly free-riding on and leveraging the secondary meaning – and so the goodwill and reputation of the Complainant. The evidence suggests that in this case, it is very much the later. The evidence of the site to which the disputed domain name resolved showed that the stylised version with the “5” instead of the “I” was used on the website itself and it stated that it was the Official Site. The goods are the same. The Panel visited the disputed domain name on 31 December 2024 and it resolved to https://sp5dershoodies.us/. Therefore the 5 shows in the domain and it was also used on the page in curved form – exactly as registered by the Complainant and also in a heading on the top of the page. This is not fair and legitimate use. Nor has the Respondent come forward to claim that it is. The Panel finds the Complainant has made out this limb of the Policy. For the same reasons, the Panel finds that the disputed domain name was registered and is used in Bad Faith. The Complainant has satisfied all three elements of the Policy and transfer is ordered.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **spidershoodies.com**: Transferred

PANELLISTS

Name	**Victoria McEvedy**

DATE OF PANEL DECISION 2024-12-31

Publish the Decision