



Asian Domain Name Dispute Resolution Centre

seoul

(Seoul Office)

ADMINISTRATIVE PANEL DECISION

Case No.: KR-2400263

Complainant: Spigen Korea Co., Ltd., represented internally.

Respondent: Jie Zhu

Disputed Domain Name: [spigencase.com]

1. The Parties and Contested Domain Name

The **Complainant** is Spigen Korea Co., LTD., Seoul, Republic of Korea.

The **Respondent** is Jie Zhu, Jiangsu, China.

The **Disputed Domain Name** is <spigencase.com>, which is registered with Chengdu West Dimension Digital Technology Co., Ltd..

2. Procedural History

The Complaint was filed with the Seoul Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC; the “Centre”) on August 20, 2024, seeking a transfer of the Disputed Domain Name.

The Centre verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for the Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the Centre’s Supplemental Rules for the Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

On August 22, 2024, the Centre sent an email to the Registrar asking for detailed data on the registrant. On August 22, 2024, the registrar, Chengdu West Dimension Digital Technology, sent the Centre its response, noting that the language of the registration agreement is Chinese, verifying the Respondent is listed as the registrant, and providing the contact details.

In accordance with the Rules, the Centre formally notified the Respondent of the Complaint. The proceedings commenced on August 26, 2024, and the deadline for the Response was set for September 15, 2024. The Centre received no response from the Respondent.

On September 19, 2024, the Centre appointed Mr. Ho-Hyun Nahm as Sole Panelist in the administrative proceeding, and after Mr. Nahm consented to the appointment and declared his impartiality and independence, the Centre, in accordance with Paragraph 7 of the Rules, organized the Panel for this case in a legitimate way.

3. Factual background

A. Complainant

The Complainant is a company incorporated in the Republic of Korea and a manufacturer of mobile accessories, including cases for mobile phones, tablet PCs, and smartwatches, which are marketed and sold under the trademark SPIGEN.

B. Respondent

The Respondent is a Chinese individual.

4. Preliminary Issue: Language Of Proceedings

The Panel notes that the Registration Agreement is written in Chinese, thereby making the language of the proceedings in Chinese. Complainant has alleged that because Respondent is conversant and proficient in English, the proceeding should be conducted in English. The Panel has the discretion under UDRP Rule 11(a) it has the

discretion to determine the appropriate language of the proceedings taking into consideration the particular circumstances of the administrative proceeding. *See FilmNet Inc. v Onetz*, FA 96196 (Forum Feb. 12, 2001 (finding it appropriate to conduct the proceeding in English under Rule 11, despite Korean being designated as the required language in the registration agreement because the respondent submitted a response in English after receiving the complaint in Korean and English). The Complainant asserts that the Respondent operates its website, associated with the disputed domain name, in English, and therefore, proceeding with the dispute in English should not impose any undue burden or hardship on the Respondent. In the absence of a Response and with no objection to the Complainant's request regarding the language of the proceeding, after considering the circumstances of the case, the Panel, pursuant to UDRP Rule 11(a), determines that English shall be the language of the proceeding.

5. Parties' Contentions

A. Complainant

- (i) The Complainant holds rights to the SPIGEN trademark in various countries, including China, where the Respondent resides, through, among other means, its registration of the mark with the Korean Intellectual Property Office ("KIPO") (*e.g.*, Reg. No. 40-0948809, registered on January 15, 2013).
- (ii) The disputed domain name is identical or confusingly similar to the "SPIGEN" trademark, in which the Complainant holds rights.
- (iii) The Respondent should be considered as having no rights or legitimate interests in relation to the disputed domain name.
- (iv) The Respondent's activities, which infringe on the Complainant's trademark, are unlawful and should be prevented by law. Based on the evidence gathered by the authority, the disputed domain name should be deemed to have been registered and used in bad faith.

B. Respondent

The Respondent did not submit a Response in this proceeding.

6. Findings

- (i) The disputed domain name was registered on November 5, 2023.
- (ii) The Complainant has established its rights to the SPIGEN trademark in various countries, including China, where the Respondent resides, through, among other things, its registration of the mark with the KIPO (*e.g.*, Reg. No. 40-0948809, registered on January 15, 2013).
- (iii) The website to which the disputed domain name resolves prominently displays the Complainant's SPIGEN trademark and offers unauthorized phone cases for various brands for sale.
- (iv) Actual consumer confusion has occurred.

7. Discussions

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (i) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and

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

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. *See* WIPO Jurisprudential Overview 3.0 at section 4.3; *see also eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire*, FA 157287 (Forum June 26, 2003) (“Because Complainant did not produce clear evidence to support its subjective allegations [. . .] the Panel finds it appropriate to dismiss the Complaint”).

A) Identical / Confusingly Similar

The Panel notes that the Complainant holds trademark rights for SPIGEN in various countries, including China, where the Respondent resides, through, among other things, its registration of the mark with the KIPO (*e.g.*, Reg. No. 40-0948809, registered on January 15, 2013). Registration of a mark with national trademark authorities constitutes valid proof of rights in a mark. Since the Complainant has provided evidence of its trademark registrations, the Panel finds that the Complainant has established rights in the relevant marks under Policy paragraph 4(a)(i).

The Complainant further contends that the disputed domain name <**spigencase.com**> is confusingly similar to the Complainant's SPIGEN mark. The Panel observes that the addition of a generic or descriptive term, along with a gTLD, generally does not sufficiently distinguish a disputed domain name from a trademark under Policy ¶ 4(a)(i). *See Microsoft Corporation v. Thong Tran Thanh*, FA 1653187 (Forum Jan. 21, 2016) (determining that confusing similarity exists where [a disputed domain name] contains Complainant's entire mark and differs only by the addition of a generic or descriptive phrase and top-level domain, the differences between the domain name and its contained trademark are insufficient to differentiate one from the other for the purposes of the

Policy). The Panel notes that the disputed domain name incorporates the Complainant's SPIGEN mark in its entirety and merely adds the descriptive term "case" and the ".com" gTLD. Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's mark under Policy paragraph 4(a)(i).

B) Rights and Legitimate Interests

Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii), then the burden shifts to Respondent to show it does have rights or legitimate interests. *See* Section 2.1, WIPO Jurisprudential Overview 3.0 ("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.").

The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant points out that it has never had any business relationship with the Respondent and that the Respondent could not possibly have been commonly known by the disputed domain name. The Panel observes that relevant information, such as WHOIS data, can be used as evidence to show whether a respondent is commonly known by the disputed domain name under Policy paragraph 4(c)(ii). The Panel notes that the WHOIS information lists "Jie Zhu" as the registrant, and there is no evidence in the record to suggest that the Respondent was authorized to use the mark. Therefore, the Panel finds that the Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).

The Panel further notes that the website associated with the disputed domain name prominently displays the Complainant's SPIGEN trademark and offers unauthorized phone cases for various brands. Passing off as the Complainant does not constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use under

Policy paragraph 4(c)(i) or (iii). *See Ripple Labs Inc. v. Jessie McKoy / Ripple Reserve Fund*, FA 1790949 (Forum July 9, 2018) (finding the respondent did not use the domain name to make a *bona fide* offering of goods or services per Policy paragraph 4(c)(i) or for a legitimate noncommercial or fair use per Policy paragraph 4(c)(iii) where the website resolving from the disputed domain name featured the complainant's mark and various photographs related to the complainant's business); *see also Wolverine World Wide, Inc. v. Fergus Knox*, FA 1627751 (Forum Aug. 19, 2015) (finding no *bona fide* offering of goods or legitimate noncommercial or fair use existed where Respondent used the resolving website to sell products branded with Complainant's MERRELL mark, and were either counterfeit products or legitimate products of Complainant being resold without authorization).

The Complainant emphasizes that the Respondent's website prominently displays the Complainant's SPIGEN mark and various photographs showing the use of cases for different phone products, supported by a screenshot of the website associated with the disputed domain name. The Panel finds that the Respondent creates a false sense of legitimacy intended to mislead consumers into believing it is related to or affiliated with the Complainant, when in fact it is not. Therefore, the Panel concludes that the Respondent is not making a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use, as per Policy paragraph 4(c)(i) or (iii).

The Panel finds that the Complainant has made out a *prima facie* case that arises from the considerations above. All of these matters go to make out the *prima facie* case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the *prima facie* case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C) Bad Faith

The Complainant asserts that the disputed domain name should be considered as having been registered and used in bad faith, as the Respondent, by registering the domain name, intentionally sought to attract Internet users to its website by creating a

likelihood of confusion with the Complainant's mark regarding the source, sponsorship, affiliation, or endorsement of the Respondent's website or the products and services offered on it. The Respondent presents goods and services as if it were the Complainant or its official distributor, thereby profiting unlawfully from its infringing activities. Additionally, the Respondent uses product images from the official SPIGEN website and the Amazon SPIGEN Store (thereby infringing the Complainant's copyrights) to attract customer attention and unlawfully profits from distributing products through the website associated with the disputed domain name.

The Panel finds that passing off as the Complainant while offering to sell competing products constitutes evidence of bad faith registration and use under Policy paragraphs 4(b)(iii) and 4(b)(iv). *See Ontel Products Corporation v. waweru njoroge*, FA1762229 (Forum December 22, 2017) (“Respondent’s primary offering seem to be counterfeits of Complainant’s toy car products. Respondent’s use of the <magictrackscars.com> domain name is thus disruptive to Complainant’s business per Policy paragraph 4(b)(iii)”); *see also Russell & Bromley Limited v. Li Wei Wei*, FA 1752021 (Forum Nov. 17, 2017) (finding the respondent registered and used the at-issue domain name in bad faith because it used the name to pass off as the complainant and offer for sale competitive, counterfeit goods). The Panel recalls that the Complainant provides a screenshot of the disputed domain name’s resolving website. Furthermore, the Panel notes that the Complainant has provided evidence that actual confusion among consumers has occurred. Therefore, the Panel finds that Respondent registered and is using the disputed domain name in bad faith under Policy paragraph 4(b)(iv).

8. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**. Accordingly, it is Ordered that the domain name <spigencase.com> be **TRANSFERRED** from the Respondent to the Complainant.



Ho-Hyun Nahm

Sole Panelist

Dated: September 27, 2024