



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2201656
Complainant:	Rextec International Ltd.
Respondent:	Sazid Rahman
Disputed Domain Name(s):	<spinfitbd.com>

1. The Parties and Contested Domain Name

The Complainant is Rextec International Ltd., of 3F., No. 163, Sec. 1, Zhongcheng Rd., Shilin Dist., Taipei City, Taiwan.

The Respondent is Sazid Rahman, of 38/a, Dhaka, Dhanmo, 1209, Bangladesh.

The domain name at issue is spinfitbd.com, registered by Respondent with Namecheap, Inc., of 4600 East Washington Street, Suite 305, Phoenix, AZ 85034, USA.

2. Procedural History

On 1 September 2022, the Complainant filed a Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (“**ADNDRC**”), pursuant to the Uniform Domain Name Dispute Resolution Policy (“**Policy**”) approved by the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (“**Rules**”), approved by ICANN Board of Directors on 28 September 2013 and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“**Supplemental Rules**”) effective from 31 July 2015. The Complainant chose to have a sole panelist to handle the dispute.

On 1 September 2022, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same day, the Registrar transmitted by email to the ADNDRC its verification response confirming that the contact details of the registrant were masked in the public WHOIS and, thus, providing the underlying registration information. On 2 September 2022, the ADNDRC notified the Complainant of the deficiencies in the Complaint. On 5 September 2022, the Complainant filed an amended Complaint. The ADNDRC formally notified the Respondent of the Complaint and the proceedings commenced on 8 September 2022. On 28 September 2022, the ADNDRC received the Response from the Respondent. On the same day, the ADNDRC notified the Respondent of the deficiencies in the Response concerning the selection of the panel. The Respondent replied electing to have the case decided by a single-member panel.

On 29 September 2022, the ADNDRC appointed Ivett Paulovics as sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that she is able to act independently and impartially between the parties.

3. Factual background

The Complainant is a company based in Taiwan, active in designing, manufacturing and commercializing ear tips, earphones and speakers worldwide under the SPINFIT trademark.

The Complainant is owner of various registered trademarks, including:

- US trademark “SPINFIT” (word) no. 5426486, filed on 3 July 2017 (first use on 17 December 2011, in commerce since 2 May 2012), registered on 20 March 2018, in class 9
- US trademark “SPINFIT” (device) no. 4822395, filed on 2 May 2012 (first use and in commerce since 1 July 2015), registered on 29 September 2015, in class 9
- Malaysian trademark “SPINFIT” (device) no. 2017054796, registered since 22 March 2017, in class 9
- Chinese trademark “SPINFIT” (device) no. 11121902, registered since 28 February 2014, in class 9
- European Union trademark “SPINFIT” (device) no. 013528229, filed on 4 December 2014, registered on 30 March 2015, in class 9.

The Complainant’s above-mentioned rights are hereinafter collectively referred to as the SPINFIT Trademark.

The Complainant also submitted documentary evidence of additional trademarks, among which:

- Singaporean trademark “SPINFIT” (device) no. 40201605721T
- Australian trademark “SPINFIT” (device) no. 1856231
- Indian trademark “SPINFIT” (device) no. 3635527

all owned by Ji Cheng International Limited, a third-party with respect to the Complainant. Since these trademarks have nothing to do with the Complainant, the Panel has not considered them in the present proceeding.

Finally, the Complainant submitted documentary evidence of a Korean trademark (no. 40-1012882), a Japanese trademark (no. 5561281), and a Taiwanese trademark (no. 01553673) with no translation in English. Paragraph 11 of the Rules provides that the language of the administrative proceeding shall be the language of the registration agreement of the disputed domain name (in the present case English), subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding (e.g., nationality of the parties). The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding. On the other hand, Paragraph 10(c) of the Rules provides that the Panel shall ensure that the administrative proceeding takes place with due expedition. Taken into account that the Complainant has sufficiently demonstrated to have rights in the SPINFIT Trademark, the Panel considers unnecessary to order the Complainant to submit the documents submitted in Korean, Japanese and Taiwanese translated into English, but it has not considered those documents in the present proceeding.

The Respondent is an individual residing in Bangladesh. The Respondent bought the Complainant’s products with the intention to resell them. He registered the disputed

domain name on 17 March 2022 with privacy / proxy service. The disputed domain name resolves to a website displaying the Complainant's trademarks and products.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The SPINFIT Trademark, created in 2007 and registered in numerous countries, has acquired reputation with reference to ear tips and earphones.
- ii. The disputed domain name incorporates in its entirety the SPINFIT Trademark with the mere addition of the letters "BD", standing for Bangladesh and therefore is confusingly similar to such mark.
- iii. The website to which the disputed domain name resolves is a copycat version of the Complainant's main website, containing the photos of the Complainant's products protected by copyright.
- iv. The Complainant has not given any permission or authorization to the Respondent to use its SPINFIT Trademark or register the disputed domain name.
- v. The Respondent has not only registered the disputed domain name confusingly similar to the Complainant's trademark, but also uses the same in bad faith for a website that displays the Complainant's trademark and the photos of the Complainant's products, exploiting thus the Complainant's reputation to attract Internet users to his website.
- vi. The Respondent has also activated a social media account (<https://www.facebook.com/SpinfitBangladeshofficial>) where the disputed domain name and the associated website is cited under the information section.

B. Respondent

The Respondent's contentions may be summarized as follows:

- i. The Respondent purchased the Complainant's products with the intention to resell them. For this reason, he registered the disputed domain name and built a website related to the Complainant's products.
- ii. The disputed domain name is different from the Complainant's trademark, due to the presence of the additional letters "BD".
- iii. The Respondent has rights and legitimate interests to the disputed domain name, since he purchased the Complainant's products.
- iv. The Respondent's intention was to boost the sale of the Complainant's products.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The Complainant has established that it has rights in the SPINFIT Trademark since 2012.

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademarks 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. While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for the purposes of the first element of the Policy (see paragraph 1.7 of WIPO Overview 3.0).

UDRP panels have consistently found that the addition of letters or other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to the relevant trademark, recognizable within the disputed domain name, would not prevent a finding of confusing similarity under the first element (see paragraph 1.8 of WIPO Overview 3.0 and the decisions cited thereto).

The TLD is to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark, as it is a technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0 and the decisions cited thereto).

The disputed domain name consists of the term "SPINFIT", the letters "BD" (which might indicate Bangladesh, the country where the Respondent resides), and the .com TLD. The addition of the non-distinctive and descriptive (geographic) letters "BD" neither affects the attractive power of the Complainant's SPINFIT Trademark, nor is it sufficient to prevent the finding of confusing similarity between the disputed domain name and such mark.

The content of the website associated with the domain name is usually disregarded by UDRP panels when assessing confusing similarity under the first element. In some instances, panels have however taken note of the content of the website associated with a domain name to confirm confusing similarity whereby it appears prima facie that the respondent seeks to target a trademark through the disputed domain name (see paragraph 1.9 of WIPO Overview 3.0 and the decisions mentioned thereto).

In the dispute at hand, considered that the disputed domain name resolves to a website displaying the Complainant's SPINFIT Trademark and related to the Complainant's products, it is clear that the Respondent had in his mind the Complainant, its activities and the SPINFIT Trademark, and intended to create confusion with such mark by registering the disputed domain name.

Therefore, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's trademark.

B) Rights and Legitimate Interests

It is a consensus view of UDRP panels that the complainant shall establish a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name to

shift the burden of proof to the respondent (see paragraph 2.1 WIPO 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.").

At the moment of the filing of the Complaint, the identity of the disputed domain name's registrant was hidden. Upon the ADNDRC's request for registrar verification, the Registrar disclosed the underlying registration data, identifying as registrant Sazid Rahman, an individual residing in Bangladesh.

The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's SPINFIT Trademark or to register the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

UDRP panels have largely held that the composition of domain names consisting of a trademark plus an additional term (e.g., geographic) cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see paragraph 2.5.1 of WIPO Overview 3.0).

The disputed domain name, confusingly similar to the Complainant's SPINFIT Trademark, since it incorporates such mark in its entirety by merely adding the letters "BD", carries a high risk of implied affiliation.

The disputed domain name has been used for a website that marketed, promoted and offered for sale various SPINFIT products. From the screenshot of the website related to the disputed domain name and provided by the Complainant, it is clear that the website contains pictures of the Complainant's products and various sections referring to the Complainant's business and products. It appears to be an online shop targeting consumers in Bangladesh (indeed, on the website the script "Bangladesh" is displayed under the device trademark of the Complainant). It is unclear whether the products offered via the website by the disputed domain name were genuine or fake. With his Response the Respondent provided invoice and correspondence, claiming that his products were original and purchased from the Complainant. The Panel notes that the Respondent could potentially have been a reseller (even an unauthorized one) of the Complainant's products and even unauthorized resellers can have rights or legitimate interests in the domain name, deriving from Paragraph 4(c)(i) of the Policy (which provides that the registrant has rights and legitimate interests if it has used the domain name in connection with a bona fide offering of goods and services), under the "Oki data" test (see *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903 and par. 2.8.1 of the WIPO Overview 3.0). However, this is not the case in the dispute at hand, as the Respondent did not meet the requirements of the "Oki data" test by failing to "accurately and prominently disclose the registrant's relationship with the trademark holder". From the provided screenshot there is no information on the Respondent's website about the relationship with the Complainant. Moreover, the website looks very similar to the Complainant's main website: <https://spinfiteartip.com/?lang=en>. The Panel also notes that, in applying the "Oki data" test, the risk of misrepresentation has led panels to find that a respondent lacks rights or legitimate interests in cases involving a domain name identical to the complainant's trademark (see par. 2.8.2 of the WIPO Overview 3.0). As already mentioned, the disputed

domain name and the Complainant's mark are confusingly similar, as the SPINFIT Trademark is fully incorporated in the disputed domain name and the addition of the "BD" letters actually increases confusion with the Complainant's own website. The overall look and feel of the Respondent's website increases confusion and creates an impression that such website is somehow affiliated with the Complainant.

Therefore, the Panel finds that the use of the disputed domain name by the Respondent is clearly not a bona fide offering of goods or services or legitimate noncommercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's mark under the Policy.

The Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

C) Bad Faith

The disputed domain name has been registered and is being used in bad faith for the following cumulative reasons.

The Respondent has used a privacy / proxy service when registering the disputed domain name. Although the use of such service is not in and of itself an indication of bad faith, the circumstances and the manner in which such service is used may however impact a panel's assessment of bad faith (see paragraph 3.6 of WIPO Overview 3.0).

The Respondent has registered the disputed domain name which is to be considered confusingly similar to Complainant's SPINFIT Trademark, since it incorporates such mark in its entirety and differs from it merely by adding the non-distinctive and descriptive (geographic) letters "BD" (which refers to Bangladesh where the Respondent resides), and the TLD .com (which is disregarded for the purpose of determination of confusing similarity between the disputed domain name and the trademarks of the Complainant as it is a technical requirement of registration).

Given the distinctiveness and reputation of the Complainant's prior mark, it is inconceivable that the Respondent could have registered the disputed domain name for a mere chance without actual knowledge of the Complainant's rights in such mark and the intention to exploit such reputation by diverting traffic away from the Complainant's website.

The disputed domain name resolves to a website, displaying the SPINFIT Trademark and related to the Complainant's products. Moreover, the Respondent has also activated a social media account comprising the Complainant's trademark (<https://www.facebook.com/SpinfitBangladeshofficial>). This clearly evidences the Respondent has targeted the Complainant and its trademark through the disputed domain name by impersonating or falsely suggesting sponsorship or endorsement by the Complainant.

The Respondent's conduct makes it clear that he has registered and has been using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to his website or other on-line location, by creating a likelihood of confusion with the Complainant's SPINFIT Trademark as to the source, sponsorship, affiliation, or endorsement of his website or location or of a product or service on his website or location (paragraph 4(b)(iv) of the Policy).

Finally, the Respondent has also violated the paragraph 2 of Policy (“By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in your Registration Agreement are complete and accurate; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to determine whether your domain name registration infringes or violates someone else's rights”).

Taken into account all circumstances of this case, the Panel finds that the Complainant has discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the Policy).

6. Decision

For all the reasons above, the Complaint is accepted and, since the Complainant requested the cancellation of the disputed domain name, the disputed domain name is to be cancelled.



Ivett Paulovics
Panelist

Dated: 11 October 2022