

## ADMINISTRATIVE PANEL DECISION

Sodexo v. Evgeniy Erokhin

Case No. D2022-0740

### 1. The Parties

The Complainant is Sodexo, France, represented by Areopage, France.

The Respondent is Evgeniy Erokhin, Russian Federation.

### 2. The Domain Name and Registrar

The disputed domain name <jesodexog.xyz> is registered with Sav.com, LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 3, 2022. On March 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 3, 2022, the Registrar transmitted by email to the Center its verification response:

- (a) confirming it is the Registrar for the disputed domain name;
- (b) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint; and
- (c) confirming that English is the language of the registration agreement.

The Center sent an email communication to the Complainant on March 7, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

On March 8, 2022, the Center received an email in English from the email account which the Registrar had identified as the email account of the registrant of the disputed domain name. The email requested information about the dispute. The Center replied noting that it was still verifying that the Complaint complied with the requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”) and the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) and directed attention to the online guidelines for preparing a Response.

The Complainant filed an amended Complaint on March 12, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the 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 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 5, 2022. No further response was received from the Respondent. Accordingly, the Center notified the Parties that it would appoint the panel on April 6, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on April 12, 2022. 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 was established in France in 1966 under the name Sodexho Alliance. It changed its name to the current spelling, Sodexo, in 2008.

The business of the Complainant is the provision of foodservices and facilities management. It has some 420,000 employees operating in 64 countries and serving 100 million customers. According to the January 2020 "infographic" included in Annex 5 to the Amended Complaint, the Complainant's corporate group had revenues of

- (a) almost 20.7 million Euros in its 2017 fiscal year;
- (b) 20.4 million Euros in its 2018 fiscal year; and
- (c) almost 30 million Euros in its 2019 fiscal year.

The Complainant derived 45 *percent* of its revenues from North America, 39 *percent* from Europe and 16 *percent* from Africa, Asia, Australia, Latin America and the Middle East.

The Complainant promotes its services from a number of domain names or sub-domains including <sodexo.com>, <sodexousa.com>, <us.sodexo.com>, <uk.sodexo.com>, <sodexoprestige.co.uk>, <sodexo.fr>, <sodexoca.com>, <cn.sodexo.com>, <sodexho.fr>, <sodexho.com>. Some of these redirect to the website hosted at <sodexo.com>.

At least when the Complaint was filed, the Complainant was promoting its services in the Russian Federation from a website at the sub-domain <ru.sodexo.com> and "https://www.sodexobenefits.ru", both in Russian.

The Complaint includes evidence that the Complainant owns numerous registered trademarks. For present purposes, it is sufficient to note:

- (1) European Union Trademark (EUTM) No. 006104657, SODEXO and star device, which was registered on June 27, 2008 with effect from July 16, 2007 in respect of a wide range of goods and services in International Classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45;
- (2) EUTM No. 008346462, SODEXO, which was registered on February 4, 2010 with effect from June 8, 2009 in respect of a wide range of goods and services in the same classes as EUTM No. 006104657;

- (3) International Registration No. 964615, SODEXO and star device, which was registered in the same classes of goods and services on January 8, 2008 designating Armenia, Australia, Azerbaijan, Bosnia and Herzegovina, Bahrain, Belarus, Switzerland, China, Algeria, Egypt, European Union, Islamic republic of Iran, Iceland, Israel, Japan, Kyrgyzstan, Democratic People's Republic of Korea, Republic of Korea, Kazakhstan, Lesotho, Morocco, Monaco, Republic of Moldova, Montenegro, Mongolia, Republic of Namibia, Norway, Serbia, Russian Federation, Singapore, Turkey, Ukraine, United States of America, Uzbekistan and Viet Nam; and
- (4) International Registration No. 1240316, SODEXO, which was registered in the same classes of goods and services on October 23, 2014 and designating the United Kingdom, Ireland and Mozambique.

The Complaint also includes evidence of registered trademarks for SODEXHO dating from 1998.

According to a Whois report, the disputed domain name was registered on November 2, 2021 and last updated on November 7, 2021.

At the time the Complaint was filed, the disputed domain name resolved to a website promoting an escort service and pornography.

## **5. Discussion and Findings**

No formal response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules and, as noted above, an email was received by the Center from the email account confirmed as the Respondent's email address by the Registrar. The Panel finds that the Respondent has been given a fair opportunity to present his or its case.

Paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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 respect of 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**

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of numerous registered trademarks including the registered trademarks identified in section 4 above.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of “likelihood of confusion” under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. e.g. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain (“gTLD”) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

In addition, it is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10. But that is not the case here.

Disregarding the “.xyz” gTLD and the star device in some of the Complainant’s registered trademarks, the disputed domain name consists of the Complainant’s registered trademark and the term “je” as a prefix and the letter “g” as a suffix. As this requirement under the Policy is essentially a standing requirement, the addition of these elements does not preclude a finding of confusing similarity. See e.g. [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant’s trademark remains visually and aurally recognisable within the disputed domain name.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

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

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an

evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

The Respondent registered the disputed domain name after the Complainant had registered its trademark and also after the Complainant began using its trademark.

As the disputed domain name is, or was being, used to promote an escort service and pornography, there can be no suggestion that the Respondent's use is a legitimate noncommercial or fair use for the purposes of paragraph 4(c)(iii) of the Policy.

The Complainant's trademark appears to be an invented or coined term. It certainly does not appear to be descriptive of the type of services which were being offered by the Respondent from the website to which the disputed domain name resolved. Accordingly, its incorporation into the disputed domain name cannot be explained by the nature of the services being offered at the website.

It has repeatedly been held under the Policy that the use of someone else's trademark (without their permission) to promote pornography does not constitute an offer of goods or services in good faith under the Policy. See e.g. *Autodesk, Inc. v. Super Privacy Service LTD c/o Dynadot / 小林 王*, WIPO Case No. [D2022-0360](#); *International Business Machines Corporation v. chenaibin*, WIPO Case No. [D2022-0339](#) and *Genadi Man v. Yinghua Zhao, Tiaoguomaogu*, WIPO Case No. [D2021-3229](#). No doubt in many jurisdictions escort services and the provision of pornography may be legitimate business (although in others they may not be). Nonetheless, the use of someone else's trademark to attract custom to the pornography site without the trademark owner's permission may well tarnish the reputation of the trademark and is in any event an impermissible attempt to take advantage of the trademark's reputation and goodwill. Neither is legitimate conduct under the Policy.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

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

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

As already noted, the Complainant's trademark appears to be an invented or coined term and does not appear to be descriptive of the services that were being offered from the Respondent's website and, so far as the record in this case discloses, has no connection with the Respondent or any name by which he is known.

Accordingly, it appears highly likely that the Respondent was well aware of the Complainant's trademark when he incorporated it into the disputed domain name. That conclusion is reinforced by the fact the Complainant's trademark has been found to be a well-known trademark in numerous prior decisions under the Policy.

Given the short time between the registration of the disputed domain name and its use for the escort services / pornographic website, the Panel readily infers the Respondent registered the disputed domain name for the purpose for which it has been used.

The reasons which lead to the conclusion that the Respondent does not have rights or legitimate interests in the disputed domain name, therefore, also lead to the findings that the Respondent registered and has been using the disputed domain name in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

## **6. 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, <jesodexog.xyz>, be transferred to the Complainant.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: April 25, 2022