

## **ADMINISTRATIVE PANEL DECISION**

Sodexo v. 冉茂明 (Mao Ming Ran)

Case No. D2022-0767

### **1. The Parties**

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

The Respondent is 冉茂明 (Mao Ming Ran), China.

### **2. The Domain Name and Registrar**

The disputed domain name <s0dxe0.cyou> (the “Domain Name”) is registered with West263 International Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 4, 2022. On March 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 7, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. 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. The Complainant filed an amended Complaint in English on March 12, 2022.

On March 7, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 10, 2022, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution 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 in English and Chinese of the Complaint, and the proceedings commenced on March 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 4, 2022.

The Center appointed Karen Fong as the sole panelist in this matter on April 15, 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, a French company founded in 1966, specialises in food services and facilities management. It has 420,000 employees serving 100 million consumers in 64 countries including China. In 2020, its consolidated revenues reached EUR 19.3 billion.

The Complainant's services are provided under the name Sodexo. Trade mark registrations for SODEXO include International Registration No. 1240316, registered on October 23, 2014, and International Registration No. 964615, registered on January 8, 2008, which designates many jurisdictions including China (the "Trade Mark").

Based on the available record, the Respondent is an individual based in China. The Domain Name was registered on February 17, 2022, and resolves to an inactive website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the Domain Name is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name was registered and is being used in bad faith. The Complainant requests transfer of the Domain Name.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **A. General**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (i) The Domain Name is identical or confusingly similar to trade marks or service marks in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) The Domain Name was registered and is being used in bad faith.

## **B. Language of Proceeding**

The Rules, paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

The Complainant submits that the language of the proceeding should be English for the following reasons:

- The Domain Name is in Latin script rather than Chinese characters which indicate that the Respondent is able to understand the English language;
- The Complainant has no knowledge of the Chinese language;
- Requiring the Complainant to translate the Complaint into Chinese and to conduct the proceeding in Chinese would result in substantial expenses for the Complainant and unwarranted delay of the proceeding.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time and costs.

The Panel accepts the Complainant's submissions regarding the language of the proceeding. The Respondent has not challenged the Complainant's request and in fact has failed to file a Response. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner. In this case, the Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. The Panel notes that all of the communications from the Center to the Parties were transmitted in both Chinese and English. In all the circumstances, the Panel determines that English be the language of the proceeding.

## **C. Identical or Confusingly Similar**

The Panel is satisfied that the Complainant has established that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the Domain Name contains the Trade Mark but with the letters "o" in the mark replaced by the numeral "0" and the letters "e" and "x" swapped round. It is well established that domain names which consist of a common, obvious, or intentional misspelling of a trade mark is considered to be confusingly similar to the relevant mark for the purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark (see section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). This is a typical typosquatting case as the Domain Name is clearly a misspelling of the Trade Mark and the Trade Mark is easily recognizable within the Domain Name.

For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the Top-Level Domain which in this case is ".cyou". It is viewed as a standard registration requirement (section 1.11.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Domain Name is confusingly similar to trade marks in which the Complainant has rights, and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

#### **D. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in the domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with some allegations of evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that it is not affiliated with the Respondent and has not licensed or otherwise authorized the Respondent to use the Trade Mark or register the Domain Name or any domain name. It would not appear that the Respondent is commonly known by the Domain Name nor does it have any registered trade mark rights to the Domain Name. The fact that the Domain Name resolves to an inactive website is not *bona fide* or legitimate noncommercial or fair use of the Domain Name.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded to these allegations and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

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

To succeed under the Policy, the Complainant must show that the Domain Name has been registered and is being used in bad faith. It is a double requirement.

The Panel is satisfied that the Respondent must have been aware of the Trade Mark when he registered the Domain Name particularly since the Trade Mark has no other meaning other than its significance as a trade mark belonging to the Complainant.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

"Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should

have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark."

The fact that there is a clear absence of rights or legitimate interests coupled with no explanation for the Respondent's choice of the Domain Name is also a significant factor to consider (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). In light of the above, the Panel finds that registration is in bad faith.

The Domain Name is also used in bad faith. The fact that the Domain Name resolves to an inactive website does not prevent a finding of bad faith ([WIPO Overview 3.0](#), section 3.3). The Panel has to examine the circumstances of the case to determine whether the Respondent is acting in bad faith. UDRP panels may draw inferences about whether the domain name is used in bad faith given the circumstances surrounding registration, and *vice versa*. In this case, inferences of bad faith use are found in the following factors: the Domain Name consists of the misspelling of the Complainant's well-known and fanciful Trade Mark, the Respondent has failed to file a Response, and the implausibility of any good faith use to which the Domain Name may be put.

The Panel therefore concludes that the Domain Name was registered and is being used in bad faith, and that the requirements of paragraph 4(a)(iii) of the Policy are fulfilled.

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <s0dxe0.cyoy> be transferred to the Complainant.

*/Karen Fong/*

**Karen Fong**

Sole Panelist

Date: May 3, 2022