

## **ADMINISTRATIVE PANEL DECISION**

Modibodi Pty Ltd v. Feras Darwich  
Case No. D2025-0081

### **1. The Parties**

The Complainant is Modibodi Pty Ltd, Australia, represented by BrandShelter, France.

The Respondent is Feras Darwich, United Arab Emirates.

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

The disputed domain name <modibodime.com> is registered with Automattic Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 9, 2025. On January 10, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 10, 2025, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (REDACTED FOR PRIVACY / Knock Knock WHOIS Not There, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 13, 2025, 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 on January 23, 2025.

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”).

The Respondent sent an email communication to the Center on January 21, 2025. In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 24, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2025.

The Center appointed Jeremy Speres as the sole panelist in this matter on February 19, 2025. 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.

The Panel issued Procedural Order No. 1 on February 21, 2025, to which the Complainant responded on February 28, 2025. The Panel issued Procedural Order No. 2 on February 28, 2025, to which the Complainant responded on March 4, 2025.

#### **4. Factual Background**

The Complainant, founded in 2013, provides leakproof apparel for periods and incontinence including underwear, swimwear, activewear and maternity wear, under its MODIBODI mark. The company operates an online, direct-to-consumer business model, including from its website hosted at its domain name <modibodi.com>, which it registered in 2013, as well as selling through retailers.

The Complainant owns trademark registrations for its MODIBODI mark in various jurisdictions, including International Trademark Registration No. 1347169 MODIBODI in class 25, having a registration date of July 29, 2016, designating, amongst others, the Respondent's jurisdiction of the United Arab Emirates.

The disputed domain name was registered on February 3, 2022, and currently resolves to a website that features the Complainant's logo and product imagery, claiming to be the official distributor for the Complainant's products in the Middle East.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, the Complainant contends that the disputed domain name was registered and has been used in bad faith in order to capitalize on confusion with the Complainant's trademark for the purposes of the Respondent's commercial gain. The Complainant also states that it concluded a Reseller Agreement with a company "Southern Cross Trading LLC" (hereinafter "Southern Cross"), which is stated to be the operator of the disputed domain name's website, on February 7, 2022, but that the Respondent was not a party to the agreement. Due to various breaches by Southern Cross, the Reseller Agreement was terminated later in 2022. In response to Procedural Order No. 1, the Complainant further claims a change of ownership of the disputed domain name after its initial registration.

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

The Respondent's sole communication with the Center is set out verbatim below:

"[...] I am writing to clarify that you do not have the authority to suspend our domain, as our company is operating in the UAE, you must emphasize that any action to suspend our domain without proper legal grounds would be in violation of privacy laws here, specifically those governing data protection and privacy rights.

We kindly request that you review the matter carefully and ensure that all actions taken are in full compliance with local laws and regulations. Any decisions that could potentially infringe upon privacy rights must be handled with the utmost attention to legal requirements and proper authorization."

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "me", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

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

For the reasons discussed in relation to bad faith below, there is no need for the Panel to consider the second element.

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

The disputed domain name's website claims that it is the official distributor for Modibodi in the Middle East. The disputed domain name's website is currently geographically restricted, apparently denying access to visitors from jurisdictions outside of the Middle East, including the Panel's. The Panel has, nevertheless, using a Virtual Private Network ("VPN") server based in the Respondent's jurisdiction of the United Arab Emirates, independently ascertained, in accordance with its general powers articulated inter alia in paragraphs 10 and 12 of the Rules, that the website currently specifies that it is operated by Southern Cross. The Internet Archive reveals that this has been the case since at least early 2023. The Complainant states that it concluded a Reseller Agreement with Southern Cross on February 7, 2022, but that due to various breaches by Southern Cross, the Complainant terminated the Reseller Agreement in September 2022.

In this regard, the Complainant stated as follows in the amended Complaint:

"Despite what is mentioned on the said disputed website, the Complainant claims that the company 'Southern Cross Trading LLC' is not a distributor of the brand MODIBODI anymore. Indeed, as shown in the Annex 12, the Complainant has informed on August 23<sup>rd</sup> 2023 via the Intellectual Property Law firm SABA, that the past agreement between MODIBODI and Southern Cross Trading LLC, for which [the Respondent] is seemingly working, has been terminated. Thus, the website "modibodime.com" is now a fraudulent website, pretending to be a distributor, creating a risk of confusion towards Internet users."

The Complainant thus acknowledged that the Respondent may be an employee of Southern Cross, the Complainant's erstwhile reseller. Given the timing of the registration of the disputed domain name, four days before the Reseller Agreement was concluded, and given the content of the website expressly linking it to Southern Cross, it seems probable that the disputed domain name was registered by or on behalf of Southern Cross in anticipation of the Reseller Agreement being concluded.

It also seems at least plausible that the Respondent is associated with Southern Cross given that the Respondent's email address, as verified by the Registrar, uses the domain name <southerncrossme.com>, which is the same domain name expressly included in the Reseller Agreement as part of the email addresses for Southern Cross's signatories to that agreement.

Noting the conjunctive nature of bad faith in the third element of the Policy, requiring both bad faith registration and bad faith use, prior panels under the Policy have accepted that registration of a domain name in anticipation of concluding a license type agreement (including distributorship and reseller agreements) with a complainant before that agreement is actually concluded is not, on its own, indicative of bad faith; if the relevant respondent's intention was purely to use the domain name in fulfilment of the agreement, then without more, this is not considered bad faith. See for example *APT Advanced Polymer Technology Corp. v. Matt Arnold, Majestic Capital*, WIPO Case No. [D2019-0824](#).

In light of this, the Panel invited the Complainant, in Procedural Order No. 1, to present evidence proving that the disputed domain name was registered in bad faith, given the real possibility that it was registered by a prospective reseller in anticipation of concluding a reseller agreement. The Complainant's response was to argue that the disputed domain name appears to have been transferred to a new registrant after its registration in February 2022. This, it argues, is evident from the fact that historical Whois records for the disputed domain name show that the registrar and registrant names for the disputed domain name changed circa May 14, 2024.

The Whois changes referenced by the Complainant show that, in addition to the registrar changing, the registrant details changed from a registrant name and organization of "REDACTED FOR PRIVACY" and registrant country of New Zealand on February 4, 2022, to the current Whois details showing a registrant name of "Private Whois", registrant organization of "Knock Knock WHOIS Not There, LLC", and registrant country of the United States of America. These changes do not necessarily show that the underlying registrant changed between 2022 and the present, far less that there was a change in effective control, noting that the current registrant, i.e. the Respondent, seems to be associated with Southern Cross. It could well be that the registrant name for the disputed domain name in 2022 was in fact also a privacy service, as it is at present, and that the change in registrar resulted in a change of privacy service, noting that individual registrars often employ their own, differing, privacy services. Thus, it could well be that the underlying, beneficial registrant has been Mr. Darwich on behalf of Southern Cross all along, since registration of the disputed domain name in February 2022 until present. Based on the Internet Archive, there were no material changes to the disputed domain name's website over this period, as far as the Panel can tell, which supports this conclusion.

If that is so, and if the Respondent was in fact employed by the Complainant's authorised reseller Southern Cross at the time of registration of the disputed domain name, the Panel would consider that the Complainant has not discharged its burden of proving that the disputed domain name was registered in bad faith, in which case the Complaint must be denied.

In contrast, given the opacity of the Whois records for the disputed domain name dating from 2022, and given the lack of any meaningful response from the Respondent, a question arises as to whether the disputed domain name may have been originally registered by Southern Cross, and if so, the reasons why the disputed domain name is currently in the Respondent's name. In any case, the Panel considers that the mere change of the registrant's name/organization would not necessarily mean that there is an effective change of control, as discussed above. Under the Policy, the Panel considers that for an effective change of control of the type that could potentially impact the identity of the relevant registrant for purposes of assessing the question of bad faith registration, there would need to be evidence in the record showing that the Respondent had transferred the disputed domain name from Southern Cross to himself, in his personal capacity, with Southern Cross not being ultimately in control of the disputed domain name any longer. If true, this would break any chain of control of the disputed domain name linked to the original (presumed) beneficial registrant Southern Cross, tipping the balance of the third element in the Complainant's favour due to the bad faith usage of the disputed domain name post termination of the Reseller Agreement.

However, a number of factors weigh against this possibility. Firstly, the Respondent seems to remain in control of an email address connected to Southern Cross, pointing to his continued employment by Southern Cross. Secondly, the disputed domain name's website still states that it is operated by Southern Cross and still lists Southern Cross in its contact details page. Thirdly, in his communication with the Center, the Respondent referred to "our domain" and "our company" (emphasis added), which points away from him holding the disputed domain name in his individual personal capacity.

On balance of probabilities, the most likely explanation is that either the Respondent registered the disputed domain name in his name but on behalf of Southern Cross in 2022, or that Southern Cross was the original named registrant in 2022 but that the Respondent was later reflected as the named registrant after the registrar change circa May 2024 albeit still in his capacity as an employee of, and still on behalf of, Southern Cross. Both of these eventualities mean that the disputed domain name was registered on behalf of Southern Cross in anticipation of the conclusion of the Reseller Agreement. There is nothing in the record to suggest that Southern Cross harboured any malign intentions from the outset, as from the date of registration of the disputed domain name. The fact that Southern Cross went on to use the disputed domain name in fulfilment of the Reseller Agreement, and the fact that the Reseller Agreement does not prohibit registration of domain names reflecting the Complainant's mark, support this conclusion. There is nothing to suggest that Southern Cross, for instance, used the disputed domain name as leverage in the Reseller Agreement negotiations, or otherwise used it abusively prior to conclusion of the Reseller Agreement.

As the Panel in WIPO Case No. [D2019-0824](#) *supra* stated:

"Post-termination conduct may in some instances reflect on the respondent's original intent, as in other contexts, but the complaint cannot succeed simply because a previously circumspect distributor behaved badly after termination... The Complainant's argument for bad faith requires an inference that the Respondent harbored a malign intent from the outset around the time of the registration of the Domain Name to violate its limited license, retain the Domain Name, and then use it in bad faith, to disrupt the Complainant's business and mislead Internet users for commercial gain or otherwise. The Panel finds no persuasive evidence to make such a leap of inference and accordingly does not find bad faith in the registration of the Domain Name."

Given that the burden of proof is on the Complainant, the Panel finds the third element of the Policy has not been sufficiently established. However, this should not be understood as an approval of the Respondent's actions post termination of the Reseller Agreement, but rather a consequence of the Panel's view, on the record before it, that the Respondent's post-termination conduct is best addressed via court proceedings, bearing the conjunctive nature of the bad faith requirement in mind.

## 7. Decision

For the foregoing reasons, the Complaint is denied.

/Jeremy Speres/

**Jeremy Speres**

Sole Panelist

Date: March 12, 2025