

ADMINISTRATIVE PANEL DECISION

Sodexo v. Hulmiho Ukolen, Poste Restante
Case No. D2022-0199

1. The Parties

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

The Respondent is Hulmiho Ukolen, Poste Restante, Finland.

2. The Domain Name and Registrar

The disputed domain name <sudexobrs.com> (“the Disputed Domain Name”) is registered with Gransy, s.r.o. d/b/a subreg.cz (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 21, 2022. On January 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 24, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 24, 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 on January 26, 2022.

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 of the Complaint, and the proceedings commenced on January 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 17, 2022.

The Center appointed Jacques de Werra as the sole panelist in this matter on February 28, 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 is a French limited company which was founded in 1966. It is one of the largest companies in the world, specialized in food services and facilities management. It has over 420,000 employees, serving 100 million consumers in 64 countries.

For the fiscal year 2020, its consolidated revenues reached EUR 19.3 billion with 43 percent from North America, 40 percent from Europe and 17 percent from the rest of the world.

From 1966 to 2008, it promoted its business under the mark SODEXHO but in 2008 it simplified the spelling of its mark to SODEXO and changed its trading logo to incorporate SODEXO rather than SODEXHO.

The Complainant owns many trademarks containing the terms SODEXO or SODEXHO that are used and protected in 64 countries ("the Trademark"), including the following trademarks:

- SODEXO (figurative), International registration 964615, registered on January 8, 2008 (renewed in 2018) in International Classes; 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45;
- SODEXO, International registration 1240316, registered on October 23, 2014 in International Classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45;
- SODEXHO (figurative), International registration 689106, registered on January 28, 1998 (renewed in 2018) in International Classes 16, 36, 37, 39, 41, and 42.

The Complainant also owns numerous domain names containing SODEXO or SODEXHO including <sodexo.com>, <sodexousa.com>, <uk.sodexo.com>, <sodexoprestige.co.uk>, <sodexo.fr>, <sodexoca.com>, <cn.sodexo.com>, <sodexho.fr>, and <sodexho.com>.

The Complainant provides a wide range of services, including on-site services, benefits and rewards services, personal and home services.

The Complainant operates a subsidiary which provides benefits & rewards services ("BRS") which issues service vouchers and cards for private and public organizations in three categories of services:

- Employee Benefits to attract, engage and retain employees (such as restaurant vouchers, transport vouchers, gasoline vouchers, etc.), intensification of digitalization of benefits & rewards services,
- Incentives and Recognition to help organizations to reach their qualitative and quantitative objectives (gift vouchers, gift boxes, etc.),
- Public Benefits to manage and control the distribution of aid and public subsidies.

The Respondent registered the Disputed Domain Name on December 26, 2021 and has used it to point to a page connecting to a malicious site, which gives the impression that the computer is frozen. The visitor is invited to call a phone number mentioned on the page to try to solve the problem. When calling the number, an operator requests the visitor to download a software allowing him to access the computer remotely. To do this, he gives a code to the user which is likely to infect the computer or to install malware/spyware.

5. Parties' Contentions

A. Complainant

The Complainant claims that the Disputed Domain Name which is composed of the terms "sudexo" and "brs" misspells the Trademark by replacing the letter "o" of its Trademark with the letter "u".

The Complainant further claims that it is obvious that the Respondent has registered the Disputed Domain Name by using the typo-squatting technique and that the consumers read and/or perceive the Disputed Domain Name by distinguishing between the two elements "sudexo" and "brs", whereby the term "brs" could constitute an abbreviation of "benefits and rewards services". In the Disputed Domain Name, the sign "sudexo" keeps its individuality and is clearly perceived by consumers as the predominant part of the Disputed Domain Name.

The addition of the element "brs" in the Disputed Domain Name is not sufficient to distinguish it from the Complainant's Trademark. On the contrary, the risk of confusion or association with the Trademark is stronger given that the Trademark is precisely used by the Complainant for Benefits and Rewards Services (BRS). A Google search for the terms "sudexo brs" exclusively gives results related to SODEXO. This clearly shows the confusion between the signs.

Due to the almost identical reproduction of the Trademark in the Disputed Domain Name, the public will believe that the Disputed Domain Name comes from the Complainant or is linked to the Trademark in so far as the Complainant specifically renders services specialized in employee benefits and rewards (BRS).

The Respondent has no rights nor legitimate interests in the Disputed Domain Name as he has no rights on the Trademark as corporate name, trade name, shop sign, mark or domain name that would be prior to the Complainant's rights on the Trademark. The Respondent was not commonly known by the Disputed Domain Name prior to the adoption and use by the Complainant of the corporate name, business name, and Trademark, or by its preceding trademark SODEXHO.

Moreover, the Respondent does not have any affiliation, association, sponsorship or connection with the Complainant and has not been authorized, licensed or otherwise permitted by the Complainant or by any subsidiary or affiliated company to register the Disputed Domain Name and to use it.

Due to the well-known character and reputation of the Trademark, the Respondent most likely knew its existence when he registered the Disputed Domain Name and knew that he had no rights or legitimate interests in it. The term SODEXO is purely fanciful and nobody could legitimately choose this word or any variation thereof (and particularly associated to the element "brs"), unless seeking to create an association with the Complainant.

Furthermore, the Complainant points out that this is not the first time that the Respondent is involved in a domain name dispute. The Respondent was indeed involved in many cases in which the transfer of the domain names he registered was ordered and which were reproducing marks owned by third parties. See, e.g., *Yamaha Motor Corporation, U.S.A. v. Domain Admin, Whois protection, this company does not own this domain name s.r.o. / Hulmiho Ukolen, Poste restante*, WIPO Case No. [D2021-2429](#); *Ammunition Operations LLC v. Domain Admin, Whois protection, / Hulmiho Ukolen, Poste restante*, WIPO Case No. [D2021-0147](#).

Moreover, the connection to the page linked to the Disputed Domain Name encourages Internet users to allow a third party, to have direct access to their computer. It is highly likely that this access permits the Respondent to spread a computer virus or malware. Previous UDRP decisions have held that the use of a domain name for spreading malware or a virus amounts to registration and use in bad faith.

The use of a slight variation of the Complainant's Trademark in the Disputed Domain Name to point to a malicious website or page constitutes evidence of bad faith use of the Disputed Domain Name. Such use tarnishes the distinctiveness and reputation of Complainant's Trademark and demonstrates Respondent's

bad faith. Internet users who have a legitimate interest in Complainant's products and services could have been then exposed to a malicious website linked to the Disputed Domain Name. This may not only be confusing and disturbing for the consumers, but this can also create a dilution of the Trademark.

The unauthorized use and registration of the Disputed Domain Name by the Respondent to attract and redirect Internet users to a malicious website constitutes bad faith registration and use of the Disputed Domain Name.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the complainant must prove each of the following three elements in order to succeed in a UDRP proceeding. Thus, for the Complainant to succeed, it must prove all of the three elements under the Policy:

- (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 Complainant must establish that the Respondent's Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Panel first notes that the Complainant is the owner of the Trademark.

A comparison between the Disputed Domain Name and the Trademark shows that the Disputed Domain Name is composed of a variation of the Trademark (*i.e.* "sudexo" instead of SODEXO, whereby the difference is limited to the replacement of one single letter, *i.e.* "o" by "u") to which three letters have been added as a suffix, *i.e.* "brs". The Panel finds that neither the replacement of a single letter in the Trademark, nor the addition of the suffix "brs" prevents a finding of confusing similarity as the Trademark remains sufficiently recognizable in the dispute domain name. On this basis, the Panel considers that the Disputed Domain Name is confusingly similar to the Trademark.

As a result, based on the rights of the Complainant in the Trademark and on the confusing similarity between the Trademark and the Disputed Domain Name, the Panel finds that the conditions of paragraph 4(a)(i) of the Policy are met.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights to or legitimate interests in the Disputed 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 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 has been commonly known by the domain name, even if it 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.

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, previous UDRP panels have consistently ruled that paragraph 4(c) of the Policy shifts the burden to the respondent to come forward with evidence of a right or legitimate interest in the domain name, once the complainant has made a *prima facie* showing. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

In this case, the Panel finds that the Complainant has made a *prima* showing that the Respondent lacks any rights or legitimate interests in the Disputed Domain Name. The Panel acknowledges that the Complainant never authorized, licensed, or permitted the Respondent to use the Trademark in any manner and that the Respondent is not commonly known by the Disputed Domain Name.

It is furthermore established that the use of a domain name for illegal activity (e.g., phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. See, [WIPO Overview 3.0](#), section 2.13.

In this case, the Panel finds that it is reasonable to infer that Respondent's use of the Disputed Domain Name to create a risk of implied affiliation with Complainant combined with a fraudulent warning of imminent lockup danger to a user's computer to trap the user into calling the warning's fraudulent technical support help line (a scheme sometimes referred to as "mousetrapping"), represents the type of malicious, illegitimate, and bad faith use incapable of meeting the requirements of the second criterion of the Policy. See, e.g., *Sodexo v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-2012](#).

On this basis, the Panel finds that the Complainant has made a *prima facie* showing that the Respondent has no rights or legitimate interests in the Disputed Domain Name and that the Respondent has not established any rights to or any legitimate interests in the Disputed Domain Name.

The Panel is consequently satisfied that the Complainant has established that the second requirement of paragraph 4(a) of the Policy is met.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name;

(ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct;

(iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the respondent intentionally is using the domain name in an attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of

confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant is seeking to profit from and exploit the trademark of another. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

In this case, the Panel finds on the basis of the allegations of the Complainant that the Respondent registered and uses the Disputed Domain Name in bad faith for the following reasons.

The Complainant has established that the Respondent had previously engaged in the registration of domain names corresponding to well-established third-party trademarks. See, e.g., *Yamaha Motor Corporation, U.S.A. v. Domain Admin, Whois protection, this company does not own this domain name s.r.o. / Hulmiho Ukolen, Poste restante*, WIPO Case No. [D2021-2429](#); WIPO Case No. [D2021-0147 Ammunition Operations LLC v. Domain Admin, Whois protection, / Hulmiho Ukolen, Poste restante](#).

On this basis, the Panel finds that the Respondent has engaged in a pattern of conduct of registering domain names in order to prevent the owners of the trademark or service mark from reflecting the mark in the corresponding domain names which already constitutes bad faith under Paragraph 4(b)(ii) of the Policy. Furthermore, the distinctiveness and reputation of the Trademark, as well as the typo-variant nature of the Disputed Domain Name, suggest that the Respondent knew of and sought to take unfair advantage of the Trademark, and so registered the Disputed Domain Name in bad faith.

Bad faith further results from Respondent's illegitimate conduct with the Disputed Domain Name, consisting in the use of the Disputed Domain Name to link to a malicious website used for trapping consumers searching for Complainant's services through a fraudulent popup warning, directing trapped users to a help line used to spread viruses or malware. See, e.g., *Sodexo v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-2012](#).

On this basis, the Panel finds that the Respondent registered and uses the Disputed Domain Name in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

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 disputed domain name <sudexobrs.com> be transferred to the Complainant.

/Jacques de Werra/

Jacques de Werra

Sole Panelist

Date: March 14, 2022