

ADMINISTRATIVE PANEL DECISION

Sodexo v. 杨智超 (Zhichao Yang)

Case No. D2022-0649

1. The Parties

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

The Respondent is 杨智超 (Zhichao Yang), China.

2. The Domain Names and Registrar

The disputed domain names <sodexobeefitscenter.com>, <sodexobenefifscenter.com>, <sodexobenefitscenter.com>, and <sodexobenetitscenter.com> (individually and collectively the “Domain Names”) are registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 24, 2022. On February 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On February 25, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 25, 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 2, 2022.

On February 25, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On March 2, 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 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 24, 2022.

The Center appointed Karen Fong as the sole panelist in this matter on April 4, 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 multiple jurisdictions including China (the "Trade Mark"). The Complainant also provides benefit and rewards services.

Based on the available record, the Respondent is an individual based in China. The Domain Names were registered on December 30, 2021. The Domain Names resolve to pay-per-click webpages with link headings such as: "Medicare Plans", "Health Insurance", and "Life Insurance" (the "Websites"). The Respondent has been the named respondent in many UDRP cases concerning other third party brand owners as well as the Complainant which has resulted into those domain names being ordered to be transferred. The previous cases involving the Complainant and the Respondent include the following: *Sodexo v. Yang Zhichao (杨智超)*, WIPO Case No. [D2021-0902](#); *Sodexo v. Yang ZhiChao (杨智超)*, WIPO Case No. [D2021-0286](#); *SODEXO v. Super Privacy Service LTD c/o Dynadot / Zhichao*, WIPO Case No. [D2020-3539](#); *SODEXO v. Zhichao Yang*, WIPO Case No. [D2020-3542](#); and, *Sodexo v. 杨智超 (Zhichao Yang)*, WIPO Case No. [D2020-3397](#).

5. Parties' Contentions

A. Complainant

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

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 Names, the Complainant must prove each of the following, namely that:

(i) The Domain Names are 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 Names; and

(iii) The Domain Names were registered and are 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 Names is Chinese.

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

- The Domain Names are 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 conduct the proceeding in Chinese would result in unwarranted delay.

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, all the Domain Names contain the Trade Mark in its entirety together with misspellings of the words "benefits center". One has an additional "f", another is missing the letter "n", the third replaces the "t" with an "f", and the last one replaces the "f" with a "t". It is well established that domain names which consist of a common, obvious, or intentional misspelling of a trade mark are 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 Trade Mark is clearly recognisable within all the Domain Names, which also include a misspelling of the term "benefits center" after the Trade Mark that does not prevent confusing

similarity ([WIPO Overview 3.0](#), section 1.8).

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 generic Top-Level Domain (“gTLD”) which in this case is “.com”. It is viewed as a standard registration requirement (section 1.11.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Domain Names are 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 Names or any domain name. It would not appear that the Respondent is commonly known by the Domain Names nor does it have any registered trade mark rights to the Domain Names. Further, the display of pay-per-click links on the Website does not constitute a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the Domain Names. Moreover, the incorporation of the Complainant’s distinctive mark along with the misspellings of the term “benefits center” illustrates Respondent’s intent to confuse Internet users and mislead them to competing sites via the pay-per-click links, capitalizing on the reputation and goodwill of the Complainant.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for a reply from the Respondent. The Respondent has not responded 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 Names.

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

E. Registered and Used in Bad Faith

To succeed under the Policy, the Complainant must show that the Domain Names have been registered and are 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 it registered the Domain Names particularly since the Trade Mark has no other meaning other than its significance as a trade mark belonging to the Complainant and the Respondent has also been involved with a number of UDRP disputes with the Complainant in which it has had to transfer domain names with the Trade Mark back 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 Names is also a significant factor to consider (as stated in section 3.2.1 of [WIPO Overview 3.0](#)). In light of the above, the Panel finds that registration is in bad faith.

The Panel also finds that the actual use of the Domain Names is in bad faith. The Websites are pay-per-click site which have been set up for the commercial benefit of the Respondent. It is highly likely that Internet users when typing the Domain Names into their browser, or finding them through a search engine would have been looking for a site operated by the Complainant rather than the Respondent. The Domain Names are likely to confuse Internet users trying to find the Complainant’s website. Such confusion will inevitably result due to the fact the Domain Names all contain the Complainant’s distinctive Trade Mark

The Respondent employs the reputation of the Trade Marks to mislead users into visiting the Websites instead of the Complainant’s. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Respondent’s Websites are those of or authorised or endorsed by the Complainant. The Panel therefore concludes that the Domain Names were registered and are being used in bad faith under paragraph 4(b)(iv) of the Policy.

The Panel has also notes that the Respondent has been on the wrong side of a number of UDRP cases concerning other third party brand owners and the Complainant which has resulted in those domain names being ordered to be transferred. Details of some of these cases are set out in paragraph 4 above. This is an indication that the Respondent is a serial cybersquatter and is engaged in a pattern of bad faith conduct (section 3.1.2 of the [WIPO Overview 3.0](#)).

The Panel finds that the Domain Names were registered and are being used in bad faith.

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 Names, <sodexobeeifitscenter.com>, <sodexobenefifitscenter.com>, <sodexobenefifitscenter.com>, and <sodexobenetifitscenter.com> be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: April 29, 2022