

ADMINISTRATIVE PANEL DECISION

Sodexo v. Privacy Service provided by Withheld for Privacy ehf / nik haderlie
Case No. D2022-0738

1. The Parties

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

The Respondent is Privacy Service provided by Withheld for Privacy ehf, Iceland / nik haderlie, United States of America.

2. The Domain Name and Registrar

The disputed domain name <soddexo.net> is registered with NameCheap, Inc. (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 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 March 4, 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 March 9, 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 March 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 1, 2022.

The Center appointed James Bridgeman as the sole panelist in this matter on April 5, 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 carries on an international business in the provision of food services and facilities management in which it uses the SODEXO and SODEXHO marks. The former mark is a simplification of the earlier SODEXHO mark for which the Complainant holds an international portfolio of trademark and service mark registrations including:

- International Trademark SODEXO (figurative), registration number 964615, registered on January 8, 2008, for goods and services in classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45;
- International Trademark, SODEXO, registration number 1240316, registered on October 23, 2014, for goods and services in classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45;
- International Trademark SODEXO (figurative), registration number 689106, registered on January 28, 1998, for goods and services in classes 16, 36, 37, 39, 41 and 42;
- International Trademark SODEXO (figurative), registration number 694302, registered on June 22, 1998, for goods in class 9;
- European Union Trademark SODEXO, registration number 008346462, registered on February 1, 2010, for goods and services in classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45;
- European Union Trademark SODEXO (figurative), registration number 006104657, registered on June 27, 2008, for goods and services in classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45;
- International Trademark SODEXO QUALITY OF LIFE SERVICES (figurative), registration number 1195702, registered on October 10, 2013, for goods and services in classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45;
- European Union Trademark SODEXO QUALITY OF LIFE SERVICES (figurative), registration number 011138501, registered on January 22, 2013, for goods and services in classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

Additionally, the Complainant has provided a list of its claimed portfolio of trademark and service mark registrations for the SODEXHO mark in jurisdictions across the world.

The Complainant also owns numerous domain names corresponding to and/or containing SODEXO or SODEXHO marks, which are used to promote its activities including <sodexo.com>, <sodexoprestige.co.uk>, <sodexo.fr>, <sodexoca.com>, <sodexousa.com>, <sodexho.fr> and <sodexho.com>.

The disputed domain name <soddexo.net> was registered on January 7, 2022. It is inactive and being passively held by the Respondent, as it redirects to the website of the Registrar.

There is no information available about the Respondent except for that provided in the Complaint, the Registrar's Whois for the disputed domain name and the information provided by the Registrar in response to the request by the Center for details of the registration of the disputed domain name for the purposes of this proceeding.

5. Parties' Contentions

A. Complainant

The Complainant claims rights in the SODEXO and SODEXHO marks established by its ownership of its portfolio of trademark and service mark registrations described above and its extensive use of these marks in its business, providing food services and facilities management, with 420.000 employees, serving 100 million consumers in 64 countries and consolidated revenues of 19,3 billion EUR which are represented by region as 43% in North America, 40% in Europe and 17% in the rest of world.

The Complainant submits that it has developed a strong international reputation in the SODEXO and SODEXHO marks which has been recognized by UDRP panels established under the Policy in numerous recent decisions.

The Complainant submits that the disputed domain name <soddexo.net> is confusingly similar to the SODEXO and SODEXHO marks in which the Complainant has rights as the disputed domain name is almost identical to the SODEXO mark with the only difference being the additional letter “d” in the disputed domain name.

The Complainant further contends that this misspelling of its mark in the disputed domain name is characteristic of typosquatting and due to the similarity of the mark and the disputed domain name, the public may be confused into believing that the disputed domain name relates to the Complainant’s group and mark.

The Complainant next alleges that the Respondent has no rights or legitimate interests in the disputed domain name, arguing that the Respondent was not commonly known by the concerned domain name prior to the adoption and use of SODEXO and SODEXHO by the Complainant as a corporate name, business name and mark.

The Complainant adds that to the best of its knowledge the Respondent has no rights in the disputed domain name as a corporate name, trade name, mark, shop sign, or domain name that predates the Complainant’s rights in the SODEXO mark.

The Complainant further submits that, 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 concerned domain name and to use it.

The Complainant next alleges that the disputed domain name was registered and is being used in bad faith, arguing that the SODEXO mark is purely fanciful, and nobody could legitimately choose this word or any variation thereof, unless seeking to create an association with the Complainant’s activities and marks.

The Complainant further contends that due to the well-known character and reputation of the SODEXO and SODEXHO marks, the Respondent was aware of its existence when he registered the almost identical disputed domain name, and that he knew perfectly well that he had no rights or legitimate interests in the disputed domain name and cannot lawfully use it.

The Complainant argues that such actual knowledge of the Complainant’s trademarks and activities at the time of the registration of the disputed domain name allows the making of an inference of bad faith and submits that “[i]t has been held in previous cases that knowledge of a corresponding mark at the time of the domain name’s registration suggests bad faith”. See *Accor, So Luxury HMC v. Youness Itsmail*, WIPO Case No. [D2015-0287](#).

The Complainant further argues that there is a “principle established in previous UDRP decisions that the registration of a domain name incorporating a widely-recognized or well-known trademark by someone who has no connection whatsoever with the trademark is a clear indication of bad faith”. See *SODEXO v. Shahzan - PrivacyProtect.org.*, WIPO Case No. [D2013-1308](#).

Additionally, it is contended that the disputed domain name was registered and is being used in bad faith because it is inconceivable that the Respondent could make any active use of the disputed domain name without creating a false impression of association with the Complainant.

The Complainant adds that the passive holding of the disputed domain name does not prevent a finding of bad faith. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000- 0003 and *Novo Nordisk A/S v. CDMS Invest*, WIPO Case No. [D2012-0676](#), in which the panels found that passive holding, under the totality of circumstances of the case, can indeed constitute a bad faith use under the

Policy.

In this regard the Complainant submits that when considering whether the passive holding of a domain name constitutes bad faith registration and use for the purposes of the Policy panels have taken into consideration factors such as:

- the strong reputation and well-known character of the complainant's mark;
- the lack of evidence provided by the respondent of any good faith use with regards to the disputed domain name;
- the identity (or almost identity) of the disputed domain name with the complainant's name and mark intended to divert or mislead potential web users from the complainant's website they are actually trying to visit.

The Complainant contends that each of these circumstances may apply to the present case.

In conclusion, the Complainant contends that the passive holding of the disputed domain name by the Respondent constitutes a threat because there is a risk that the disputed domain name may be used in an abusive manner and, potentially, for fraudulent purposes which constitutes bad faith registration and use for the purposes of the Policy.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has provided convincing evidence that it has rights in the SODEXO and SODEXHO marks established by its ownership of its portfolio of trademark and service mark registrations described above and extensive use of the marks in its food services and facilities business.

The Complainant's SODEXO mark is clearly recognizable in the disputed domain name as it is incorporated in its entirety within <soddexo.net>, with the mere addition of a second letter "d", in combination with the generic Top-Level-Domain ("gTLD") extension ".net".

The Complainant's SODEXO mark is the dominant and only element in the disputed domain name.

The additional letter "d" is likely to be unnoticed by many Internet users and the gTLD extension ".net" is likely to be considered by Internet users as a necessary technical requirement for a domain name.

Similarly, the disputed domain name is confusingly similar to the SODEXHO mark which the Complainant states is less used because the simplified newer SODEXO mark is preferred.

This Panel finds therefore that the disputed domain name is confusingly similar to the SODEXO mark in which the Complainant has rights and the Complainant has therefore succeeded in the first element of the test in Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant has made out a *prima facie* case that the Respondent has no rights legitimate interests in the disputed domain name arguing that:

- the Respondent was not commonly known by the concerned domain name prior to the adoption and use by the Complainant of the corporate name, business name and marks SODEXO and SODEXHO;

- to the best of the Complainant's knowledge, the Respondent has no rights in <soddexo.net> as a corporate name, trade name, mark, shop sign, or domain name that predates the Complainant's rights in the SODEXO mark;
- 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 and use the disputed domain name.

It is well established that once a complainant makes out a *prima facie* case that a complainant has no rights or legitimate interests in the domain name at issue, the burden of production shifts to the respondent to prove its rights or legitimate interests. The Respondent has failed to discharge that burden and therefore this Panel must find that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore succeeded in the second element of the test in Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant's trademark rights predate the registration of the disputed domain name and it is most improbable that the registrant of the disputed domain name was unaware of the Complainant, its SODEXO mark, the goodwill associated with the mark and the Complainant's established international business when the disputed domain name was chosen and registered.

The Complainant has an enormous international business, and the SODEXO mark is a very distinctive coined word. So, it is implausible that the registrant could have inadvertently chosen and registered the disputed domain name, with the additional letter "d", or that the disputed domain name, which is almost identical to the Complainant's trademarks, could be put to any lawful use without the consent of the Complainant.

This Panel finds therefore that the disputed domain name was registered in bad faith with the Complainant's mark in mind, intending to take predatory advantage of the similarity of the disputed domain name and the Complainant's mark.

Given the following factors:

- the distinctiveness of the Complainant's SODEXO mark;
- the strong reputation and well-known character of the Complainant's mark;
- that it is implausible that the Respondent could put the disputed domain name to any good faith or lawful use, without the consent of the Complainant, which is not forthcoming;
- the lack of evidence provided by the Respondent of any good faith use with regard to the disputed domain name;
- the identity (or almost identity) of the disputed domain name with the Complainant's name and mark intended to divert or mislead potential Internet users from the Complainant's website they are actually trying to visit; and
- that the disputed domain name consists of the Complainant's mark with an additional letter "d", which on the balance of probabilities, is intended to be unnoticed by Internet users and the registration and use of the disputed domain name is an exercise in typosquatting.

This Panel finds on the balance of probabilities that the passive holding of the disputed domain name by the Respondent constitutes bad faith registration and use for the purposes of the Policy.

This finding is supported by the fact that the Respondent has not responded to the Complaint.

As this Panel has found that the disputed domain name was registered and is being used in bad faith, the Complainant has succeeded in the third element of the test in Policy paragraph 4(a)(iii).

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 <soddexo.net>, be transferred to the Complainant.

James Bridgeman

Sole Panelist

Date: April 19, 2022