

ADMINISTRATIVE PANEL DECISION

Sodexo v. Huber Corrales

Case No. D2022-3234

1. The Parties

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

The Respondent is Huber Corrales, Colombia.

2. The Domain Name and Registrar

The disputed domain name <ghsodexocolombia.com> is registered with Arsys Internet, S.L. dba NICLINE.COM (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 31, 2022. On September 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 8, 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 in English and Spanish to the parties on September 10, 2022 regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the disputed domain name is Spanish. The Complainant submitted a request for English to be the language of the proceeding on September 12, 2022. The Respondent did not comment on the language of the proceeding.

The Center sent an email communication to the Complainant on September 10, 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 September 12, 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, in English and in Spanish, and the proceedings commenced on September 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 7, 2022.

The Center appointed Gustavo Patricio Giay as the sole panelist in this matter on October 13, 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, Sodex (prior called Sodexho Alliance) is a French company founded in 1966 and is one of the leaders in the foodservice and facilities management industry. The Complainant's business is broadly established in Colombia.

The Complainant claims to be one of the largest employers worldwide with 412,000 employees, to have consolidated high revenues during fiscal year 2021 and to have been categorized as one of the "The world's Most Admired Companies" by Fortune Magazine.

Since 1966, the Complainant is the owner of several trademarks SODEXO in many countries, including, among others, Colombian trademark Registration No. 357254, registered on November 23, 2007 in classes 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45; European Union Trade Mark Registration No. 006104657, registered on June 27, 2008 in international classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45; International trademark Reg. No. 964615, registered on January 8, 2008, in international classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 protected in the following countries: Armenia, Australia, Azerbaijan, Bosnia and Herzegovina, Bahrain, Belarus, Switzerland, China, Algeria, Egypt, European Union, Islamic Republic of Iran, Iceland, Israel, Japan, Kyrgyzstan, Democratic People's Republic of Korea, Republic of Korea, Kazakhstan, Lesotho, Morocco, Monaco, Republic of Moldova, Montenegro, Mongolia, Republic of Namibia, Norway, Serbia, Russian Federation, Singapore, Türkiye, Ukraine, United States of America, Uzbekistan and Viet Nam.

Also, the Complainant owns a number of domain names which include the trademark SODEXO or SODEXHO, such as the domain name <sodexo.com>, <uk.sodexo.com>, <sodexoprestige.co.uk>, <co.sodexo.com> and <sodexousa.com>.

Moreover, the notoriety of the SODEXO trademark has been already recognized in many other recent cases submitted to WIPO Arbitration and Mediation Center.

The disputed domain name <ghsodexocolombia.com> was registered on August 11, 2022 and resolves to an inactive blank website.

5. Language of the proceeding

Pursuant to paragraph 11 of the Rules, unless otherwise agreed by the parties, the language of the proceeding is the language of the registration agreement, subject to the authority of the panel to determine otherwise.

As indicated above, the Center has informed the parties that the language of the registration agreement for the disputed domain name is Spanish. Nevertheless, the Complainant has filed the Complaint and amended Complaint in English and has confirmed its request for the language of the proceeding to be English.

The Respondent did not oppose the Complainant's language request when asked by the Center to comment thereon.

Noting the aim of conducting the proceedings with due expedition, paragraph 10 of the Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality and, that each party is given a fair opportunity to present its case.

The Panel finds that ordering the Complainant to translate the Complaint, in view of the costs involved, would imply a significant burden to the Complainant, in addition to an unwarranted delay in the proceeding.

The Panel notes that the Center notified the Parties in Spanish and English of the language of the proceeding as well as notified the Respondent in Spanish and English of the Complaint and amended Complaint. The Respondent not only failed to answer the Complaint, but also did not oppose the Complainant's language request when it was given the opportunity do so.

In view of the foregoing, the Panel decides that the language of the proceeding is English.

6. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to its trademark SODEXO in which the Complainant has rights, and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Respondent is not affiliated with the Complainant in any way. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark SODEXO or apply for registration of the disputed domain name.

The Respondent has not made any use of the disputed domain name since its registration and has no demonstrable plan to use the disputed domain name, other than to create a likelihood of confusion with the Complainant's trademark.

However, the Complainant claims to fear a fraudulent use of the disputed domain name since the Complainant's clients have received payment requests of false invoices and/or have been ordered with products for considerable amounts posing as employees of the Complainant.

The disputed domain name includes the well-known and distinctive trademark SODEXO and the country name "Colombia". Consequently, it is reasonable to infer that the Respondent, who lives in Colombia, has registered the disputed domain name with full knowledge of the Complainant's trademark and with the intention to cause confusion among consumers who might think that the disputed domain name pertains or is associated to SODEXO's Colombian subsidiary.

Furthermore, the Complainant contends that the passive use of the disputed domain name to host an inactive website is for the intention of gaining a commercial benefit and thus constitutes bad faith registration and use.

Finally, the Complainant has requested the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

B. Respondent

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

7. Discussion and Findings

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

- (i) the disputed domain name is identical or confusingly similar with 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in Section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's SODEXO trademark, as it incorporates the Complainant's trademark SODEXO in its entirety with the inclusion of the elements "gh" and "colombia" which does not prevent a finding of confusing similarity.

Moreover, the ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Based on the above, the Panel finds that the disputed domain name is confusingly similar to the trademark SODEXO in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

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

- (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 trademark 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 a complainant is required to make out a *prima facie* case

that the respondent lacks rights or legitimate interests in the domain name (Section 2.1 of [WIPO Overview 3.0](#)). Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name and if the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Notwithstanding the above, the Complainant has claimed not to have authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the SODEXO trademark nor there is any other evidence in the file to suggest that the Respondent has rights or legitimate interests in the disputed domain name. Also, the Complainant has prior rights in the SODEXO trademark which precede the Respondent's registration of the disputed domain name.

Likewise, and as further discussed under Section 7.c of this Decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name. On the contrary, Respondent's use of the disputed domain name appears to be merely intended to benefit from SODEXO's reputation by confusing Internet users and leading them to believe that the site to which the disputed domain name relates is an official site of the Complainant. Hence, as established in section 2.5 of [WIPO Overview 3.0](#): "Fundamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry."

Given these circumstances, 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, 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 disputed domain name (see *Telstra Corporation Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

C. Registered and Used in Bad Faith

The Complainant has submitted evidence to support that the trademark SODEXO mentioned in paragraph 4 above is widely known and was registered and used many years before the Respondent registered the disputed domain name. The Respondent when registering the disputed domain name has targeted the Complainant's trademark SODEXO to generate confusion among the Internet users and benefit from the Complainant's reputation.

Therefore, the Panel is satisfied that the Respondent must have been aware of the Complainant and the Complainant's trademark SODEXO mentioned in paragraph 4 above (Factual Background) when it registered the disputed domain name on August 11, 2022, even more, considering that the Respondent is from Colombia where the Complainant has developed its business. Consequently, and in accordance with Section 3.1.4 of [WIPO Overview 3.0](#), the Panel considers that the inclusion of the Complainant's SODEXO trademark in the disputed domain name creates a presumption that the disputed domain name was registered on a bad faith basis.

Additionally, the clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered in bad faith (as stated in Section 3.2.1 of [WIPO Overview 3.0](#)).

Furthermore, as per Section 3.3 of [WIPO Overview 3.0](#), the fact that the disputed domain name does not resolve to an active website does not prevent a finding of bad faith under the doctrine of passive holding. See also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

In connection with the Respondent's passive holding use of the disputed domain name, the Panel considers the following factors: (a) that the Complainant's trademark SODEXO is well-known; (b) The failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use; and (c) any good faith use of the disputed domain name, incorporating Complainant's trademark in its entirety, is implausible.

In view of the above given reasons, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith.

8. 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 <ghsodexocolombia.com> be transferred to the Complainant.

/Gustavo Patricio Giay/

Gustavo Patricio Giay

Sole Panelist

Date: October 27, 2022