

## ADMINISTRATIVE PANEL DECISION

Sodexo v. Name Redacted

Case No. D2022-3840

### 1. The Parties

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

The Respondent is Name Redacted.<sup>1</sup>

### 2. The Domain Name and Registrar

The disputed domain name <belguim-sodexo.com> is registered with NameCheap, Inc. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 13, 2022. On October 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 14, 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 (Privacy service provided by Withheld for Privacy ehf). The Center sent an email communication to the Complainant on October 18, 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 October 19, 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”).

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<sup>1</sup>Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the apparent identity theft, the Panel has redacted Respondent’s name from this Decision. However, the Panel has attached as Annex 1 to this Decision an instruction to the Registrar regarding transfer of the disputed domain name which includes the name of Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this Decision shall not be published due to the exceptional circumstances of this case. See *ASOS plc. v. Name Redacted*, WIPO Case No. [D2017-1520](#); *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on October 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 9, 2022.

On October 27, 2022, a third party contacted the Center. On November 2, 2022, the Complainant sent two emails to the Center concerning the possible suspension and settlement of the proceeding. On November 10, 2022, the Center and the Complainant exchanged emails concerning the suspension and settlement of the proceeding.

On November 22, 2022, pursuant to paragraph 6 of the Rules, the Center notified the Parties of the commencement of the panel appointment stage.

The Center appointed Alexandre Nappey as the sole panelist in this matter on December 16, 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 the French company Sodexo, one of the largest company in the world specialized in foodservices and facilities management.

The Complainant is the owner of several national, international and European trademark registrations SODEXO, among which:

- French Trademark SODEXO No. 073513766 filed on July 16, 2007, registered for products and services in classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45, and renewed in 2017;
- International Trademark SODEXO No. 964615 filed on January 8, 2008, under priority of the French trademark registration No. 073513766 of July 16, 2007, registered for products and services in classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45, renewed in 2018 and protected in the numerous countries;
- European Trademark SODEXO No. 008346462 filed on June 8, 2009, registered for products and services in international classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45, and renewed in 2019;
- International Trademark SODEXO No. 1240316 filed on October 23, 2014, registered for products and services in classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45 protected in numerous countries and renewed in 2019;

The Respondent registered the disputed domain name <belguim-sodexo.com> on September 29, 2022. At the time of the present decision, the disputed domain name is not active.

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

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

First, the Complainant claims that the disputed domain name <belguim-sodexo.com> is identical or confusingly similar to the mark SODEXO in which the Complainant has rights;

Indeed, it is composed of the identical mark SODEXO, with the element "belguim", which obviously refers to the country Belgium.

The only difference between the element "belguim" and the country Belgium is the swap between the letters "l" and "u".

According to the Complainant, such difference corresponds to an obvious misspelling of the word “Belgium”, which can be made by an Internet user and is characteristic of typosquatting practice intended to create confusing similarity between Complainant’s mark and the disputed domain name.

In the disputed domain name, the mark SODEXO keeps its individuality and is clearly perceived by consumers as the predominant part of the concerned domain name.

Then, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name:

- the Respondent has no rights on SODEXO as corporate name, trade name, shop sign, mark or domain name that would be prior to the Complainant’s rights on SODEXO.
- 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 mark SODEXO / SODEXHO.
- 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.

Third, the Complainant asserts that the disputed domain name was registered and is being used in bad faith:

- the mark SODEXO 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 mark SODEXO.
- given the well-known character and reputation of the SODEXO / SODEXHO mark, the Respondent knew its existence when he registered the domain name, so that he perfectly knew that he had no rights or legitimate interests in the disputed domain name and that he cannot lawfully use it. The Respondent not only knows the SODEXO mark but wants to benefit of its reputation. It is obvious that the Respondent registered the disputed domain name with actual knowledge of Complainant’s rights in the mark SODEXO very likely for the purpose of creating confusion with Complainant’s mark to divert or mislead third parties for Respondent’s illegitimate profit.

Even if the disputed domain name, which has been recently created, does not presently seem to have any active content, a passive holding of a domain name does not prevent a finding of bad faith.

## **B. Respondent**

The Respondent did not reply to the Complainant’s contentions. The Respondent appears to have used the identity of a third party when registering the disputed domain name. As stated above under “Procedural History”, a third party contacted the Center on October 27, 2022, stating that the third party’s client’s name and physical contact information had been used for purposes of registering the disputed domain name. While the third party and the Complainant agreed to settle the administrative proceeding, the Center noted that since the third party was not the Respondent the settlement could not be implemented without confirmation from the Respondent, which was not received.

## **6. Discussion and Findings**

Notwithstanding the default of the Respondent, it remains up to the Complainant to make out its case in accordance with paragraph 4(a) of the Policy, and to demonstrate that:

- (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.

However, under paragraph 14(b) of the Rules, where a Party does not comply with any provision of the Rules, the Panel “shall draw such inferences therefrom as it considers appropriate”. Having considered the Parties’ contentions, the Policy, the Rules, the Supplemental Rules and applicable law, the Panel’s findings on each of the above-mentioned elements are the following:

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

The Panel is satisfied that the Complainant owns numerous trademark rights on the name SODEXO. This trademark SODEXO is fully reproduced in the disputed domain name.

The addition of the word “belguim”, which will obviously be read as a typo of the geographic word “Belgium” by the Internet user, does not prevent a finding of confusing similarity.

It has been consistently decided in cases under the Policy that adding a term to an established mark does not prevent the finding that a domain name is confusingly similar (e.g., *AB Electrolux v. Haron Ali*, SWAQNY/Whoisguard protected, Whoisguard, Inc., WIPO Case No. [D2017-0920](#), <zanussi-maintenance.com>; *CREDIT MUTUEL ARKEA v. Nilice jose Abadassi*, WIPO Case No. [D2019-1122](#), <arkea-services.com>).

Accordingly, the Panel finds that the Complainant has succeeded in showing that the disputed domain name is confusingly similar to a mark in which the Complainant has rights.

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

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant has satisfied its burden of proof here: the Complainant has argued that it does not know the Respondent, is not connected to the Respondent, and that to its knowledge the Respondent has no rights or legitimate interests in the disputed domain name. Besides, the disputed domain name is not used in connection with a *bona fide* offering of goods or services.

Furthermore, the composition of the disputed domain name, consisting of the Complainant’s trademark SODEXO with the addition of the word “belguim” which is an obvious misspelling of the country word “belgium” cannot constitute fair use in these circumstances as it carries a risk of implied affiliation and effectively impersonates or suggests sponsorship or endorsement by the Complainant.

Based on the above, the Panel considers that the Complainant has made a *prima facie* case and the burden of production shifts to the Respondent.

See *Sodexo v. Privacy service provided by Withheld for Privacy ehf / Andrew Dacxd*, WIPO Case No. [D2021-2474](#).

The Respondent did not challenge the Complaint. Rather, the Respondent appears to have engaged in identity theft, utilizing a third party’s name and physical contact information for purposes of registering the disputed domain name, which further reinforces the lack of the Respondent’s rights or legitimate interests in the disputed domain name.

In view of the above and in the lack of any response from the Respondent, the Panel is satisfied that it is more than likely that the Respondent does not use the disputed domain name for a *bona fide* offering of goods or services.

Consequently, the Panel finds that the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

### C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which, if found by this Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. Paragraph 4(b) of the Policy reads:

“For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith;

- (i) circumstances indicating that you have registered, or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

Each of the four circumstances in paragraph 4(b) of the Policy, if found, would be an instance of “registration and use of a domain name in bad faith”.

Considering that the Complainant has established goodwill and reputation on the SODEXO trademark and that the disputed domain name incorporates that trademark in its entirety, the Respondent had necessarily the Complainant's trademark in mind when it registered the disputed domain name.

Indeed, the Respondent knew or should have known of the Complainant's trademarks and deliberately registered the disputed domain name (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, section 3.2.2 (“WIPO Overview 3:0”)).

Further, the fraudulent means used by the Respondent to register the disputed domain name, by impersonating a third party, demonstrates that the Respondent registered the disputed domain name in bad faith.

The disputed domain name does not resolve to an active webpage and the Panel cannot conceive any use that the Respondent could make of the disputed domain name that would not interfere with the Complainant's trademark rights.

In the circumstances of the present case, the Panel finds that the Respondent's passive holding of the disputed domain name does not prevent a finding of bad faith for the purpose of the Policy (see [WIPO Overview 3.0](#), section 3.3).

In all these circumstances the Panel holds that the disputed domain name <belguim-sodexo.com> was registered and is being used in bad faith.

The Panel finds that the above described circumstances constitute registration and use in bad faith pursuant to the third requirement of paragraph 4(a) 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, <belguim-sodexo.com>, be transferred to the Complainant.

*/Alexandre Nappey/*

**Alexandre Nappey**

Sole Panelist

Date: December 30, 2022