

ADMINISTRATIVE PANEL DECISION

Sodexo v. Mandysen
Case No. D2022-3937

1. The Parties

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

The Respondent is Mandysen, Singapore.

2. The Domain Name and Registrar

The disputed domain name <sodexobtptoolkit.com> is registered with Realtime Register B.V. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 20, 2022. On October 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 22, 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 October 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 October 27, 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 October 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 18, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on November 22, 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

Founded in 1966, the Complainant is a company specialized in food services, facilities management, workplace services, childcare, tutoring and adult education, concierge services and home care for dependent persons. The Complainant has 412 000 employees serving daily 100 million consumers in 56 countries. For fiscal year 2021, the consolidated revenues of the Complainant reached EUR 17.4 billion. From 1966 to 2008, the Complainant promoted its business under the SODEXHO trademark and trade name. In 2008, the Complainant simplified the spelling of its trademark and name to SODEXO and changed its logo from SODEXHO to SODEXO.

The Complainant is the owner of the following trademark registrations for the sign “SODEXO” (the “SODEXO trademark”):

- the International trademark SODEXO with registration No. 964615, registered on January 8, 2008 for goods and services in International Classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45;
- the International trademark SODEXO with registration No. 1240316, registered on October 23, 2014 for goods and services in International Classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45;
- the European Union trademark SODEXO with registration No. 006104657, registered on June 27, 2008 for goods and services in International Classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45; and
- the European Union trademark SODEXO with registration No. 008346462, registered on February 1, 2010 for goods and services in International Classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

The Complainant is also the owner of the domain names <sodexo.com>, <sodexo.fr>, <sodexoca.com> and <sodexousa.com>. These domain names resolve to the official website of the Complainant.

The disputed domain name was registered on June 20, 2022. It is currently inactive. According to the evidence submitted by the Complainant, on October 20, 2022 the disputed domain name redirected to a malicious pornography website.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is confusingly similar to its SODEXO trademark, because it is composed of this trademark with the addition of the letters “btp” and the dictionary word “toolkit”. According to the Complainant, the sequence “btp toolkit” in the disputed domain name does not distinguish it from the SODEXO trademark which is dominant in it. The Complainant adds that the letters “btp” refer to “Better Tomorrow Plan” – the name given by the Complainant to its worldwide corporate roadmap and toolkit. The Complainant maintains that the public will believe that the disputed domain name is linked to the Complainant.

The Complainant submits that the Respondent is using the disputed domain name to point to a webpage connecting to a malicious pornographic website.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it does not have any connection with the Complainant and has not been permitted by the Complainant to register the disputed domain name and to use it. The Complainant adds that the Respondent has no rights in “Sodexo” as corporate name, trade name, shop sign, trademark or domain name that would be prior to the Complainant’s rights in the SODEXO trademark. The Complainant notes

that the Respondent was not commonly known by the disputed domain name prior to the adoption and use by the Complainant of its corporate and business name and the SODEXO trademark.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent knew of the existence of the SODEXO trademark when it registered the disputed domain name. According to the Complainant, the word “Sodexo” is purely fanciful and nobody would legitimately choose it unless seeking to create an association with the Complainant. The Complainant points out that the Respondent is using the disputed domain name to divert Internet traffic to a Chinese pornographic website in an intentional attempt to attract, for commercial gain, Internet users to the Respondent’s website. It adds that such use tarnishes the distinctiveness and reputation of the SODEXO trademark.

B. Respondent

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

6. Discussion and Findings

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the Respondent has registered and is using the disputed domain name in bad faith.

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]”

The Respondent however did not specifically respond to the statements and allegations contained in the Complaint and did not include any bases for the Respondent to retain registration and use of the disputed domain name.

A. Identical or Confusingly Similar

The Complainant has provided evidence that it is the owner of the SODEXO trademark. Therefore, the Panel is satisfied that the Complainant has established its rights in the SODEXO trademark for the purposes of the present proceeding.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the Top-Level Domain (“TLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” gTLD section of the disputed domain name for the purposes of its comparison to the Complainant’s trademark.

The disputed domain name reproduces the SODEXO trademark in its entirety with the addition of the three-letter sequence “btp” and the dictionary word “toolkit”. These two additional elements do not sufficiently distinguish the disputed domain name from the SODEXO trademark, which remains easily recognizable in it. As discussed in section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the SODEXO trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on a complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it has not authorized it to use the SODEXO trademark and there is no relationship between the Parties. The Complainant maintains that the sequence “btptoolkit” in the disputed domain name refers to “Better Tomorrow Plan” – the name given by the Complainant to its worldwide corporate roadmap for the Sodexo Group in global sustainability. According to the Complainant, it is therefore impossible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate. The Complainant adds that the disputed domain name redirects users to a malicious pornography website. The Complainant has thus established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response or disputed the contentions of the Complainant; it has not explained its choice of the disputed domain name or its meaning.

As already discussed, the disputed domain name is confusingly similar to the SODEXO trademark and contains the sequence “btptoolkit”, and redirects to a pornography website. In the absence of any other explanation, the Panel accepts as plausible the Complainant’s contention that the disputed domain name was intentionally designed to refer to its “Better Tomorrow Plan” roadmap and toolkit to make the disputed domain name attractive to Internet traffic, and then was used for a pornography website most likely for financial gain. Such use of the disputed domain name by the Respondent cannot be regarded as legitimate.

This is sufficient for the Panel to reach the conclusion that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(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.”

The Respondent does not provide any plausible explanation for the registration and intended use of the disputed domain name. In the lack of any such explanation, the Panel accepts that the confusing similarity between the disputed domain name and the SODEXO trademark creates the risk that Internet users may mistakenly believe that the disputed domain name refers to an official location of the Complainant for its Better Tomorrow Plan roadmap and toolkit. This leads the Panel to the conclusion that it is more likely than not that the Respondent has registered the disputed domain name in bad faith with knowledge of the Complainant and targeting the SODEXO trademark in the expectation that the disputed domain name would attract Internet users interested in the Complainant's activities.

The disputed domain name has been used to redirect visitors to a pornography website. This supports a conclusion that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to this website by creating a likelihood of confusion with the Complainant's SODEXO trademark as to the source, sponsorship, affiliation, or endorsement of the pornography website.

On the basis of the above, the Panel finds that the disputed domain name has been registered and 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 disputed domain name <sodexobtptoolkit.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: December 1, 2022