

ADMINISTRATIVE PANEL DECISION

Sodexo v. Gwedoline BERTRANT

Case No. D2023-0136

1. The Parties

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

The Respondent is Gwedoline BERTRANT, France.

2. The Domain Names and Registrars

The disputed domain name <sodexo-energie.com> is registered with Register SPA LLC (the “Registrar”). The disputed domain names <sodexo-energie.online> and <sodexo-energie.store> are registered with eNom, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 11, 2023. On January 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 12 and 13, 2023, the Registrars transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 20, 2023, 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 January 23, 2023. On January 20, 2023, the Center transmitted an email in English and French to the Parties regarding the language of the proceeding regarding the domain name <sodexo-energie.com>. The Complainant confirmed its request that English be the language of the proceeding on January 23, 2023. 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 French of the Complaint, and the proceedings commenced on January 30, 2023. In accordance with

the Rules, paragraph 5, the due date for Response was February 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 20, 2023.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on March 1, 2023. 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 listed on Euronext which was founded in 1966 by the late Mr. Pierre Bellon, is one of the world leaders in food services and facilities management, with 422.000 employees worldwide daily serving 100 million consumers in 53 countries, and a consolidated turnover in 2022 of EUR 21,1 billion.

The Complainant owns rights in a large portfolio of SODEXO trademarks, including *inter alia* French trademark registration No. 073513766 of July 16, 2007, international trademark registration no. 964615 registered on January 8, 2008, European Union trademark registered under No. 006104657 on June 27, 2008, European Union trademark registered under No. 008346462 on February 1, 2010, European Union trademark registered under No. 011138501 on October 10, 2013, international trademark registration No. 1195702 filed on October 10, 2013 and international trademark registration No. 1240316 registered on October 23, 2014 (together referred to hereinafter as: "the Mark").

In addition, the Complainant has registered several domain names, including *inter alia* <sodexo.com> and <sodexo.fr>.

The Respondent is apparently located in France.

The disputed domain names were registered on January 3, 2023, and resolved to inactive pages. At the time of this decision, the disputed domain names do not resolve to any active website.

5. Parties' Contentions

A. Complainant

- (i) The Complainant submits that the disputed domain names reproduce the Mark, in which the Complainant has rights, and are confusingly similar to the Mark insofar as the disputed domain names contain the Mark in its entirety. The Complainant also asserts that the addition of the term in French "energie", evocative of the name of its "Energie et maintenance" division, does not serve to distinguish the disputed domain names from the Mark.
- (ii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names. Furthermore, the Complainant contends that it never licensed the Respondent to use the Mark in any manner or consented to such use. The Complainant also asserts that the Respondent never had any business connection or affiliation with the Complainant.
- (iii) The Complainant submits that the Respondent knew of the Mark when registering the disputed domain names and is using the disputed domain names, by passive holding, in bad faith.
- (iv) The Complainant requests that the disputed domain names be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Aspects

A. Language of the Proceeding

Paragraph 11(a) of the Rules provides that “[u]nless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative 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”.

The Registrar of the disputed domain names <sodexo-energie.store> and <sodexo-energie.online>, ENOM, Inc., confirmed that the language of the Registration Agreement of these disputed domain names is English, whereas the Registrar of the disputed domain name <sodexo-energie.com>, Register SPA, confirmed that the language of the Registration Agreement of this disputed domain name is French.

The Complainant formally requested that the language of the proceeding be English, to which the Respondent failed to comment or to object.

In the light of the above circumstances, particularly the facts that the Panel must render the administrative decision in only one language, and having to ensure pursuant to paragraph 10(c) of the Rules that the administrative proceeding takes place with due expedition, the Panel, who is conversant in both English and French, considering the time and cost for the Complainant of translating and submitting the Complaint in French, determines pursuant to paragraph 11(a) of the Rules that the appropriate language of the proceeding is English.

B. Failure to Respond

As aforementioned, no Response was received from the Respondent.

Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain names have been met, even in the event of a default.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's default as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the default, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by defaulting and failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain names, such as making legitimate noncommercial or fair use of the disputed domain names.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Requirements of paragraph 4(a) of the Policy

A. Identical or Confusingly Similar

In comparing the Mark with the disputed domain names, it is evident that the latter consists solely of the Mark, followed by a hyphen, the term in French “energie”, and respectively by the generic Top-Level Domain (“gTLD”) “.com”, “.online” or “.store”.

The addition of terms does not prevent a finding of confusing similarity between a domain name and a trademark, where the trademark remains recognizable. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8. Here, the Mark is clearly recognizable in the disputed domain names.

It is also well established that a gTLD, including, as is the case here, the gTLD “.com”, “.online” or “.store”, does not generally affect the assessment of a domain name for the purpose of determining identity or confusing similarity.

The Panel finds that the disputed domain names are confusingly similar to the Mark, which they incorporate entirely.

Thus, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that with regard to paragraph 4(a)(ii) of the Policy this could result in the often impossible task of proving a negative proposition, requiring information that is primarily if not exclusively within the knowledge of a respondent.

Thus, the consensus view of UDRP panels is that paragraph 4(c) of the Policy shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a domain name, once the complainant has made a *prima facie* showing, as the Panel believes the Complainant has made in this case. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

The applicable standard of proof in UDRP cases being the “balance of probabilities” or “preponderance of the evidence”, the Panel is prepared to draw certain inferences in light of the particular facts and circumstances of the case. See [WIPO Overview 3.0](#), section 4.2.

As previously noted, the Respondent offered no reason for selecting the disputed domain names. There is no evidence that the Respondent is commonly known by any of the disputed domain names or makes a legitimate noncommercial or fair use of the disputed domain names.

No information is provided on what rights or legitimate interests the Respondent may have in the disputed domain names.

To counter any notion that the Respondent has such rights or legitimate interests, the Complainant has argued that the Respondent (i) has no business connection or affiliation with the Complainant, and (ii) received no license or consent from the Complainant to register or use the disputed domain names.

Moreover, the Panel finds the composition of the disputed domain names, combining the Mark with the term in French “energie”, which is used by the Complainant in the name of one of its divisions, carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

In the circumstances, the Panel concludes that the Complainant has established the requirement of paragraph 4(a)(ii) of the Policy with respect to the disputed domain names.

C. Registered and Used in Bad Faith

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain names confusingly similar to the Mark.

It is established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may, in certain circumstances, support a finding of bad faith. See [WIPO Overview 3.0](#), section 3.2.2.

In this case, given that many UDRP panels have declared the Mark to be famous or well-known (e.g. *Sodexo v. Contact Privacy Inc. Customer 1246780534 / Chivers Michael*, WIPO Case No. [D2020-0865](#); *Sodexo v. WhoisGuard Protected, WhoisGuard, Inc. / New World*, WIPO Case No. [DCO2020-0021](#); *Sodexo v. Contact Privacy Inc. Customer 1247228940 / James Lehman*, WIPO Case No. [D2020-1281](#); *Sodexo v. Registration Private, Domains By Proxy, LLC / Krissa Pucket*, WIPO Case No. [D2020-1315](#); *Sodexo v. Contact Privacy Inc. Customer 1247189803 / NorAm Accounts Receivable*, WIPO Case No. [D2020-1683](#); *SODEXO v. Super Privacy Service LTD c/o Dynadot / Zhichao*, WIPO Case No. [D2020-1762](#); *SODEXO v. Zhichao Yang*, WIPO Case No. [D2020-2286](#); *SODEXO v. Ashutosh Dwivedi, Food & Beverages*, WIPO Case No. [D2020-2686](#); *Sodexo v. Domains By Proxy, LLC, DomainsByProxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-3085](#); *Sodexo v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case [D2021-0472](#); *Sodexo v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-0485](#); *Sodexo v. Daniela Ortiz*, WIPO Case No. [D2021-0628](#); *Sodexo v. Yang Zhichao*, WIPO Case No. [D2021-0902](#); *Sodexo v. Lloyd Group*, WIPO Case No. [D2021-1214](#) and *Sodexo v. franck gauthier*, WIPO Case No. [D2021-3746](#)), the Respondent could have known of it by a mere check of public databases.

The Panel thus finds it impossible to believe that the Respondent chose to register the disputed domain names randomly with no knowledge of the Mark. See [WIPO Overview 3.0](#), section 3.1.1.

Furthermore, the large scale of the Complainant's operations in France, the fact that the Respondent appears to be located in France and her lack of response in this proceeding reinforce the implausibility that she chose to register the disputed domain names without knowledge of the Mark.

In addition, it is well established that the mere passive holding of a domain name may in appropriate circumstances be evidence not only of bad faith registration, but also of bad faith use. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *DCI S.A. v. Link Commercial Corporation*, WIPO Case No. [D2000-1232](#); *Mary-Lynn Mondich and American Vintage Wine Biscuits, Inc. v. Shane Brown, doing business as Big Daddy's Antiques*, WIPO Case No. [D2000-0004](#); and *Alitalia –Linee Aeree Italiane S.p.A v. Colour Digital*, WIPO Case No. [D2000-1260](#).

Prior UDRP panels have also held that bad faith use of a domain name by a respondent may also result from the fact its good faith use is in no way plausible (see *Audi AG v. Hans Wolf*, WIPO Case No. [D2001-0148](#)), considering the specificity of the activity of the Complainant.

In this case, the Panel cannot find any actual or contemplated good faith use of the disputed domain names, as their use invariably results in taking unfair advantage of the Complainant's rights. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

Finally, some UDRP panels have held that in certain circumstances, registrants of domain names would have a duty to abstain from registering and using a domain name which is either identical or confusingly similar to a prior trademark held by others and which would infringe upon or otherwise violate the rights of a

third party. See Policy, paragraph 2(b); *Nike, Inc. v. B. B. de Boer*, WIPO Case No. [D2000-1397](#); *Nuplex Industries Limited v. Nuplex*, WIPO Case No. [D2007-0078](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *BOUYGUES v. Chengzhang, Lu Ciagao*, WIPO Case No. [D2007-1325](#); *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#); and *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#).

The Panel concludes in the light of all these circumstances that the Respondent's registration and use of the disputed domain names constitutes bad faith, and that the requirement of paragraph 4(a)(iii) of the Policy is also satisfied in this case.

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 names, <sodexo-energie.com>, <sodexo-energie.online>, and <sodexo-energie.store> be transferred to the Complainant.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: March 8, 2023