

ADMINISTRATIVE PANEL DECISION

Sodexo v. Gokhan Kaya

Case No. D2023-2633

1. The Parties

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

The Respondent is Gokhan Kaya, Türkiye.

2. The Domain Names and Registrar

The disputed domain names <sodexo-eu.net> and <sodexo-eu.xyz> are registered with Turkicaret.net Yazılım Hizmetleri Sanayi ve Ticaret A.S. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 19, 2023. On June 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 21, 2023, the Registrar 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, 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 June 26, 2023.

On June 21, 2023, the Center sent an email communication regarding the language of the proceeding in English and Turkish. The Complainant submitted a request to proceed in English on June 22, 2023. The Respondent did not submit any response to the Center’s communication.

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 both in English and in Turkish, and the proceedings commenced on July 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 25, 2023.

The Center appointed Selma Ünlü as the sole panelist in this matter on July 27, 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 Sodexo is a French company founded in 1966, operating in food services and facilities management. The Complainant operates internationally with 422 thousand employees in 53 countries serving 100 million customers every day.

The Complainant owns several trademarks containing “SODEXO”, *inter alia*, as follows:

- International device mark SODEXO no. 964615, registered since January 8, 2008;
- International word mark SODEXO no. 1240316, registered since October 23, 2014; and,
- the European Union (“EU”) word mark SODEXO no. 008346462, registered since February 1, 2010.

The Complainant is also the owner of the domain names including the trademark SODEXO, such as <sodexo.com>, <sodexo.fr>, <sodexousa.com>.

The disputed domain names were registered on June 12, 2023, and are inactive.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain names are confusingly similar to the Complainant’s well-known trademark and the disputed domain names include the trademark in its entirety. The Complainant also contends that the addition of the “eu” does not avoid a finding of confusing similarity and it even increases the risk of confusion because the Complainant is well established in the EU. Therefore, the Complainant asserts that the disputed domain names are confusingly similar to its prior well-known trademark SODEXO.

The Complainant claims that the Respondent has no rights or legitimate interests in the disputed domain name and that the Respondent was not commonly known by the concerned domain names prior to the adoption and use by the Complainant of the corporate name, business name and mark SODEXO or SODEXHO. Moreover, it was also claimed 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 disputed domain names and to use them.

The Complainant contends that 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. It is also stated that considering the well-known character and reputation of the SODEXO or SODEXHO mark, the Respondent was aware of the Complainant’s trademark when he registered the disputed domain names, and he knew that he had no rights or legitimate interests in the disputed domain names and that he cannot lawfully use them.

The Complainant further asserts that the Respondent not only knows the SODEXO mark but wants to benefit of its reputation and that it is obvious that the Respondent registered the disputed domain names with actual knowledge of the Complainant’s rights in the mark SODEXO. The Complainant also claims that the Respondent registered the disputed domain names for the purpose of creating confusion with the Complainant’s mark to divert or mislead third parties for the Respondent’s illegitimate profit. In any case, it was also stated that passive holding of a domain name does not prevent a finding of bad faith. Lastly, it was

asserted by the Complainant that the unauthorized registration of the disputed domain names by the Respondent and their passive holding, likely in the aim of fraudulent uses, are for the purpose of commercial gain and then constitute bad faith registrations and uses.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

The Panel determines in accordance with the Complainant's request and the Rules, paragraph 11(a), that the language of the administrative proceeding shall be English. Although the language of the Registration Agreement for both disputed domain names is Turkish, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceeding in English. The Panel notes that the Respondent was given the opportunity to file a Response in Turkish or English and that this opportunity was not used by the Respondent.

Consequently, the Panel is convinced that the Respondent will not be prejudiced by a decision being rendered in English.

6.2. Substantive Issues

The Complainant must prove that the three elements of paragraph 4(a) of the Policy have been met for each of the disputed domain names, namely:

- (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.

Since the Respondent did not object to any of the contentions from the Complainant by not submitting a Response, the Panel will decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint and supporting Annexes.

A. Identical or Confusingly Similar

In light of the explanations and evidence provided by the Complainant, the Panel is satisfied that the Complainant has valid trademark rights in the SODEXO trademark, which is reproduced in its entirety in the disputed domain names.

The Panel finds that the disputed domain names are confusingly similar to the Complainant's SODEXO trademark and the addition of a hyphen and the "eu" do not prevent a finding of confusing similarity.

Furthermore, the addition of the gTLD ".xyz" and ".net" does not prevent a finding of confusing similarity, since it is merely a technical registration requirement to be disregarded typically.

Consequently, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark and the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists non-exhaustively the relevant circumstances that could show the Respondent's rights or legitimate interests in a domain name, as follows:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] 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] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] 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 or to tarnish the trademark or service mark at issue."

The Panel notes that the Respondent has not filed a Response, and therefore, neither denied the Complainant's claims, nor brought any information or evidence to prove any rights or legitimate interests.

The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name.

Since the Complainant made out a *prima facie* case, the burden of production shifts to the Respondent to establish its rights or legitimate interests in the disputed domain name. The Respondent, however, has not sought to rebut that *prima facie* case.

In light of the Complainant's assertions and evidence, the Panel finds that the Complainant has met the requirement under the Policy of *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain names. Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists certain relevant non-exhaustive circumstances, which can be considered as the registration and use of a domain name in bad faith, namely:

"(i) circumstances indicating that [the respondent has] registered or acquired [a disputed] 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 [the respondent's] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] 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 [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other on-line location, by creating a likelihood of confusion

with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location."

Given the explanations in the Complaint and the evidence provided by the Complainant, the Panel finds that the disputed domain names were registered in bad faith.

The Panel concludes that the Complainant's SODEXO trademark is of distinctive character and as it was also found by other panels in the past, it is well known. The addition of "eu" does not vanish the confusing similarity, on the contrary, the Panel considers that this addition increases the confusion because it demonstrates the Complainant's geographical area of activity. The fact that the Respondent decided to register the disputed domain names including the well-known trademark in its entirety with such addition strongly suggests that the Respondent took the Complainant's well-known SODEXO trademark into account and targeted it specifically in order to gain unfair advantage.

Therefore, the Panel is of the opinion that, due to the earlier rights of the Complainant in the well-known SODEXO trademarks, the Respondent was aware of the Complainant and its trademarks at the time of registration of the disputed domain names (see e.g., *Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#)). Referring to *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#), the Panel believes that the awareness of the Complainant's trademark at the time of the registration of the disputed domain names is to be considered an inference of bad faith registration.

Moreover, the disputed domain names are inactive. Regarding inactive domain names, section 3.3 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#) provides the following: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding." The Panel concluded here that the doctrine of passive holding applies, taking into account (i) the degree of distinctiveness or reputation of the Complainant's mark, (ii) the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the Respondent's concealing its identity or use of false contact details (since it is also noted that the notification couriers sent out by the Center could not be delivered to the Respondent's address), and (iv) the implausibility of any good faith use to which the disputed domain names may be put.

Consequently, the Panel decides that the third requirement is also met and both the registration and the use of the disputed domain names are 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 names, <sodexo-eu.net> and <sodexo-eu.xyz>, be transferred to the Complainant.

/Selma Ünlü/

Selma Ünlü

Sole Panelist

Date: August 7, 2023