

ADMINISTRATIVE PANEL DECISION

Sodexo v. Sebastian Barra Alarcon, sodexo
Case No. D2024-0501

1. The Parties

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

The Respondent is Sebastian Barra Alarcon, sodexo, Chile.

2. The Domain Name and Registrar

The disputed domain name <sindicatosodexo.org> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 2, 2024. On February 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 2, 2024, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 7, 2024, 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 February 9, 2024.

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 February 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 8, 2024.

The Center appointed Alissia Shchichka as the sole panelist in this matter on March 14, 2024. 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

Established in 1966, the Complainant provides food and facilities management services. With a dedicated workforce of 430,000 employees serving the needs of 80 million consumers daily across 45 countries, the Complainant recorded consolidated revenues of EUR 22.6 billion in 2023.

The Complainant has provided evidence that it is the registered owner of numerous SODEXO and SODEXHO trademarks, including, but not limited to the following:

- International trademark registration N° 1240316, registered on October 23, 2014, for a verbal mark SODEXO, designating multiple jurisdictions, in classes 9, 16, 35-45;
- International trademark registration N° 964615, registered on January 8, 2008, for a figurative mark SODEXO, designating multiple jurisdictions, in classes 9, 16, 35-45;
- Chilean trademark registration N° 814943, registered on April 24, 2008, for the figurative mark SODEXO, in classes 9 and 16;
- International trademark registration N° 689106, registered on January 28, 1998, for a figurative mark SODEXHO, designating multiple jurisdictions, in classes 16, 36, 37, 39, 41, and 42;

The Complainant also owns more numerous domain names, which include <sodexo.com> (registered on October 9, 1998), <sodexo.fr> (registered on January 14, 2008), <sodexho.com> (registered on October 23, 1995), and other domain names containing the SODEXO and/or SODEXHO trademarks. The Complainant also promotes its business in Chile at "<https://cl.sodexo.com/home.html>".

The disputed domain name was registered on January 29, 2024. At the time of this Decision, the disputed domain name leads to a registrar inactive parking page. However, the Complainant has provided evidence that previously, the disputed domain name directed to a parking page featuring pay-per-click ("PPC") links redirecting to websites of unrelated third parties operating in the same sector as the Complainant.

The Respondent, according to the disclosed Whois information for the disputed domain name, is located in Chile.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant asserts that the SODEXO and SODEXHO trademarks have a strong reputation and are widely recognized globally.

According to the Complainant, the disputed domain name is confusingly similar to the Complainant's trademark SODEXO as it incorporates the entire trademark. The addition of the Spanish term "sindicato" ("union"/"syndicate" in English) to the SODEXO trademark does not alter the overall impression that the disputed domain name is associated with the Complainant's trademark or prevent the confusing similarity between the disputed domain name and the Complainant's trademark. On the contrary, this term increases the likelihood of confusion since it refers to the Complainant's employee union and is perceived as the Complainant's official website for unions/syndicates. With regards to the generic Top-Level Domain ("gTLD") ".com", which forms part of the disputed domain name, the Complainant requests that the Panel disregard it under the first element as it is a standard registration requirement.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name since (1) the Complainant is not affiliated with the Respondent, and he has never licensed or otherwise authorized the Respondent to apply to register the disputed domain name; (2) the Respondent is not commonly known by the disputed domain name; and (3) the Respondent has registered the disputed domain name under the name "Sebastian Barra Alarcon" (an invented identity) from "SODEXO", obviously for the purpose of impersonating a purported employee of the Complainant.

Finally, the Complainant argues that the Respondent has registered and is using the disputed domain name in bad faith since: (1) the Complainant's trademarks significantly predate the registration of the disputed domain name, and the Complainant's fanciful SODEXO and SODEXHO trademarks are well known and widely used. This indicates that the Respondent knew about the Complainant's trademarks; (2) the Respondent's use of the disputed domain name in connection with the PPC parking website demonstrates that the Respondent knowingly targeted the Complainant's prior registered trademark to generate traffic to the disputed domain name and gain financial benefit by leveraging the reputation of the Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

The Respondent's default in the case at hand does not automatically result in a decision in favor of the Complainant, however, paragraph 5(f) of the Rules provides that if the Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from the Respondent's failure to submit a response as it considers appropriate.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term, here, “sindicato”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Complainant has confirmed that the Respondent is not affiliated with the Complainant, or otherwise authorized or licensed to use the SODEXO and SODEXHO trademarks or to seek registration of any domain name incorporating the trademarks.

According to Whois details, the Respondent’s name is “Sebastian Barra Alarcon” from “SODEXO”.

According to Section 2.3 of [WIPO Overview 3.0](#), “Insofar as a respondent’s being commonly known by a domain name would give rise to a legitimate interest under the Policy, panels will carefully consider whether a respondent’s claim to be commonly known by the domain name – independent of the domain name – is legitimate. Mere assertions that a respondent is commonly known by the domain name will not suffice; respondents are expected to produce concrete, credible evidence.”

The Panel concludes that the Respondent, refraining from filing a Response, has failed to provide the substantial evidence required to show he was commonly known by the disputed domain name. [WIPO Overview 3.0](#), section 2.3.

The Panel therefore concurs with the Complainant’s assertion that the Respondent provided a false name and has used the Complainant’s name, SODEXO, to purportedly establish a legitimate appearance in connection with the disputed domain name.

Furthermore, based on the available record, the Panel finds that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain, to misleadingly divert consumers or to tarnish the trademark or service mark at issue. [WIPO Overview 3.0](#), section 2.4.

Indeed, the Respondent so far obviously has neither used the disputed domain name for a bona fide offering of goods or services nor for a legitimate noncommercial or fair purpose, but merely has used it for a parking page featuring PPC links. Given that the disputed domain name consists of the Complainant’s well-known SODEXO trademark combined with the term “sindicato”, which could be perceived as the Complainant’s official website for unions/syndicates, such use of the disputed domain name does not represent a bona fide offering because it capitalizes on the reputation and goodwill of the Complainant’s trademark. [WIPO Overview 3.0](#), section 2.9.

Accordingly, the Complainant has provided evidence supporting its prima facie claim that the Respondent lacks any rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Therefore, the Panel concludes that the Respondent does not have any rights or legitimate interests in the disputed domain name and the Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

The Panel finds that the Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

On the issue of registration, the Panel observes that the Complainant's rights to the well-known SODEXO and SODEXHO trademarks substantially precede the Respondent's registration of the disputed domain name. Consequently, the Respondent knew or should have known of the Complainant's trademarks at the time of registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

Further, the mere registration of the disputed domain name that is confusingly similar to the Complainant's well-known trademarks by the Respondent, who is unaffiliated with the Complainant, can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

On the issue of use, the disputed domain name redirected visitors to a PPC website displaying a variety of links leading to third party competitors' active websites. These websites are not affiliated with the Complainant but are related to the Complainant's business. This is evidently done with the purpose of generating PPC revenues. Therefore, the Panel finds that the Respondent has intentionally sought to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's SODEXO and SODEXHO trademarks regarding the source, sponsorship, affiliation, or endorsement of the website. Consequently, this constitutes a bad-faith use of the disputed domain name. [WIPO Overview 3.0](#), section, 3.5.

Upon reviewing the available evidence, the Panel concludes that the current non-use of the disputed domain names does not preclude a finding of bad faith, as established in the landmark UDRP decision *Te/stra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Panel finds that, in the circumstances of this case, the Respondent's registration and use of the disputed domain name constitute bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

The Panel finds that the Complainant has established the third element 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 <indicatosodexo.org> be transferred to the Complainant.

/Alissia Shchichka/

Alissia Shchichka

Sole Panelist

Date: March 28, 2024