

ADMINISTRATIVE PANEL DECISION

SODEXO v. IT Manager

Case No. D2024-3135

1. The Parties

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

The Respondent is IT Manager, United States of America (“United States”). See discussion below as to respondent identity.

2. The Domain Name and Registrar

The disputed domain names <sodexocellular.com> and <sodexowireless.com> (each a “Disputed Domain Name” together the “Disputed Domain Names”) are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 31, 2024. On July 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On July 31, 2024, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 19, 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 August 20, 2024.

On August 5, 2024, the Complainant filed a separate complaint - WIPO Case No. [D2024-3207](#) - in relation to the domain name <sodexwireless.com>. The Panel will refer to this case as the “Later Case”. On August 8, 2024, an individual used the Center’s online facility to file a response in the Later Case. That response related to both the domain name <sodexwireless.com> and the Disputed Domain Names. That response identified the respondent as an individual who was not referenced in the Later Case complaint and accordingly the Center identified this filing as a third party response (see further below).

In the present case, 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 August 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 12, 2024. The Center concluded that the Respondent had not filed any Response and accordingly, the Center notified the Respondent's default on September 19, 2024.

Following registrar disclosure in the Later Case (WIPO Case No. [D2024-3207](#)), the Complainant amended the complaint in the Later Case so that the respondent of record in the Later Case was identified as "IT Manager, Clari Group" with an address identical to the Respondent in the present case.

In the present case the Center received an e-mail on September 19, 2024, from an individual. This e-mail stated that a response had been filed with the Center "months ago". As a result of that communication and following a further exchange of e-mails the Center identified that the response in question was that made on August 8, 2024, under the reference for the Later Case (WIPO Case No. [D2024-3207](#)) (see above). The Panel notes that curiously this document was filed before the Notification of Complaint and Commencement of Administrative Proceeding in both cases. In the e-mail correspondence the individual in question states "To clarify - we responded to the original complaint dated 31 July as found in the WIPO registration database on August 3rd. In any case, I shall resubmit our response today using the site which is still within the 4 day extension automatically granted to Respondents according to the rules". The response online form in question identifies the respondent as being "Robert Franz" and states that the "Respondent's authorized representative's company name/law firm" is "Entrepreneur Wireless LLC". The online document was drafted as a response relating to both the domain name <sodexwireless.com> and the Disputed Domain Names. The Panel will treat it as the Response for reasons discussed below.

On September 25, 2024, the Center confirmed with the Respondent it was in receipt of the Response, noting however, that the response was filed under a different case number, D2024-3207.

On September 9, 2024, the Complainant's Representative sent an e-mail to Robert Franz. On September 13, 2024, an e-mail in reply was received and the Complainant then sent a further e-mail on September 17, 2024. These e-mails are discussed below. On September 26, 2024, the Complainant submitted a Supplemental Filing.

The Center appointed Nick J. Gardner as the sole panelist in this matter on October 3, 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

The Complainant is a French company. Founded in 1966, it is one of the largest companies in the world specializing in foodservice and facilities management with 430,000 employees serving daily 80 million consumers in 45 countries. The Complainant's consolidated revenues in 2023 reached EUR 22.6 billion

From 1966 to 2008, the Complainant promoted its business under the mark and trade name SODEXHO, which in 2008 was simplified to SODEXO. The Complainant owns registered trademark rights for the SODEXO word mark and for various combined word and logo marks that incorporate the mark SODEXO in many countries, See, for example, European Union trademark registration filed on June 8, 2009, registered on February 1, 2010, under No. 008346462. These trademarks are referred to as the "SODEXO trademark" in this decision.

The Complainant owns <sodexo.com> and various other domain names corresponding to or including the term "SODEXO" and promotes its activities via websites linked to such domain names

The Disputed Domain Name <sodexocellular.com> was registered by the Respondent on July 28, 2024. It resolves to a parking page with pay-per-click ("PPC") links to third party web sites.

The Disputed Domain Name <sodexowireless.com> was registered by the Respondent on July 28, 2024. It resolves to a webpage which appears to require login details to be entered. Pursuant to its general powers - see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 4.8 - the Panel has visited this website. The Panel notes that it is also possible to click on a button "Sign Up Now" which leads to a page promoting various telecommunications packages. At least one link on that page redirects to the Complainant's website and other links redirect to other telecommunications websites. The filed evidence shows that the landing page previously prominently displayed the Complainant's stylised Sodexo logo. As at the date of this Decision that logo no longer appears on the landing page although it is still present on the "contact us" page.

5. Parties' Contentions

A. Complainant

The Complainant's case can be summarized as follows

The Disputed Domain Names are each identical to or confusingly similar to the Complainant's trademark SODEXO, which is incorporated in the Disputed Domain Names with the addition of the generic or descriptive dictionary word "wireless" and "cellular"

The Respondent has no rights nor legitimate interests in the Disputed Domain Names as it has no rights in "sodexo" as a corporate name, trade name, shop sign, mark or domain name.

The Respondent is not commonly known by the Disputed Domain Names. Moreover, 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's trademark SODEXO is purely fanciful and well-known worldwide as previous UDRP decisions already recognized. The unauthorized registration of the Disputed Domain Names by the Respondent constitutes bad faith registration and use.

B. Respondent

A preliminary question arises in relation to respondent identity. The Response says that the Respondent is "Robert Franz" and states that the "Respondent's authorized representative's company name/law firm" is "Entrepreneur Wireless LLC". The Response then goes on to say that "Respondent represents Entrepreneur Wireless LLC, a US-based Mobile Virtual Network Operator (MVNO) that provides mobile phone and VOIP service to various customers through direct-to-consumer and employer-sponsored phone plans. Clarigrp is an affiliated entity that manages domain names on behalf of Entrepreneur Wireless LLC and other affiliated entities". It seems to the Panel that the Response has been incorrectly completed and Mr. Franz should have been shown as the Respondent's representative and either Enterprise Wireless LLC or Clarigrp should have been shown as the Respondent. The Panel will use the term Respondent to refer to Clarigrp and Enterprise Wireless LLC. It follows that the substantive content of the online response form filed by Mr. Franz is properly the Response in relation to the present Complaint (as well as being the response in the Later Case).

The Response goes on to state as follows:

"Entrepreneur Wireless LLC does business under multiple brands including Nexys Mobile, Tesa Mobile, DK Wireless, and Barstool Wireless. Sodexo Wireless is a new wireless service brand operated by Entrepreneur Wireless LLC. Anyone going to the website today can sign up for a legitimate, bona fide mobile phone service on a national carrier network. This website and service was live and operable prior to any notice being given to Respondent of the dispute and its use is in connection with a bona fide offering of goods or

services, satisfying element (i) of paragraph 4(c). In addition, Sodexo provides food services and no consumer would confuse Sodexo Wireless services with Sodexo food service. It is extraordinarily unlikely that any given person could possibly be a customer of both the Complainant and the Respondent. Given these facts, Claimant's request for transfer fails to satisfy element ii of paragraph 4(a) of the Policy. For the purposes of Paragraph 4(a)(iii), Entrepreneur Wireless states the following facts: 1) It has never contacted or attempted to contact Complainant or a competitor of Complainant. 2) It has registered the domain name for the purpose of providing a bona fide wireless service. 3) Sodexo and Entrepreneur Wireless are not in the same business, so there cannot be a claim of attempted business disruption. 4) The domain is not generally advertised and Complainant fails to make any claim that Respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the complainant's trademark. Given these facts, Claimant's request for transfer fails to satisfy element (iii) of paragraph 4(a) of the Policy".

6. Discussion and Findings

Preliminary Matter – Complainant's Supplemental Filing

The Panel declines to admit the Complainant's Supplemental Filing. That filing is simply drawing attention to something that is already in evidence, namely the use by the Respondent of the Complainant's logo on the landing page of the website to which the Disputed Domain Name <sodexowireless> resolves. As such the supplemental filing is unnecessary.

Substantive Matters

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are:

- (i) that the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names; and,
- (iii) that the Disputed Domain Names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established that it is the owner of the SODEXO trademark. The Panel finds that each of the Disputed Domain Names are confusingly similar to this trademark. Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy "when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). It is established that, where a mark is recognizable within the disputed domain name, the disputed domain name is considered to be confusingly similar to the mark – see [WIPO Overview 3.0](#) at section 1.7. In the present case each of the Disputed Domain Names includes the Complainant's trademark in its entirety.

It is also established that the addition of a term (such as here "wireless" and "cellular") to a disputed domain name would not prevent a finding of confusing similarity between the domain name and the mark. See [WIPO Overview 3.0](#) at section 1.8.

It is also well established that the Top-Level Domain ("TLD"), in this case ".com", is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#) at section 1.11.

Accordingly, the Panel finds that each of the Disputed Domain Names is confusingly similar to the Complainant's trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

The Panel finds the SODEXO trademark is, on the evidence before the Panel, a term in which the Complainant has developed a significant reputation. It is also a term which has no meaning other than in relation to the Complainant.

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

(i) before any notice to the respondent of the dispute, 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 has been commonly known by the domain name, even if the respondent has 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 Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Names or to use the SODEXO trademark. The Complainant has prior rights in the SODEXO trademark which precede the Respondent's acquisition of the Disputed Domain Names. The Complainant has therefore established a prima facie case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Names and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Names (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

The Response in substance says that (i) above applies in that the Disputed Domain Names and the domain names <sodexwireless.com> were registered in relation to a "legitimate, bona fide mobile phone service on a national carrier network". There are a number of difficulties with this assertion. First of all, the Respondent has not produced a single piece of evidence to support it. If such a service (whether existing or proposed) existed it should have been straightforward to produce documentation confirming this was the case. In this regard see [WIPO Overview 3.0](#) at section 2.2:

"As expressed in UDRP decisions, non-exhaustive examples of prior use, or demonstrable preparations to use the domain name, in connection with a bona fide offering of goods or services may include: (i) evidence of business formation-related due diligence/legal advice/correspondence, (ii) evidence of credible investment in website development or promotional materials such as advertising, letterhead, or business cards (iii) proof of a genuine (i.e., not pretextual) business plan utilizing the domain name, and credible signs of pursuit of the business plan, (iv) bona fide registration and use of related domain names, and (v) other evidence generally pointing to a lack of indicia of cybersquatting intent. While such indicia are assessed pragmatically in light of the case circumstances, clear contemporaneous evidence of bona fide pre-complaint preparations is required.

Acknowledging that business plans and operations can take time to develop, panels have not necessarily required evidence of such use or intended use to be available immediately after registration of a domain name, but the passage of time may be relevant in assessing whether purported demonstrable preparations are bona fide or pretextual.

If not independently verifiable by the panel, claimed examples of use or demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services cannot be merely self-serving but should be inherently credible and supported by relevant pre-complaint evidence".

The second problem with the Respondent's case is that the Respondent has not explained how or why it came to coin the terms "Sodexo" and "Sodex" in relation to this proposed service.

Furthermore, the third problem is that the evidence shows that the Disputed Domain Name <sodexowireless.com> resolved to a webpage which appeared to require login details, but which also prominently contained a copy of the Complainant's own stylised "Sodexo" logo. The Respondent cannot credibly claim a case of independent derivation for use in an unrelated business when it is using the Complainant's own logo. The Complainant's representatives pointed this out to the Respondent in their e-mail of September 9, 2024. This elicited an e-mail in reply clearly written on behalf of the Respondent which stated as follows:

"Thank you for finally reaching out directly. That website was made at the request of Sodexo's US leadership team as a demonstration of a proposed partnership. The original snapshot you have below was created only as an example requested by Sodexo and the logo was removed as soon as it was no longer required for those purposes. Other companies requested examples of our work, so we maintained the website as a demo for their review.

Our services are not advertised anywhere, so the only way you could have found our site is if you are broadly searching for name Sodexo, including industries that fall outside of your trademark registration. The expedited domain arbitration process is not a venue for disputing trademarks.

Having a mobile application is not the same as being a telecommunications provider and they do not fall under the same category with the USPTO.

As stated in our response, there is no malicious intent with our site. Our business is in providing white label wireless services for brands and enterprise companies. Sodexo is an interested partner who requested the example."

This e-mail contains a completely different explanation from that contained in the Response. It now says (at least in relation to the Disputed Domain Name <sodexowireless.com>) that this was registered "at the request of Sodexo's US leadership team as a demonstration of a proposed partnership". This too is problematic as if it were true the Panel would expect the Respondent to readily produce documentation (for example e-mail exchanges or the terms of the applicable agreement for this work) passing between the Respondent and the Complainant's United States affiliate. It has not done so.

A further problem with all of these accounts is that they do not explain why the Disputed Domain Name <sodexocellular.com> and the domain name <sodexowireless.com> are each linked to a parking page.

Looking at the evidence as a whole the Panel on the balance of probabilities does not accept the explanation offered by the Respondent. The Panel is conscious that proceedings under the UDRP are of a limited and restricted nature, do not involve oral hearings, discovery or cross examination, and hence are only applicable to clear cut cases, and it is not usually appropriate to decide disputed questions of fact or matters of truth or falsehood. That does not however mean the Panel cannot reach a conclusion as to the veracity of a case that is being advanced where the only evidence that is provided is in the form of conclusory statements that are inherently not credible, and which are not supported by relevant corroborative or third party evidence. The Panel considers this to be such a case. The Respondent's case is simply not credible and the Panel concludes that on the balance of probabilities the Respondent's claim to have independently derived the Disputed Domain Names is not true.

The Panel finds that the Respondent has failed to produce any credible evidence to establish its rights or legitimate interests in the Disputed Domain Names. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy a non-exhaustive list of factors evidencing registration and use in bad faith comprises:

- (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 web site 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 your web site or location or of a product or service on your web site or location.

The Respondent has not produced any credible evidence to support its claim that it independently derived the Disputed Domain Name for use in relation to a bona fide wireless service (see discussion above). There is no evidence before the Panel to support any case that the Disputed Domain Name <sodexocellular.com> has ever been used for anything other than resolving to a parking page with PPC links. In these circumstances the Panel concludes that (iv) applies as the Disputed Domain Name is likely to attract traffic because of confusion with the Complainant's mark, and the Respondent likely derives commercial gain as a result. The website linked to the Disputed Domain Name comprises a series of PPC links to other third-party websites. The Panel infers that some consumers, once at this website will follow the provided links and "click through" to other sites which offer products some of which may compete with those of the Complainant. The Panel infers the website is automatically generated. This does not however matter. It is well established that where a domain name is used to generate revenue in respect of "click through" traffic, and that traffic has been attracted because of the name's association with the Complainant, such use amounts to use in bad faith, see for example *Shangri-La International Hotel Management Limited v. NetIncome Ventures Inc.*, WIPO Case No. [D2006-1315](#); *Owens Corning v. NA*, WIPO Case No. [D2007-1143](#); *McDonald's Corporation v. ZusCom*, WIPO Case No. [D2007-1353](#); *Villeroy & Boch AG v. Mario Pingerna*, WIPO Case No. [D2007-1912](#); *Rolex Watch U.S.A., Inc. v. Vadim Krivitsky*, WIPO Case No. [D2008-0396](#).

See also [WIPO Overview 3.0](#) section 3.5: "Can third-party generated material "automatically" appearing on the website associated with a domain name form a basis for finding bad faith?"

Particularly with respect to "automatically" generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests).

Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith".

So far as the Disputed Domain Name <sodexowireless.com> is concerned the Panel is unable to discern the Respondent's motive. The Panel cannot clearly determine which, if any, of the factors under paragraph 4(b) of the Policy (above) may apply. However, the Panel notes that in any event this list is non exhaustive and concludes that the registration of the Disputed Domain Name with knowledge of the Complainant's trademark is itself evidence of bad faith – see *Magneti Marelli Motopropulsion France S.A.S. v. Mopex S.A.*,

WIPO Case No. [D2003-0187](#) - “Previous Panels have held that the awareness of a Complainant’s mark at the time of registration of a disputed domain name that is confusingly similar to that mark is evidence of bad faith” (see also the cases therein cited to similar effect). The use of a copy of the Complainant’s own stylised “Sodexo” logo on the website connected to the Disputed Domain Name <sodexowireless.com> further supports panel’s finding of bad faith.

Accordingly, the Panel finds that each of the Disputed Domain Names has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

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, <sodexowireless.com> and <sodexocellular.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: October 17, 2024