

ADMINISTRATIVE PANEL DECISION

Sodexo v. 和杰俊

Case No. DCN2023-0066

1. The Parties

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

The Respondent is 和杰俊, China.

2. The Domain Name and Registrar

The disputed domain name <sodexo.org.cn> is registered with 浙江贰贰网络科技有限公司 (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 13, 2023. On December 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 15, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the China ccTLD Dispute Resolution Policy (the “Policy”), the China ccTLD Dispute Resolution Policy Rules (the “Rules”), and the WIPO Supplemental Rules for China ccTLD Dispute Resolution Policy and China ccTLD Dispute Resolution Policy Rules (the “WIPO Supplemental Rules”).

In accordance with the Rules, Articles 5 and 6, and Articles 14 to 16, and the WIPO Supplemental Rules, paragraph 4(d), the Center formally notified the Respondent in English and Chinese of the Complaint, and the proceedings commenced on December 19, 2023. In accordance with the Rules, Articles 17 and 49, the due date for Response was January 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 9, 2024.

The Center appointed C. K. Kwong as the sole panelist in this matter on January 18, 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, Article 29.

4. Factual Background

The Complainant, Sodexo (a French company), is specialized in food services and facilities management, and is the owner of numerous trademarks consisting of or comprising the word “Sodexo”. These registrations include:

- 1) International Trademark Registration No. 964615 for the mark SODEXO and device registered on January 8, 2008 claiming a priority date of July 16, 2007 based on its corresponding French trademark registration in respect of goods and services under International Classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45 with protection extended to, inter alia, China.
- 2) International Trademark Registration No. 1240316 for the word mark SODEXO registered on October 23, 2014 in respect of goods and services under International Classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45.

The evidence produced by the Complainant shows its first registration for the mark SODEXO well before the first registration of the disputed domain name <sodexo.org.cn> on December 11, 2023.

The disputed domain name resolves to a website which is inactive.

Other than the particulars shown in the printout of the database searches conducted by the Complainant on the Whois Database (as provided in Annex 1 to the Complaint) and the inactive page as shown on the screen capture provided on page 14 of the Complaint, there is no evidence concerning the background of the Respondent and its businesses or activities.

The Complainant uses the domain names <sodexo.com>, <sodexoprestige.co.uk>, <sodexo.fr>, <sodexoca.com>, and <sodexousa.com> to operate websites for offering and promoting their goods and services bearing the SODEXO trademark or with reference to the SODEXO trademark.

5. Parties' Contentions

A. Complainant

The Complainant has made the following contentions.

The Complainant was established in 1966. It is specialized in food services and facilities management, with 430,000 employees serving 80 million consumers in 45 countries on a daily basis. The Complainant's consolidated revenue reached EUR 22.6 billion in 2023, with 46% of its revenue from North America, 36% from Europe, and 18% from the rest of the world.

The SODEXO trademark is continuously and extensively used and registered worldwide including the trademarks SODEXO and SODEXO with device as set out in Section 4 above. It operates numerous websites to which its domain names, including <sodexo.com>, resolve to promote onsite services, benefits and rewards services, personal and home services which are intended to improve the quality of daily life.

SODEXO mark has a strong reputation and is widely known all over the world, as recognized in various UDRP decisions.

The main element in the disputed domain name is the word “sodexo” which is identical to and incorporates the Complainant's mark in its entirety. This will mislead the public to believe that the disputed domain name comes from the Complainant or is linked to it.

The Complainant has recently experienced attacks by the use of domain names embodying the Complainant's mark SODEXO for phishing to perpetrate email scam sent to its clients requesting payment of false invoices on fake Sodexo bank accounts or to order products to the Complainant's clients for considerable amounts of money by impersonating the Complainant's employees.

The Complainant fears that the Respondent will attempt to defraud the Complainant's clients and other third parties by using the disputed domain name in email scams.

The Respondent has no rights in and is not commonly known by the disputed domain name. The Respondent is unknown to the Complainant. It has no affiliation, association, sponsorship, or connection with the Complainant. The Complainant has not authorized, licensed, or otherwise permitted the Respondent to register and use the disputed domain name.

"Sodexo" is a fancy word which nobody could legitimately choose to use whether alone or in combination with other elements or in forms of variations without an intention to create an impression of connection with the Complainant or its trademark SODEXO.

Given the reputation and well-known status of the Complainant's mark SODEXO, the Respondent should know of the Complainant's SODEXO mark at the time of registration of the disputed domain name, with knowledge that it has no rights or legitimate interests in the disputed domain name.

Even if the disputed domain name, which has been recently created, does not seem to be active in a site with contents, a passive holding of a domain name does not prevent a finding of bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issues

A. Notice of the Proceedings

On December 19, 2023, the Center sent the Notification of Complaint and Commencement of Administrative Proceedings to the Respondent, using the contact details including those found in the Complaint, Whois, and Registrar Verification. The said notification was sent, inter alia, by email as per the said contact particulars with copies to the Registrar with no bounce back notice relating to the [...]@qq.com email address of the Respondent. The said notification was also sent by courier service to the postal address of the Respondent with record showing that it was delivered on December 22, 2023.

In the circumstances, the Panel finds that the Respondent has been properly notified. As long as the Center communicated with the Respondent using the contact information which the Respondent has chosen to provide to the Registrar as reflected in the above contact details, its notice obligations will be discharged and the Respondent is bound accordingly.

The Panel is satisfied that the Center has discharged its responsibility under the Rules and the WIPO Supplemental Rules to employ reasonably available means calculated to achieve actual notice of the Complaint to the Respondent.

B. Language of the Proceedings

In its Complaint filed on December 13, 2023, the Complainant requested that English to be the language of the proceeding in this case.

In accordance with Article 6 of the Policy, Article 8 of the Rules, and Article 18 of the WIPO Supplemental Rules, unless otherwise agreed by the parties, or determined by the Panel under exceptional circumstances, the language of the administrative proceeding shall be Chinese. The Panel may order that any documents submitted in the language other than Chinese be accompanied by its translation in whole or in part into Chinese.

In support of its request, the Complainant has, inter alia, argued that:

- (a) The Complainant is not able to communicate in Chinese and therefore, if the Complainant should submit all documents in Chinese, the proceedings will be unduly delayed and the Complainant would have to incur substantial expenses for translation.
- (b) The disputed domain name is registered in Latin script rather than Chinese characters.

The Panel has taken into consideration the following facts:

- (a) The disputed domain name consists of English alphabets.
- (b) There was express notification by the Center to the Parties on December 19, 2023 by email to the Respondent (in both English and Chinese languages) specifically addressing the issue of the language of the proceedings, drawing the Respondent's attention to Article 8 of the Rules and inviting the Respondent to make comments on that.
- (c) The Center has also served the Notification of Complaint and Commencement of Administrative Proceeding in both English and Chinese ("Commencement Notification") and the Complaint (in English) on the Respondent by email to the Respondent's [...]@qq.com email address, and the Written Notice in both English and Chinese by courier, which appear to have been successfully delivered.
- (d) Notwithstanding these communications, the Respondent has made no objection to the use of English as the language for these proceedings at any material time despite opportunities given to comment and/or object.
- (e) The Respondent has chosen not to file any response despite bilingual notifications of these proceedings by the Center which would have clearly conveyed to it the nature of these proceedings and the remedies sought. Yet, the Respondent has not taken up the opportunity to raise any ground of objections or defence.
- (f) Translation of documentation under these circumstances would be disproportionate to the interest of disposing of the dispute in a costs effective and speedy way.

In exercising its discretion to use the language other than Chinese, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties taking into account all relevant circumstances of the case including matters such as the parties abilities to understand and use of the proposed language, time, and costs.

Taking all the circumstances into account, the Panel is satisfied that there is no prejudice or unfairness to the Respondent for these proceedings to be conducted in English and for its decision to be rendered in English. Accordingly, the Panel determines that the language of the administrative proceedings should be English.

6.2 Substantive Issues

In rendering its decision, the Panel should adjudicate the dispute in accordance with Article 31 of the Rules which provides that, "[t]he Panel shall conduct the proceedings in such manner as it considers appropriate according to these Rules and Supplemental Rules and decide a complaint on the basis of the statements

and documents submitted and in accordance with the Policy, as well as any rules and principles of law which it deems applicable. If a Respondent does not submit a response, the Panel shall, in the absence of exceptional circumstances, decide the dispute based upon the complaint". Article 35 of the Rules further provides that, "[i]f a Party, in the absence of exceptional circumstances, does not comply with any provisions of, these Rules and Supplemental Rules or any requests from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate".

The failure of the Respondent to respond does not automatically result in a favourable decision for the Complainant. Under Article 8 of the Policy, support of a complaint is conditional on establishing each of the three elements as provided therein.

The said three elements are considered below.

A. Identical or Confusingly Similar to the Complainant's Name or Mark in which the Complainant has Civil Rights or Interests

On the evidence available, the Panel has no hesitation in finding that the Complainant has rights in the trademark SODEXO by reason of the trademark registrations recited in Section 4 above.

Furthermore, the Panel finds that the disputed domain name is identical with or confusingly similar to the Complainant's trademark SODEXO.

The dominant or principal component of the disputed domain name is the Complainant's SODEXO trademark. Despite being followed by the Second-Level Domain ("SLD") ".org" and the country code Top-Level Domain ("ccTLD") ".cn", the Complainant's SODEXO mark remains clearly recognizable in the disputed domain name.

It is well-established practice to disregard the SLD and ccTLD parts of a domain name, when assessing whether a domain name is identical or confusingly similar to the mark in issue.

Accordingly, the Panel finds that the first element of Article 8(a) of the Policy is established.

B. Rights or Legitimate Interests

The Complainant needs to establish a prima facie case showing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Once such prima facie case is made, the burden will shift to the Respondent to come forward with relevant evidence proving that it has rights or legitimate interests in the disputed domain name.

The Complainant has confirmed that it has not authorized, licensed, or permitted the Respondent to use the mark SODEXO.

There is no explanation on the record as to why it was necessary for the Respondent to adopt the term "Sodexo" in the disputed domain name.

There is no evidence before the Panel to suggest that the Respondent is commonly known as the disputed domain name.

There is also no evidence available to demonstrate any legitimate noncommercial or fair use of the disputed domain name by the Respondent. The Complainant has put forward a very strong prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent. Furthermore, the Panel considers that the composition of the disputed domain name carries a high risk of implied affiliation with the Complainant.

Accordingly, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name. The Complaint has satisfied Article 8(b) of the Policy.

C. Registered or Used in Bad Faith

The Complainant has filed for registration of its SODEXO trademark since at least 2008 as claimed in the aforesaid International Trademark Registration and has been using it long before the registration of the disputed domain name by the Respondent.

The Complainant has alleged that it has experienced attempts by others using an email address embodying its mark SODEXO to confuse and defraud its clients and other people, with fear that the disputed domain name might be used for such purpose. The Respondent did not comment on the Complainant's contentions. Notwithstanding that, the Respondent has not come forward with any defense on its choice of embodying the word "sodexo" as part of the inherently misleading disputed domain name and adopting the word "sodexo", which entirely incorporates the Complainant's word mark SODEXO as registered and used by the Complainant in their official websites under various domain names including <sodexo.com>.

The incorporation of the rather unique distinctive invented word "sodexo" as part of the disputed domain name without any explanation under the above circumstances and the prior substantial use of the Complainant's SODEXO mark lead to the conclusion that the Respondent must have been aware of the existence of the Complainant and its trademark SODEXO at the time of the registration of the disputed domain name.

Although the disputed domain name resolves to an inactive website, the Complainant's mark is distinctive and well known, and the Respondent has failed to submit a response or to provide any evidence of actual or contemplated good-faith use of the disputed domain name, the passive holding of the disputed domain name does not prevent a finding of bad faith.

The Panel finds that the circumstances under Articles 9(c) and (d) of the Policy have been established. Accordingly, the Panel finds that the disputed domain name has been registered or used in bad faith under Article 8(c) of the Policy.

7. Decision

For the foregoing reasons, in accordance with Articles 14 of the Policy and 40 of the Rules, the Panel orders that the disputed domain name <sodexo.org.cn> be transferred to the Complainant.

/C. K. Kwong/

C. K. Kwong

Sole Panelist

Date: February 1, 2024