

ADMINISTRATIVE PANEL DECISION

Sodexo v. Wu Yu

Case No. D2022-1134

1. The Parties

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

The Respondent is Wu Yu, China.

2. The Domain Name and Registrar

The disputed domain name <sodexo.email> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 1, 2022. On April 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 2, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 6, 2022, 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 April 11, 2022.

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 April 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 6, 2022.

The Center appointed Debrett G. Lyons as the sole panelist in this matter on May 11, 2022. 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 factual findings pertinent to the decision in this case are that:

- (1) the Complainant is the owner of, *inter alia*, International (Madrid) Reg. No. 964615 from January 8, 2008, for the trade mark, SODEXO (the “Trade Mark”);
- (2) the disputed domain name was registered on March 3, 2002, and redirects to a suspicious website as described later; and
- (3) there is no commercial or other relationship between the Parties and the Complainant has not authorized the Respondent to use the Trade Mark or to register any domain name incorporating the Trade Mark.

5. Parties’ Contentions

A. Complainant

The Complainant asserts trade mark rights in SODEXO. It holds national and international registrations for the Trade Mark and submits that the disputed domain name is confusingly similar to the Trade Mark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name because it has no trade mark rights of its own; is not commonly known by the disputed domain name; and the disputed domain name has been used for a nefarious purpose.

The Complainant alleges that the Respondent registered the disputed domain name in bad faith.

The Complainant accordingly requests the Panel to order transfer of the disputed domain name.

B. Respondent

The Respondent did not submit a Response.

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

It is the responsibility of the Panel to consider whether the requirements of the Policy have been met, regardless of the fact that the Respondent failed to submit a response. Having considered the Complaint and the available evidence, the Panel finds the following:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trade mark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to the trade mark.

Paragraph 4(a)(i) of the Policy does not distinguish between registered and unregistered trade mark rights. It is accepted that a trade mark registered with a national or international authority is evidence of trade mark rights for the purposes of the Policy.¹ The Complainant provides evidence of its International registration of the Trade Mark, and so the Panel finds that the Complainant has trade mark rights.²

The disputed domain name takes the Trade Mark and merely adds the generic Top-Level Domain (“gTLD”), “.email”, which can be disregarded for the purposes of comparing the disputed domain name with the Trade Mark.³ The Panel finds that the disputed domain name is identical to the Trade Mark and so finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well settled that the Complainant need only make out a *prima facie* case, after which the onus shifts to the Respondent to rebut such *prima facie* case by providing evidence demonstrating rights or legitimate interests in the disputed domain name.⁴

Notwithstanding the lack of a response to the Complaint, paragraph 4(c) of the Policy states that 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 rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

- “(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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”.

In consequence of these administrative proceedings, the Registrar confirmed the name of the domain name registrant as “Wu Yu”, which does not provide any suggestion that the Respondent is commonly known by the disputed domain name. The Panel finds no other evidence that the Respondent might be commonly known by the disputed domain name.

Further, the Complainant states that there is no association between the Parties and there is nothing to contradict that claim. There is no evidence that the Respondent has any trade mark rights. The evidence is that entry of the disputed domain name in an Internet browser causes a pop-up message written in French (the Complainant is a French international company) which poses as being from Windows and which states, when translated into English: “Windows has been blocked due to suspicious activity. Contact technical support: [phone number]”.

The Complainant’s submission is that when the given number is called a code is provided to unlock the user’s computer but the likelihood is that this step in fact allows malware to be sent to the computer.

¹ See section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

² Prior to 2008, the Complainant used the trade mark, SODEXHO. International Reg. No. 964615 is the earliest of its registrations for the Trade Mark. It is a stylized mark but for the purposes of the Policy can be treated as proof of rights in the word SODEXO (see section 1.7 of the [WIPO Overview 3.0](#)).

³ See section 1.11.1 of the [WIPO Overview 3.0](#).

⁴ See, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

There being nothing to discredit the above submissions the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. By failing to reply to the Complainant's contentions the Respondent has not rebutted that *prima facie* case.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and so the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out circumstances which shall be evidence of the registration and use of a domain name in bad faith. They are:

“(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 website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location”.

The above factors are non-exclusive, and the Panel finds that a simpler case of registration in bad faith and use in bad faith is readily shown on the facts.

The Panel finds that the Respondent targeted the Complainant and its Trade Mark. The Trade Mark has no ordinary meaning and has been recognized as well-known (see, for example, *Sodexo v. Contact Privacy Inc. Customer 1246780534 / Chivers Michael*, WIPO Case No. [D2020-0865](#)). The Panel cannot conceive of a reason for good faith adoption of the Trade Mark in the identical disputed domain name by the Respondent. Accordingly, the Panel finds registration in bad faith. Further, it is clear that the use for apparent malware distribution is in bad faith (see, for example, *Euroview Enterprises LLC v. Jinsu Kim*, WIPO Case No. D2016-1124; *Andrey Ternovskiy dba Chatroulette v. Transfer Service, Sedo.com, LLC.*, WIPO Case No. [D2018-2510](#)).

The Panel finds that the Complainant has satisfied the third and final 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 <sodexo.email> be transferred to the Complainant.

/Debrett G. Lyons/

Debrett G. Lyons

Sole Panelist

Date: May 24, 2022