

## **ADMINISTRATIVE PANEL DECISION**

Sodexo v. Fershin Himura, Fershin  
Case No. D2023-3857

### **1. The Parties**

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

The Respondent is Fershin Himura, Fershin, Mexico.

### **2. The Domain Name and Registrar**

The disputed domain name <pluxeesorodexo.online> 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 September 15, 2023. On September 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 18, 2023, 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 September 19, 2023, 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 the same day.

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 September 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2023. The Respondent sent email communications to the Center on September 20 and 21 2023. Accordingly, the Center notified the commencement of panel appointment process on October 24, 2023.

The Center appointed Shwetasree Majumder as the sole panelist in this matter on December 1, 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 is SODEXO, a French company operating in the field of foodservices and facilities management, and owning several trademark registrations worldwide for SODEXO, among which are :

- Mexican Trademark Registration No. 1030006 for SODEXO and design, registered on March 13, 2008;
- International Trademark Registration No. 1240316 for SODEXO, registered on October 23, 2014 ;
- European Union Trademark Registration No. 008346462 for SODEXO, registered on June 8, 2009.

The Complainant offers its rewards and benefit services under its trademark PLUXEE. The Complainant's subsidiary namely, Sodexo Pass International, owns the registration for the mark PLUXEE under International Trademark Registration No. 1706936, registered on November 2, 2022. This registration has been granted protection in Mexico, which is where the Respondent is based.

The Complainant also operates on the Internet, its main website being "www.sodexo.com". The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on September 13, 2023, and it directs to a website in Spanish language proposing construction services. The Complainant's trademarks SODEXO and PLUXEE can be seen on the Respondent's website.

As disclosed by the Registrar and confirmed indirectly in the Respondent's email, the Respondent is based in Mexico. Otherwise, no information is known about the Respondent beyond their unsupported claims reflected further below.

#### 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 contends that disputed domain name is confusingly similar to its trademark SODEXO and PLUXEE.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name, and it is not making either a *bona fide* offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name. The disputed domain name directs to a website proposing construction services. The Complainant points out that the Respondent has used the Complainant's trademarks SODEXO and PLUXEE on its website.

The Complainant asserts that its trademark SODEXO is a well-known trademark and has cited several WIPO URDP decisions in support of this contention. The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's trademark SODEXO is well-known in the field of foodservices and facilities management. The Complainant argues that given the well-known character of its trademark SODEXO, the Respondent knew or should have known of its existence when they registered the disputed domain name.

The Complainant contends that the Respondent registered the disputed domain name for creating confusion with the Complainant's trademarks and to divert or mislead third parties for the Respondent's illegitimate profits.

Finally, the Complainant asserts that the website “www.pluxeesodexo.online” has been created to be used as a scam. The Complainant suspects that the Respondent might also use the disputed domain name in connection with fraudulent email communications.

## **B. Respondent**

The Respondent sent two informal communications to the Center stating that the disputed domain name had been “contracted by the brand in Mexico for online activation with vines and games for only 30 days”. The Respondent also stated that he “can deliver the domain without any problem”.

## **6. Discussion and Findings**

As per paragraph 5(e) of the Rules where a respondent does not submit a response, in the absence of exceptional circumstances, the panel may decide the dispute based upon the Complaint. The Panel does not find any exceptional circumstances in this case preventing it from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a substantive response. A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.3.

It remains incumbent on the Complainant to make out its case in all respects under paragraph 4(a) of the Policy. Under paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements required under by a preponderance of evidence:

- i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- 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.

### **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 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has demonstrated its rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Complainant’s marks SODEXO and PLUXEE are incorporated in the disputed domain name. The Panel finds the entirety of the marks are reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

It is also well-accepted that a generic Top-Level Domain, in this case “online”, is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.1. Based on the available record, 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 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. Rather, the Respondent vaguely stated that the disputed domain name was seemingly authorized by the “brand”, without further specification. Given the Complainant’s contentions regarding the lack of the Respondent’s authorization, this seems misleading and likely an attempt to legitimize the registration. Further, the Respondent later seemingly consented to the remedy, reinforcing the notion that the Respondent had no rights or legitimate interests in the disputed domain name and has no intention to use it for a *bona fide* offering.

Based on the available record, the Panel finds the second element of the Policy has been established.

### **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. One of the circumstances is where a respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark.

In the present case, the Panel notes that the Respondent has incorporated the Complainant’s marks in the disputed domain name in entirety. Further, the Respondent has also unauthorizedly used the Complainant’s marks SODEXO and PLUXEE on its website which is offering construction services, which seems at odd with the Respondent’s unsupported allegations about “vine and games”. The Panel of the of view that such use of the Complainant’s marks by the Respondent is an intentional attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark.

The Panel is of the view that the Complainant’s trademark SODEXO is a well-known trademark. Indeed, there are several UDRP decisions where panels have acknowledged and upheld the reputation and well-known character of the Complainant’s trademark SODEXO. See, for example, *Sodexo v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-1580](#), and *Sodexo v. Yang Zhichao (杨智超)*, WIPO Case No. [D2021-0902](#). As set out in the [WIPO Overview 3.0](#), section 3.1.4, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Hence, the Panel is satisfied that the Respondent knew, or in any event ought to have known, of the mark’s existence.

Based on the available record, 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 <pluxeesodexo.online> be transferred to the Complainant.

*/Shwetasree Majumder/*

**Shwetasree Majumder**

Sole Panelist

Date: December 14, 2023