

ADMINISTRATIVE PANEL DECISION

SODEXO v. GengZhiGang

Case No. D2024-0822

1. The Parties

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

The Respondent is GengZhiGang, China.

2. The Domain Name and Registrar

The disputed domain name <sodexhoau.com> is registered with 22net, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 23, 2024. On February 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 26, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 26, 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 in English on February 26, 2024.

On February 26, 2024, the Center informed the parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On the same day, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 in English and in Chinese, and the proceedings commenced on March 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 27, 2024.

The Center appointed Jonathan Agmon as the sole panelist in this matter on April 2, 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, Sodexo, is a French company specializing in food services and facilities management. Founded in 1966, the Complainant has 430,000 employees, and serves 80 million customers in 45 countries daily. In the fiscal year 2023, the Complainant's revenue reached EUR 22.6 billion.

From 1966, the Complainant did business under its SODEXHO mark. In 2008, the Complainant simplified the spelling of its SODEXHO mark, and rebranded as SODEXO.

Amongst others, the Complainant owns the following SODEXHO and/or SODEXO trademarks:

- International trademark registration no. 689106 for SODEXHO (stylized), registered on January, 28, 1998;
- International trademark registration no. 964615 for SODEXO, registered on January 8, 2008;
- China trademark registration no. 1149743 for SODEXHO, registered on February, 7, 1998; and
- International trademark registration no. 694302 for SODEXHO (stylized), registered on June, 22, 1998.

The Complainant owns and operates its primary domain name at <sodexo.com>.

The disputed domain name, <sodexhoau.com> was registered on May, 19, 2014, and resolves to an inactive webpage.

The Respondent did not submit a response to the proceedings.

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

- 1) The marks SODEXHO and SODEXO are registered to the Complainant have been extensively used and are well-known. The disputed domain name is confusingly similar to the SODEXHO trademark in which the Complainant has rights. The disputed domain name incorporates the entirety of the Complainant's SODEXHO trademark with the addition of the generic or descriptive suffix "au", being the ISO country code for "Australia" to the Complainant's trademark. The disputed domain name is therefore almost identical and confusingly similar to the Complainant's SODEXHO trademark.
- 2) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the name "Sodexhoau.com". The Complainant has not licensed or authorized the Respondent to use the Complainant's SODEXHO trademark in any way, including registering the disputed domain name. The Respondent has no affiliation, association, sponsorship or connection with the Complainant.
- 3) The disputed domain name was registered and is being used in bad faith. The Complainant's trademark is fanciful, and nobody could legitimately choose this word or variation thereof, unless seeking to

create an association with the Complainant's activities and/or trademarks. Given the fame and reputation of the Complainant's trademark, the Respondent was obviously aware of the Complainant's trademark when registering the disputed domain name, and he knew that he could not lawfully use the Complainant's trademark. It is likely that the Respondent was attempting to create confusion with the Complainant's trademark to divert or mislead Internet users for illegitimate profit. The disputed domain name is also currently being passively held, which is another indication of bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that:

- 1) the Complainant is unable to communicate in Chinese, and if it is required to submit all the documents in Chinese, the proceedings would be unduly delayed and the Complainant would have to incur substantial expenses for translation; and
- 2) the disputed domain name is in the Latin script rather than Chinese characters.

The Respondent did not make any specific submissions with respect to the language of the proceeding despite being duly notified by the Center in both Chinese and English of the language of the proceeding and of the commencement of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, 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' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

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.

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 entirety of the mark is reproduced 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 terms, here, “au” may bear on assessment of the second and third elements, the Panel finds the addition of such letters 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 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.

There is no evidence that the Respondent is commonly known by the disputed domain name. The Respondent was not licensed or authorized by the Complainant to use the latter’s SODEXHO trademark or to register a domain name incorporating the trademark. There is no evidence that the Respondent uses the disputed domain name for a legitimate noncommercial or fair use, without intent for commercial gain, as the disputed domain name resolves to an inactive webpage. Given the Complainant’s reputation in the well-known SODEXHO trademark, the Panel finds that the Respondent could not have accumulated any rights or legitimate interests in the disputed domain name in the circumstances of this case.

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.

In the present case, the Panel notes that the disputed domain name incorporates the entirety of the Complainant’s SODEXHO mark with the addition of “au”. Given the distinctiveness of the Complainant’s SODEXHO mark and the length of its use by the Complainant, the Panel finds that the Respondent was aware of the Complainant and its SODEXHO mark when he applied for the disputed domain name.

The disputed domain name is inactive. UDRP panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details

(noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, the fact that the Respondent has not replied to the Complaint and the composition of the disputed domain name and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Accordingly, the Panel draws an adverse inference which leads to its conclusion that the disputed domain name was registered and is being used in bad faith.

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 <sodexhoau.com> be transferred to the Complainant.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: April 23, 2024