

## **ADMINISTRATIVE PANEL DECISION**

Sodexo v. Sam Dexso

Case No. D2023-1369

### **1. The Parties**

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

The Respondent is Sam Dexso, United States of America ("United States").

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

The disputed domain name <sodexoabgroup.com> is registered with NameCheap, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 29, 2023. On March 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 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 (Privacy service provided by Withheld for Privacy ehf), and contact information in the Complaint. The Center sent an email communication to the Complainant on April 4, 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 April 6, 2023.

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 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 9, 2023.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on May 23, 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, a French company founded in 1966, specializes in food services and facilities management. It has 422,000 employees serving 100 million consumers in 53 countries including the United States. In 2022, its consolidated revenues reached EUR 21.1 billion with 44% of revenue attributed to the North America.

The Complainant also owns numerous domain names corresponding to and/or containing SODEXO trademark, one of which is <sodexo.com> registered on October 8, 1998.

The Complainant has registered a number of SODEXO trademarks worldwide, including but not limited in the United States, where the Respondent resides, for instance:

- International Registration for SODEXO and design No. 964615, registered on January 1, 2008 for the goods and services in classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 designating *inter alia* the United States;
- European Union ("EU") Trademark for SODEXO No. 008346462, registered on February 1, 2010, for the goods and services in classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

The Respondent appears to be an individual located in the United States. According to the WhoIs, the disputed domain name was registered in the name of the Respondent on March 28, 2023. At the moment of issuance of this decision the disputed domain name does not resolve to an active website, but redirects toward a parking page which displays pay-per-click ("PPC") links to restaurant and catering services.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy have been satisfied. In particular, the Complainant asserts that:

(1) it is widely established and among others in the United States where the Respondent is located. The Complainant has strong rights in SODEXO trademark by virtue of its longstanding use and registration of the marks in a number of jurisdictions around the world. Previous UDRP panels found that SODEXO marks are well-known. The disputed domain name is identical or confusingly similar to the Complainant's SODEXO marks as it is composed of the identical sign "Sodexo", associated with the letters "ab" and the word "group". The element "ab" is either understood as the abbreviation of the Swedish type of legal entity "aktiebolag", or the geographical abbreviation for "Albania". In the disputed domain name, the sign "Sodexo" remains dominant and keeps its individuality and attractive character. The addition of the elements "ab" and "group" in the disputed domain name at issue is inoperative to distinguish it from the Complainant's mark SODEXO.

(2) the Respondent has no rights or legitimate interests in the disputed domain name, as well as no rights on SODEXO as corporate name, trade name, shop sign, mark or domain name that would be prior to the Complainant's rights on SODEXO. The Respondent was not commonly known by the disputed domain name. 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 name and to use it.

(3) the disputed domain name was registered and is used in bad faith by the Respondent. Given the well-known character and reputation of the SODEXO mark, the Respondent knew its existence when he registered the disputed domain name. The Respondent is using the disputed domain name by exploiting the confusion with the well-known SODEXO mark to attract Internet users and to incite them to click on commercial links.

The Complainant seeks a decision that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

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

The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views captured therein.

### **A. Identical or Confusingly Similar**

According to paragraph 4(a)(i) of the Policy it should be established that the disputed domain name is identical or confusingly similar to a mark in which the complainant has rights.

The Complainant has proved its rights in the SODEXO marks through trademark registrations designating numerous countries worldwide, including the United States, and also through EU and national trademark registrations registered in various countries of the world. Therefore, the Panel considers that the Complainant has satisfied the threshold requirement of having relevant trademark rights.

With the Complainant's rights in SODEXO trademark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to the Complainant's mark.

It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". See [WIPO Overview 3.0](#), section 1.7. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The disputed domain name is comprised of the words "Sodexo" followed by letters "ab" and term "group". As per section 1.7 of the [WIPO Overview 3.0](#), the disputed domain name should normally be regarded confusingly similar, since merely adding a few letters and a term does not prevent a finding of confusing similarity between the disputed domain name and the mark under the Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#), section 1.8. Bearing that in mind, the Panel accordingly holds the disputed domain name is confusingly similar to the Complainant's trademark SODEXO.

The generic Top-Level Domain ("gTLD"), such as ".com" in this case, may be disregarded for purposes of comparison under the first element, as it is viewed as a standard registration requirement. See [WIPO Overview 3.0](#), section 1.11.1.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of “proving a negative”, in particular as the evidence needed to show the Respondent’s rights or legitimate interests is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy.

The Complainant made sufficient statements in order to demonstrate that the Respondent would have no rights or legitimate interests in the disputed domain name.

According to the Complainant, the Respondent is not an authorized or licensed to use the Complainant’s SODEXO trademarks in the disputed domain name, as well as it is not in any way affiliated with the Complainant. Furthermore, the evidence in the case file shows that the Respondent is not commonly known by the disputed domain name. While the Respondent’s name seem to have a pronunciation similar to SODEXO, this in itself is not sufficient to give rise to rights or legitimate interests in the disputed domain name.

Moreover, there is no evidence the Respondent has or intends to use the disputed domain name in connection with a *bona fide* offering of goods or services.

The Respondent has not provided any rebuttal of the Complainant’s *prima facie* case and has therefore not proved rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect to the disputed domain name under paragraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

According to paragraph 4(a)(iii) of the Policy, the Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Panel finds that the Complainant has demonstrated the Respondent’s bad faith registration and use of the disputed domain name.

As the Panel established above, the Complainant’s SODEXO trademarks were used in commerce well before the registration of the disputed domain name. Previous UDRP panels have already recognized the wide reputation of the SODEXO trademark: “The Panel agrees with previous UDRP panels holding that the fanciful trademark SODEXO enjoys a wide reputation. Therefore, the Panel agrees with the fact that the Respondent would have known that the disputed domain name interferes with the Complainant’s well-known SODEXO trademark when registering the Disputed Domain Name.” See *Sodexo v. Registration Private, Domains By Proxy, LLC / Ilan Sigura*, WIPO Case No. [D2021-2898](#).

The Panel agrees and considers that the well-known character of the SODEXO trademark is established.

The Panel furthermore finds with a high degree of certainty that the Respondent knew of the Complainant’s SODEXO trademarks when registering the disputed domain name. This conclusion is supported by the well-known character of the mark, the fact that the Complainant actively works in the United States and

derives a significant proportion of revenue from there. Also, it is important to note that the Complainant's marks by nature are fanciful designations, therefore, it is highly unlikely that the Respondent has registered the disputed domain name without knowing of activities of the Complainant.

As regards bad faith use of the disputed domain name, the Complainant has demonstrated that the Respondent is using the disputed domain name in order to redirect to a website, which contains PPC links to restaurant and catering services. These PPC links lead to a list of several services directly competing with those of the Complainant. As it is well established, the use of a disputed domain name to redirect Internet users toward a parking page containing sponsored links directly linked to the complainant's core business is evidence of bad faith (see for example, *42 v. Moriah Butterfield*, WIPO Case No. [D2023-0489](#); see also [WIPO Overview 3.0](#), section 2.9.). Accordingly, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website.

The Respondent failed to submit a Response to disprove allegations of illegal activity or provide any evidence of a good faith use or to show rights or legitimate interests in the disputed domain name.

It is therefore highly unlikely that the Respondent was unaware of the existence of the Complainant and its well-known reputation and trademarks while it registered the disputed domain name. On the contrary, considering the reputation of the Complainant, the fact that the disputed domain name is confusingly similar to the Complainant's SODEXO trademarks and the use of the disputed domain name in connection with PPC links to websites in the same business area as the Complainant, it is most likely that the Respondent registered the disputed domain name having the Complainant's trademarks in mind.

For the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) 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, <sodexoabgroup.com>, be transferred to the Complainant.

*/Ganna Prokhorova/*

**Ganna Prokhorova**

Sole Panelist

Date: June 6, 2023