

ADMINISTRATIVE PANEL DECISION

Sodexo v. Nanci Nette

Case No. D2023-2686

1. The Parties

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

The Respondent is Nanci Nette, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <sodexomotivacion.info> 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 June 22, 2023. On June 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 22, 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, DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 23, 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 July 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 17, 2023.

The Center appointed Aaron Newell as the sole panelist in this matter on August 21, 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:

- i) has been trading by reference to the name SODEXHO since 1966 and subsequently SODEXO since 2008;
- ii) is headquartered in France and operates as a food services and facilities management business that also offers a system for employers to provide benefits and vouchers to employees;
- iii) provides evidence that in 2021 it was recognised by Fortune magazine as “one of the world’s most admired companies”;
- vi) provides evidence that in 2022 it saw revenue of over twenty-one billion Euros (44 per cent of which was derived from North America where the Respondent is based), and that at present it employs over 400,000 employees and every day serves approximately 100 million customers across over fifty countries;
- v) owns a number of trade mark registrations around the world for the sign SODEXO including
 - a) European Trade Mark (“EUTM”) registration no 8346462 SODEXO in classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45, filed June 8, 2009 and registered February 1, 2010; and
 - b) International Registration (“IR”) no 964615 for SODEXO (stylized) designating, *inter alia*, the United States, in classes s 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45, filed January 8, 2008 and registered in the United States on December 8, 2009;
- vi) has been successful in numerous previous UDRP complaints in which its SODEXO trade mark has often been assessed by the respective UDRP panels as being both well known and highly distinctive; and
- vii) alleges and provides supporting evidence that the disputed domain name has, while registered to the Respondent, resolved to a pay-per-click (“PPC”) advertising page that links through to websites that offer services that compete with those of the Complainant.

The disputed domain name was registered January 14, 2013. The publicly-available Whois information shows a privacy service as the recorded registrant.

The Panel notes that the Respondent did not respond to the Complaint or otherwise engage in the proceedings.

5. Parties’ Contentions

A. Complainant

The Complainant alleges that:

- i) the disputed domain name is confusingly similar to a number of its registered trade mark rights in SODEXO, including those noted above at section 4 iv);
- ii) to the best of the Complainant’s knowledge the Respondent has no rights or legitimate interests in the disputed domain name as it does not use the name SODEXO as a name or trade mark, is not commonly known by the disputed domain name, and has no relationship with the Complainant that involves any

affiliation or association with the Complainant, any sponsorship by or of the Complainant, nor any other permission whatsoever to use the disputed domain name;

iii) that the disputed domain name was registered and used in bad faith because a) the name SODEXO is well known, unique and distinctive of the Complainant, and b) the disputed domain name was used in a confusing way to direct Internet traffic to a “PPC advertising page which ultimately advertised and promoted businesses that compete with the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove:

- i) the disputed domain name registered by the Respondent 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 with respect to 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

Discounting the generic Top- Level Domain “.info” extension, the disputed domain name contains the Complainant’s registered trade mark SODEXO in its entirety.

Panels frequently find that the inclusion of an entire registered mark renders the disputed domain name confusingly similar to the included trade mark.

In this case, the use of the additional term “motivacion” in the disputed domain name does nothing to prevent a finding of confusing similarity, as the Complainant’s trade mark remains easily recognizable within the disputed domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8.

The Panel finds that disputed domain name is confusingly similar to a trade mark in which the Complainant has rights. The Complainant has met the first requirement.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

By way of its assertions outlined above in section 5.A ii) and iii), the Complainant has made out a *prima facie* case that the Respondent does not have rights and/or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.1.

The Respondent did not respond, and therefore has done nothing to challenge the Complainant's assertions.

Accordingly, there is no basis on which the Panel can find that the Respondent has any rights or legitimate interests in the disputed domain name.

The Complainant has therefore met the second requirement.

C. Registered and Used in Bad Faith

While the disputed domain name was first registered in 2013, based on a review of open online databases it is evident that the Respondent acquired the disputed domain name sometime around February 2020. From at least 2016, and up to February 2020, the disputed domain name appears to have been registered to a different entity, being "Sodexo Motivacion", with whom the Respondent has no obvious connection.

The [WIPO Overview 3.0](#), section 3.9 sets out as follows:

"[...] the date on which the current registrant acquired the domain name is the date a panel will consider in assessing bad faith. This holds true for single domain name acquisitions as well as for portfolio acquisitions."

Accordingly, the Panel will assess the Respondent's alleged bad faith conduct as at the beginning of 2020.

The Complainant has filed sufficient evidence for the Panel to conclude that as at 2020 the SODEXO name enjoyed a strong reputation, most likely both in the European Union and North America, if not more widely. In 2021 Fortune Magazine assessed the Complainant as "one of the world's most admired companies", and in 2022 the Complainant earned revenue in excess of EUR 21 billion, estimating approximately 44 per cent of this being derived from its North American business. Clearly, these achievements did not result from a standing start in 2020, but were built on the Complainant's longstanding business originating in the 1960's and progressing through 2020 into 2021 and 2022. On balance of probabilities, the Complainant had a strong reputation in its SODEXO name in 2020. Numerous other UDRP panels have so found (see *Sodexo v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues Fundacion Comercio Electronico*, WIPO Case No. [D2020-1580](#); *Sodexo v. Contact Privacy Inc. Customer 1247189803 / NorAm Accounts Receivable*, WIPO Case No. [D2020-1683](#); *SODEXO v. Super Privacy Service LTD c/o Dynadot / Zhichao*, WIPO Case No. [D2020-1762](#); *SODEXO v. Zhichao Yang (杨智超)*, WIPO Case No. [D2020-2286](#); *SODEXO v. Ashutosh Dwivedi, Food & Beverages*, WIPO Case No. [D2020-2686](#); *SODEXO v. 李金梁 (Li Jin Liang)*, WIPO Case No. [D2020-3064](#); and *Sodexo v. Domains By Proxy, LLC, DomainsByProxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-3085](#)).

The Panel also notes that the Respondent "Nanci Nette" has been involved in a number of previous UDRP proceedings as respondent, having been the registrant of domain names that contain the trade marks VOLVO, LINKEDIN, AXA, ONLYFANS, SLACK, ASHLEY MADISON in which the Panel ordered the transfer of the domain names. The Respondent appears to demonstrate a pattern and practice of registering domain names that target the owners of established trade marks.

Accordingly, noting a) the reputation and highly distinctive nature of the SODEXO name (which does not appear to have any meaning independent of the Complainant), as well as b) the inclusion of the term "motivacion" in the disputed domain name, which itself appears to be a reference to Complainant's employee rewards business, and c) the fact that the Respondent has been the named Respondent in numerous other UDRP proceedings that addressed domain names that contained the trade marks of established brands and businesses, the Panel considers it highly unlikely that the Respondent was unaware of the Complainant and its SODEXO trade mark and related business activities prior to acquiring the disputed domain name.

UDRP Paragraph 4(b)(iv) sets out as follows:

“For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

In light of the Respondent's use of the disputed domain name to resolve to PPC links to promoting paid advertising for businesses that compete with that of the Complainant, the Panel finds that the Respondent has used the disputed domain name to create a likelihood of confusion with the Complainant and its business, and has done so for commercial gain.

Accordingly the Complainant has met the third requirement.

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, <sodexomotivacion.info>, be transferred to the Complainant.

/Aaron Newell/

Aaron Newell

Sole Panelist

Date: September 4, 2023