

ADMINISTRATIVE PANEL DECISION

Sodexo v. Lee Charles (黃登通)

Case No. D2023-4460

1. The Parties

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

The Respondent is Lee Charles (黃登通), China.

2. The Domain Name and Registrar

The disputed domain name <sodexo.tech> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 26, 2023. On October 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 1, 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 in English on November 5, 2023.

On November 1, 2023, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On November 3, 2023, 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 in Chinese and English of the Complaint, and the proceedings commenced on November 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 5, 2023.

The Center appointed Douglas Clark as the sole panelist in this matter on December 18, 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 a French company specialized in foodservices and facilities management under its commercial name "Sodexo". From 1966 to 2008, the Complainant used the commercial name "Sodexho" which was changed to "Sodexo" in 2008.

The Complainant is also the owner of several trade mark registrations for SODEXO or SODEXHO, including the following:

Trade Mark	Registration Number	Registration Date	Jurisdiction
SODEXO	964615	January 8, 2008	International, including China
* * * Sodexho	689106	January 28, 1998	International, including China
* * * Sodexho	694302	June 22, 1998	International, including China

The Complainant owns and operates domain names comprising the mark SODEXO in its entirety, such as <sodexo.com>.

The disputed domain name <sodexo.tech> was registered on October 9, 2023. At the date the Complaint was filed, the disputed domain name was inactive and could not be reached.

The Respondent is an individual based in China.

5. Parties' Contentions

5.1. Complainant

The Complainant contends that:

- (a) The disputed domain name is identical or confusingly similar to its trade marks. The disputed domain name incorporates the Complainant's trade mark, SODEXO, in its entirety.
- (b) The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant never authorized, granted any license or otherwise permitted the Respondent to use the Complainant's trade marks or register the disputed domain name.
- (c) The disputed domain name was registered and is being used in bad faith. The Complainant's trade mark is well known internationally. Thus, it is reasonable to infer that the Respondent had registered

and used the disputed domain name knowing the existence of the Complainant's trade mark. The Respondent has intentionally attempted to create confusion and divert or mislead third parties for Respondent's commercial gain. Even if the disputed domain name is currently inactive, passive holding of a domain name does not prevent a finding of bad faith.

The Complainant requests the transfer of the disputed domain name.

5.2. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue – 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.

Based on the given evidence, there is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Complaint was filed in English. The Respondent did not respond. The Complainant requested that the language of the proceeding be English on the following grounds:

- (a) the Complainant would have had to retain specialized translation services at substantial costs to the Complainant and unduly delay the proceeding.
- (b) the disputed domain name is formed by words in Latin script and not in Chinese script; and

In accordance with paragraph 11(a) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- (a) the Complaint was filed in English;
- (b) the Center has notified the Respondent in both English and Chinese of the language of the proceeding and the Complaint;
- (c) the Respondent has not commented on the language of the proceeding;
- (d) an order for the translation of the Complaint and other supporting documents will result in expenses for the Complainant and a delay in the proceeding; and
- (e) the Panel considers the merits strongly in favour of the Complainant.

The Panel therefore accepts the Complaint filed in English and will render its decision in English.

6.2 Substantive Issues

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds 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 Panel finds the entirety of the mark is 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.

The addition of the general Top-Level Domain “.tech” does not prevent the finding of confusing similarity between the disputed domain name and the Complainant’s trade mark.

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.

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.

Considering the absence of response by the Respondent and the fact that the Respondent was granted neither a license nor an authorization to make use of the Complainant’s trade mark, the Panel finds the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

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.

The disputed domain name was registered long after the Complainant has registered the SODEXO trade mark and the use of the Complainant’s SODEXO trade mark is clearly not a coincidence. The SODEXO trade mark is used by the Complainant to conduct its business and the Complainant has used the trade mark for more than 10 years. The Panel is satisfied that the Respondent was aware or should have been aware of the Complainant and its SODEXO trade mark when he or she registered the disputed domain name.

Absent evidence to the contrary, it cannot be said that the disputed domain name could be used without creating confusion or misleading third parties to give the false impression that the Respondent was associated with the Complainant.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. 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. The Panel notes the distinctiveness or reputation of the Complainant's trademark, 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.

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 <sodexo.tech> be transferred to the Complainant.

/Douglas Clark/
Douglas Clark
Sole Panelist
Date: January 5, 2024