

ADMINISTRATIVE PANEL DECISION

Sodexo v. gong si qi
Case No. D2024-0313

1. The Parties

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

The Respondent is gong si qi, China.

2. The Domain Name and Registrar

The disputed domain name <rothsodexo.com> is registered with Gname.com Pte. Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 24, 2024. On January 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 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 January 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 January 29, 2024.

On January 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 January 26, 2024, 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 February 8, 2024. In accordance with

the Rules, paragraph 5, the due date for submitting a response was February 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 29, 2024.

The Center appointed Joseph Simone as the sole panelist in this matter on March 8, 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, was founded in 1966 and is one of the largest food services and facilities management companies in the world, with 430,000 employees serving daily 80 million consumers in 45 countries.

The Complainant provides restaurant and catering services, as well as facility management services, workplace services, benefits and rewards services, and personal and home services.

The Complainant has an extensive global portfolio of SODEXO trade marks, which includes the following:

- International Trade Mark Registration No. 964615 for SODEXO (figurative mark) in Classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45, designating, inter alia, China, the Russian Federation, Singapore, United States of America, registered on January 8, 2008; and
- International Trade Mark Registration No. 1240316 for SODEXO (word mark) in Classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45, designating, inter alia, the United Kingdom, registered on October 23, 2014.

The disputed domain name was registered on January 21, 2024.

According to the Complainant, it acquired the ROTH BROS company in 2013 and uses the domain name <sodexoroth.com> in connection with facility management services.

The Complainant's evidence indicates that at the time of filing of the Complaint, the disputed domain name resolved to a website in Chinese featuring an "Anshan Haicheng Miaocong Tea Processing Factory". At the time of issuance of this decision, the disputed domain name resolves to an inactive page.

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 the disputed domain name registered by the Respondent is identical or confusingly similar to the Complainant's SODEXO trade marks, and that the addition of the generic Top-Level Domain ("gTLD") ".com" does not affect the analysis as to whether the disputed domain name is identical or confusingly similar to the Complainant's trade marks.

Furthermore, the Complainant argues that the addition of the term "roth" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's SODEXO mark.

The Complainant asserts that it has not authorized the Respondent to use the SODEXO mark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services.

The Complainant also claims there is no evidence indicating that the Respondent has any connection to the SODEXO mark in any way, and that there is no plausible good-faith reason for the Respondent to have registered the disputed domain name. The Complainant therefore concludes that the registration and any use of the disputed domain name whatsoever must be in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

In accordance with paragraph 11(a) of the Rules:

"[...] the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. Hence, the default language of the proceeding should be Chinese.

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

- The spirit of Paragraph 11 of the Rules is to ensure fairness in the selection of language by giving full consideration to the parties' level of comfort with each language, the expenses to be incurred, the possibility of delay in the proceeding in the event translations are required, and other relevant factors. *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. [D2003-0679](#);
- It is also important to ensure fairness to the parties and to maintain an inexpensive and expeditious avenue for resolving domain name disputes, and the use of Chinese as the language of the proceeding would create an undue burden for the Complainant; and
- The disputed domain name is registered in Latin script, rather than Chinese characters.

The Respondent was notified in both Chinese and English of the language of the proceeding and the commencement of the proceeding and did not comment on the language of the proceeding or submit any response in either Chinese or English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel must, in the spirit of fairness take into account all relevant circumstances of the case, including 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).

Considering the circumstances of this case, the Panel determines that the language of the proceeding shall be English, and as such, the Panel has issued this decision in English. The Panel further finds that such determination should not create any prejudice to either Party and should ensure that the proceeding takes place with due expedition.

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 3.0](#), section 1.7.

Based on the available record, the Panel acknowledges that the Complainant has established rights in the SODEXO trade mark in many jurisdictions around the world.

Disregarding the gTLD ".com", the disputed domain name incorporates the Complainant's trade mark SODEXO in its entirety. Although the addition of the term "roth" may bear on the assessment of the second and third elements, the Panel finds the mere addition of this term does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's mark.

The Panel therefore finds that the Complainant satisfies the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the SODEXO trade mark and in showing that the disputed domain name is confusingly similar to its mark.

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 challenging 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 evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade mark and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services.

Having reviewed the available record, the Panel finds that the Complainant has satisfactorily established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that the Respondent, prior to receiving notice of the dispute, enjoyed rights or legitimate interests in the disputed domain name, has used or has demonstrated its preparation to use the disputed domain name in connection with a bona fide offering of goods or services, or has been commonly known by the disputed domain name, or that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name. As such, the Panel concludes that the Respondent has failed to rebut the Complainant's prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Accordingly, and based on the Panel's findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

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.

Paragraph 4(b) of the Policy states that any of the following circumstances in particular, but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances in which bad faith may be found. Other circumstances may also be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith.

([WIPO Overview 3.0](#), section 3.2.1)

For reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

When the Respondent registered the disputed domain name, the SODEXO trade marks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain name.

The Respondent has provided no evidence to justify his choice of the term "sodexo" in the disputed domain name. In light of the foregoing, it would be unreasonable to conclude that the Respondent - at the time of the registration of the disputed domain name - was unaware of the Complainant's trade mark.

The Complainant's registered trade mark rights in SODEXO for its products and services predate the registration date of the disputed domain name. Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain name.

This is further supported by the fact that the Complainant acquired the ROTH BROS company in 2013 and uses the domain name <sodexoroth.com> in connection with its offering of facility management services. The Panel finds it highly likely that the Respondent was aware of the Complainant's acquisition of the

ROTH BROS company, and deliberately intended to target the Complainant. Indeed, a simple online search (such as via Google or Baidu) for the term “rothsodexo” would have revealed that the Complainant’s website <sodexoroth.com> and information concerning the Complainant’s acquisition of ROTH BROS.

At the time of the filing of the Complaint, the disputed domain name resolved to a commercial website featuring an “Anshan Haicheng Miaocong Tea Processing Factory”, which is to attract potential prospective customers in the name of the Complainant.

Considering the foregoing facts, there are no plausible good faith reasons for the Respondent to have registered the disputed domain name. The Panel finds in these circumstances that, by using the disputed domain name, 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 trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

While the disputed domain name does not currently resolve to an active website, having reviewed the available record, the Panel finds the current non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. See [WIPO Overview 3.0](#), section 3.3.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.

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 <rothsodexo.com> be transferred to the Complainant.

/Joseph Simone/

Joseph Simone

Sole Panelist

Date: March 22, 2024