

## **ADMINISTRATIVE PANEL DECISION**

Sodexo v. 马加爱 (Ma Jia Ai)

Case No. D2022-3060

### **1. The Parties**

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

The Respondent is 马加爱 (Ma Jia Ai), China.

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

The disputed domain name <sodexobenifits.com> is registered with DNSPod, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 18, 2022. On August 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 22, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant in English and Chinese on August 23, 2022, 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 August 26, 2022.

On August 23, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On August 25, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 English and Chinese of the Complaint, and the proceedings commenced on September 2, 2022. In accordance with

the Rules, paragraph 5, the due date for Response was September 22, 2022. The Respondent's informal communications were received on August 25, August 31, and September 1, 2022 respectively. The Center notified the Commencement of Panel Appointment Process to the Parties on September 23, 2022.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on September 28, 2022. 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 multinational company headquartered in France, founded in 1966 and operating in a range of sectors, including the food services, facilities and benefits and rewards industries. The Complainant claims to be one of the largest companies and employers in the world with 412,000 employees serving 100 million consumers on a daily basis throughout 56 countries. For fiscal year 2021, the Complainant's consolidated revenues reached EUR 17,4 billion. As to its branding, from 1966 to 2008, the Complainant promoted its business under the SODEXHO mark and trade name. However, in 2008, the Complainant simplified the spelling of its main house mark and trade name to SODEXO.

The Complainant provides evidence that it owns a large trademark portfolio for SODEXO (and, incidentally, also SODEXHO), including, but not limited to International trademark registration number 964615 for the SODEXO logo mark registered on January 8, 2008 (under priority of the French trademark SODEXO, registration number 3513766 of July 16, 2007), and designating, amongst other jurisdictions, China, Switzerland, and the European Union; and European Union Trade Mark Registration number 8346462 for the word mark SODEXO registered on February 1, 2010.

The disputed domain name was registered on November 22, 2019, and is therefore of a later date than the abovementioned trademarks of the Complainant. The Panel notes that the disputed domain name is linked to an active website in English, containing what are presumed to be pay-per-click hyperlinks to third party providers of a variety of employee benefits-related services, including meal vouchers.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for SODEXO, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith.

The Complainant claims that its trademarks are distinctive, used intensively and well-regarded in the sectors in which it operates and submits company and marketing information. The Complainant also submits a large number of prior UDRP decisions which have recognized that the Complainant's trademarks for SODEXO are well-known, see for instance *Sodexo v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-1580](#) and *Sodexo v. Contact Privacy Inc. Customer 1247189803 / NorAm Accounts Receivable*, WIPO Case No. [D2020-1683](#). Particularly, the Complainant claims that the disputed domain name was registered by the Respondent with the intentional misspelling of the word "benefits", which is one of the sectors in which the Complainant operates. The Complainant also provides evidence that the disputed domain name is linked to an active website displaying what are presumed to be pay-per-click hyperlinks to third party providers of a variety of employee benefits-related services, including meal vouchers. The Complainant argues that this constitutes an intentional attempt by the Respondent to attract, for commercial gain, Internet users to the Complainant's competing websites and to other unrelated websites by creating a likelihood of confusion with the Complainant's well-known mark for SODEXO. The Complainant essentially contends that such registration and use does not

confer any rights or legitimate interests in respect of the disputed domain name and constitutes registration and use of the disputed domain name in bad faith.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions, but did send informal communications which were received on August 25, August 31, and September 1, 2022 respectively. In these communications, the Respondent essentially stated, respectively: (a) that its English is not good so that it requests Chinese to be the language of the proceeding; (b) it offered to assign the disputed domain name to the Complainant for USD 500; and (c) it stated that it cannot agree with a gratuitous assignment of the disputed domain name to the Complainant.

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Language of the Proceeding**

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement. However, the Panel is given the authority to determine a language of the proceeding other than the language of the Registration Agreement, taking into account the circumstances of every individual case.

According to the Registrar's verification response, the language of the Registration Agreements for the disputed domain name is Chinese. Nevertheless, the Complainant filed its Complaint and its amended Complaint in English, and requests that English be the language of the proceeding.

The Panel has carefully considered all elements of this case, and considers the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited in a timely manner, in Chinese and English, by the Center to present its Response in either English or Chinese, but chose not to do so); the fact that the website hosted at the disputed domain name contains links only in English and that the disputed domain name is written in Latin letters and not in Chinese characters; the fact that in some of its informal communications (notably in its email of August 31, 2022), the Respondent also wrote in English, and responded to the communications of the Complainant which were written exclusively in English, so that the Panel concludes that the Respondent is, at least to some degree, capable of communicating in English and, finally, the fact that Chinese as the language of this proceeding could lead to unwarranted delays and additional costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and decides that the language of this administrative proceeding shall be English.

### **6.2. Discussion and Findings on the Merits**

The Policy requires the Complainant to prove three elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

## A. Identical or Confusingly Similar

The Panel finds that the Complainant has shown that it has valid rights in the mark SODEXO based on its intensive use and registration of the same as a trademark in several jurisdictions.

Moreover, as to confusing similarity, the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, states: "[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing". In this case, the Panel considers that the disputed domain name is created by incorporating the Complainant's trademark for SODEXO in its entirety, followed by a clearly intentionally misspelled version of the word "benefits" (*i.e.* written in the disputed domain name as "benifits"). According to the Panel, in this case, the disputed domain name contains the entirety of the Complainant's trademark for SODEXO, which remains easily recognizable in the disputed domain name, and the addition of the intentionally misspelled word "benifits" does not impact on this finding. The Panel also notes that the applicable generic Top-Level Domain ("gTLD") (.com in this case) is viewed as a standard registration requirement, and may as such be disregarded by the Panel, see in this regard the [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and the first element required by the Policy is fulfilled.

## B. Rights or Legitimate Interests

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant, is not a good faith provider of goods or services under the disputed domain name and is not making legitimate noncommercial use or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, the Respondent did not provide any Response or evidence in this proceeding.

Furthermore, upon review of the facts, the Panel notes that the disputed domain name directs to an active website containing what are presumed to be pay-per-click hyperlinks to third party providers of a variety of employee benefits-related services, including meal vouchers. The Panel concludes that this shows the Respondent's intention to capitalize on the reputation and goodwill of the Complainant's trademarks for SODEXO, from which the Respondent cannot derive any rights or legitimate interests in the disputed domain name (see also [WIPO Overview 3.0](#), section 2.9 and previous UDRP decisions in this sense such as *Maker Studios, Inc. v. ORM LTD / Contact Privacy Inc. Customer 0137258808*, WIPO Case No. [D2014-0918](#) and *Lennar Pacific Properties Management, Inc., Lennar Mortgage, LLC v. 徐海民 (Xu Hai Min), 权中俊 (Quan Zhong Jun), 殷磊 (Lei Yin), 杨智强 (Zhi Qiang Yang)*, WIPO Case No. [D2021-0576](#)).

On the basis of the foregoing elements, the Panel finds that the Complainant has satisfied the requirements for the second element under the Policy.

## C. Registered and Used in Bad Faith

The Panel finds that the registration of the disputed domain name, which incorporates the Complainant's famous trademark for SODEXO in its entirety, was selected and registered with the clear intention to divert Internet users to the Respondent's website linked to the disputed domain name. The Panel has taken into account the strong reputation and fame of the Complainant's trademarks (including in the Respondent's jurisdiction China) and the Respondent's intentional misspelling of the word "benefits" in the disputed domain name, which is particularly one of the main sectors in which the Complainant operates and which the Panel consequently considers an attempt by the Respondent to create an unfair advantage from unsuspecting

Internet users misspelling this word (“typosquatting”). Given these elements, the Panel considers that the registration of the disputed domain name was conducted with obvious knowledge of the Complainant’s prior registered trademarks and was therefore obtained in bad faith.

As to use of the disputed domain name in bad faith, the website linked to the disputed domain name currently displays what are presumed to be pay-per-click hyperlinks to the commercial services of unrelated third parties. This shows that the Respondent 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 the Respondent’s website. The Panel considers that this constitutes direct evidence of bad faith of the Respondent under section 4(b)(iv) of the Policy. The preceding elements lead the Panel to conclude that the Respondent is using the disputed domain name in bad faith.

Finally, the Respondent has failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third element under 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 <sodexobenifits.com> be transferred to the Complainant.

*/Deanna Wong Wai Man/*

**Deanna Wong Wai Man**

Sole Panelist

Date: October 11, 2022