

ADMINISTRATIVE PANEL DECISION

SODEXO v. Lowell Clark

Case No. D2024-2377

1. The Parties

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

The Respondent is Lowell Clark, United States of America.

2. The Domain Name and Registrar

The disputed domain name <sodexoliveusa.com> is registered with IONOS SE (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 11, 2024. On June 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 12, 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 (1&1 Internet Inc) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 17, 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 on June 17, 2024.

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 June 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 16, 2024.

The Center appointed Iris Quadrio as the sole panelist in this matter on August 2, 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 – operating since 1966 – is one of the largest companies in the world specialized in food services and facilities management.

Moreover, the Complainant is one of the largest employers worldwide, with more than 430,000 employees serving daily 80 million consumers in 45 countries.

From 1966 to 2008, the Complainant promoted its business under the SODEXHO trademark. Since 2008, the Complainant has simplified the spelling of its trademark to SODEXO. The trademark SODEXO is intensely used by the Complainant in connection with food services, such as restaurant and catering services, and facility management services, such as reception, hospitality and cleaning services.

The Complainant is the owner of the trademarks SODEXO and SODEXO LIVE in many jurisdictions, including International trademark registration no. 1648068, SODEXO LIVE ! (figurative), registered on October 15, 2021; International trademark registration no. 964615, SODEXO (figurative), registered on January 8, 2008; European Union Trade Mark No. 008346462, SODEXO, registered on February 1, 2010; and European Union Trade Mark No. 006104657, SODEXO (figurative), registered on June 27, 2008, among many others.

Likewise, the Complainant claims to own a domain name portfolio incorporating its trademark, including, among others, its primary domain name <sodexo.com>, registered since October 9, 1998.

Lastly, the disputed domain name was registered on June 4, 2024, and it currently resolves to an inactive website.

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.

The Complainant claims that the disputed domain name is confusingly similar to the trademarks SODEXO and SODEXO LIVE in which the Complainant has prior rights.

The Complainant contends that the Respondent has no rights or legitimate interest in respect of the disputed domain name, nor is he related in any way to the Complainant. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademarks SODEXO and SODEXO LIVE or apply for registration of the disputed domain name.

More specifically, the Complainant alleged that the Respondent is passively holding the disputed domain name and that he knew or should have known of the existence of the Complainant's trademarks before registering the disputed domain name.

Finally, the Complainant has requested the Panel to issue a decision ordering the transfer of the disputed domain name to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interest in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

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.

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 entirety of the SODEXO and SODEXO LIVE marks are reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, the geographical term "usa", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Having reviewed the available record, 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.

The Complainant claims not to have authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the trademarks SODEXO and SODEXO LIVE, nor is there any other evidence in the case file suggesting that the Respondent has or could have rights or legitimate interests in the disputed domain name.

Additionally, since the Respondent is passively holding the disputed domain name, this Panel considers that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods and services. Lastly, the composition of the disputed domain name carries a risk of implied affiliation that cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

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.

In such connection, the Complainant submitted evidence to support that the trademarks SODEXO and SODEXO LIVE are widely known and were registered and used many years before the Respondent registered the disputed domain name. Thus, when registering the disputed domain name, the Respondent most likely knew of and has targeted the Complainant's trademarks SODEXO and SODEXO LIVE to generate confusion among Internet users.

Therefore, the Panel is satisfied that the Respondent must have been aware of the Complainant and the Complainant's trademarks SODEXO and SODEXO LIVE when it registered the disputed domain name. Consequently, and in accordance with Section 3.1.4 of [WIPO Overview 3.0](#), the Panel considers that the inclusion of the Complainant's SODEXO and SODEXO LIVE trademarks in the disputed domain name creates a presumption that the disputed domain name was registered on a bad faith basis.

Furthermore, as per section 3.3 of [WIPO Overview 3.0](#), the fact that the disputed domain names do not resolve to an active website does not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademarks, 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 <sodexoliveusa.com> be transferred to the Complainant.

/Iris Quadrio/

Iris Quadrio

Sole Panelist

Date: August 16, 2024