

ADMINISTRATIVE PANEL DECISION

SODEXO v. Ivan Zavalin, SvitSymok
Case No. D2024-2830

1. The Parties

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

The Respondent is Ivan Zavalin, SvitSymok, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <mindful-sodexo.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 11, 2024. On July 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 15, 2024, the Registrar transmitted by email to the Center its verification response. The Center sent an email communication to the Complainant on July 22, 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 July 22, 2024.

The Center verified that the Complaint together with the amendment to the 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 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 17, 2024.

The Center appointed Peter Kružliak as the sole panelist in this matter on August 29, 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.

The Respondent submitted an email on September 18, 2024.

4. Further Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the disputed domain name <mindful-sodexo.com> was registered by the Respondent on July 9, 2024, well after the start of the international conflict, thus the situation in Ukraine did not prevent the Respondent from registering the disputed domain name. Consequently, the Panel further considered that the Complaint together with the amendment to the Complaint were delivered to the Respondent's email address confirmed by the Registrar, as well as through the contact tool provided by the Registrar. Moreover, the disputed domain name first resolved to a password-protected active website, but on the date of the decision the website is unavailable – which may indicate the Respondent is aware of the case and taking action to hide its tracks.

It is further noted that, for the reasons which are set out later in this Decision, the Panel has no doubt that the Respondent registered and has used the disputed domain name in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its well-known trademark with reputation.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

5. Factual Background

The Complainant is a food-services and facilities-management company founded in 1966 and based in France with consolidated revenue of EUR 22,6 billion in 2023 with 46% of the revenue from North America, 36 % of the revenue from Europe, and 18 % of the revenue from the rest of the world.

The Complainant has been using the SODEXO brand since 2008, when this brand due to its simplified spelling substituted the previous brand SODEXHO used since 1966.

The Complainant is the owner of inter alia the following SODEXO trademark registrations:

- international trademark registration SODEXO (combined), number 964615, registered on January 8, 2008, for classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 protected in the following countries: Armenia, Australia, Azerbaijan, Bosnia and Herzegovina, Bahrain, Belarus, Switzerland, China, Algeria, Egypt, European Union, Islamic republic of Iran, Iceland, Israel, Japan, Kyrgyzstan, Democratic People's Republic of Korea, Republic of Korea, Kazakhstan, Lesotho, Morocco, Monaco, Republic of Moldova, Montenegro, Mongolia, Republic of Namibia, Norway, Serbia, Russian Federation, Singapore, Turkey, Ukraine, United States of America, Uzbekistan and Viet Nam;
- European Union trademark registration SODEXO (word), number 008346462, registered on February 1, 2010 for classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45; and

- international trademark registration SODEXO (word), number 1240316, registered on October 23, 2014, for classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 protected in the following countries: Islamic republic of Iran, Mozambique and United Kingdom.

(the “SODEXO trademark”)

Besides other SODEXO trademark registrations in numerous countries all over the world, the Complainant owns substantial trademark portfolio of earlier SODEXHO trademarks, including:

- international trademark registration SODEXHO (combined), number 689106, registered on January 28, 1998, for classes 16, 36, 37, 39, 41 and 42 protected in the following countries: Armenia, Austria, Azerbaijan, Benelux, Belarus, Switzerland, China, Czech Republic, Germany, Denmark, Algeria, Egypt, Spain, Finland, United Kingdom, Greece, Hungary, Iceland, Italy, Japan, Democratic People’s Republic of Korea, Kazakhstan, Latvia, Morocco, Monaco, Montenegro, Norway, Poland, Portugal, Romania, Serbia, Russian Federation, Sweden, Slovenia, Slovakia, Ukraine, Viet Nam; and
- international trademark registration SODEXHO (combined), number 694302, registered on June 22, 1998, for class 9 protected in the following countries: Armenia, Austria, Azerbaijan, Benelux, Belarus, Switzerland, China, Czech Republic, Germany, Denmark, Algeria, Egypt, Spain, Finland, United Kingdom, Greece, Hungary, Iceland, Italy, Japan, Democratic People’s Republic of Korea, Kazakhstan, Latvia, Morocco, Monaco, Montenegro, Norway, Poland, Portugal, Romania, Serbia, Russian Federation, Sweden, Slovenia, Slovakia, Ukraine, Viet Nam.

The Complainant also registered many domain names containing SODEXO trademarks, such as <sodexo.com>, <uk.sodexo.com>, <sodexoprestige.co.uk>, <sodexo.fr>, <sodexoca.com>, <sodexousa.com>, <cn.sodexo.com>. Furthermore, the record shows that FORTUNE Magazine included the Complainant among “The world’s Most Admired Companies”. The Complainant also indicated numerous UDRP panel decisions confirming the reputation and well-known character of the SODEXO trademarks.

The Respondent is an individual from Ukraine. The disputed domain name <mindful-sodexo.com> was created on July 9, 2024, and based on available record it originally resolved to an empty password protected website, on the day of decision the website is unavailable.

6. 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 <mindful-sodexo.com> is confusingly similar to the SODEXO mark of the Complainant, as it is composed of the identical sign SODEXO and the presence of the term mindful does not prevent such finding. The sign SODEXO keeps its individuality and is clearly perceived by consumers as the predominant part of the the disputed domain name <mindful-sodexo.com> and the addition of descriptive terms to a mark will not alter the fact that the domain name at issue is confusingly similar to the mark in question. The Complainant also emphasized that confusion is more likely since the Complainant is the owner of the subdomain <mindful.sodexo.com> and uses it to connect to an official website dedicated to recipes for consumers.

The Complainant further asserts that the Respondent has no rights nor legitimate interests in the disputed domain name <mindful-sodexo.com>, as he has no rights on SODEXO as corporate name, trade name, shop sign, mark or domain name that would be prior to the Complainant’s rights on SODEXO. The Respondent was not commonly known by the disputed domain name <mindful-sodexo.com> prior to the

adoption and use by the Complainant of the corporate name, business name and mark SODEXO / SODEXHO. Moreover, the Respondent does not have any affiliation, association, sponsorship or connection with the Complainant and has not been authorized, licensed or otherwise permitted by the Complainant or by any subsidiary or affiliated company to register the disputed domain name <mindful-sodexo.com> and to use it.

And finally, the Complainant submits that the unauthorized registration and use of the disputed domain name <mindful-sodexo.com> by the Respondent constitutes bad faith registration and use. The SODEXO sign is fanciful and nobody could legitimately choose this word, unless seeking to create association with the Complainant. The Respondent must have known of the existence of SODEXO trademark due to its well-known character and reputation, which according to previous UDRP panel decisions may be considered an inference of bad faith. Furthermore, the registration of the disputed domain name <mindful-sodexo.com> with the knowledge of the SODEXO trademark is, according to the Complainant, very likely for the purpose of creating confusion with the Complainant's mark to divert or mislead third parties for the Respondent's illegitimate profit trying to make consumers believe that the disputed domain name connects to a Sodexo's official website protected by a password. And even if the disputed domain name was not currently active, a passive holding of a domain name does not prevent a finding of bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions. On September 18, 2024, well after the due date to file response, which expired on August 13, 2024, the Respondent sent an email communication to the Center without any materially relevant content saying "Sorry for the late reply. I just got notification. Should I remove the domain? Or what should I do?".

7. Discussion and Findings

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 the SODEXO trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the SODEXO trademark is reproduced within the disputed domain name and the addition of other term, such as "mindful" in this case, may bear on assessment of the second and third elements, however it 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. Similarly the hyphen between the individual words is not sufficient to avoid finding of confusing similarity (see for example *L'Oreal v. Tracey Johnson*, WIPO Case No. [D2008-1721](#) and *Atacadão - Distribuição, Comércio E Indústria LTDA. v. seong-chea park*, WIPO Case No. [D2022-4615](#)).

Accordingly, the disputed domain name <mindful-sodexo.com> is confusingly similar to the SODEXO trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Per the available record the disputed domain name <mindful-sodexo.com> originally resolved to empty password-protected website and on the day of decision the website is unavailable. Neither of these uses could be considered according to the Panel as bona fide offering.

Furthermore, the available record does not show any trademark registrations or earlier relevant rights of the Respondent corresponding to the disputed domain name <mindful-sodexo.com>, nor the fact that the Respondent is commonly known by the disputed domain name.

Finally, the Panel was not able to identify any reason why the present use of the disputed domain name <mindful-sodexo.com> by the Respondent should be considered as legitimate non-commercial or fair use. The SODEXO trademark has reputation, as repeatedly recognized by previous UDRP decisions (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*, WIPO Case No. [D2020-2286](#); *SODEXO v. Zhichao Yang*, WIPO Case No. [D2020-2286](#); *SODEXO v. Ashutosh Dwivedi, Food & Beverages*, WIPO Case No. [D2020-2686](#); *SODEXO v. Li Jin Liang*, WIPO Case No. [D2020-3064](#); *Sodexo v. Domains By Proxy, LLC, DomainsByProxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-3085](#); *Sodexo v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-0472](#); *Sodexo v. Daniela Ortiz*, WIPO Case No. [D2021-0628](#); *Sodexo v. bin quan wang, wang bin quan*, WIPO Case No. [D2021-0629](#); *Sodexo v. Yang Zhichao*, WIPO Case No. [D2021-0902](#); *Sodexo v. Lloyd Group*, WIPO Case No. [D2021-1214](#); *Sodexo v. Contact Privacy Inc. Customer*, WIPO Case No. [D2022-1399](#); *Sodexo v. Host Master, Transure Enterprise Ltd*, WIPO Case No. [D2022-1140](#); *Sodexo v. Huade Wang*, WIPO Case No. [D2022-1446](#); *Sodexo v. li jiang*, WIPO Case No. [D2023-0211](#); *Sodexo v. VEERA RAGHAVA*, WIPO Case No. [D2023-1370](#); *Sodexo v. chengao*, WIPO Case No. [D2023-1894](#)), per the available record (not rebutted by the Respondent) the other term in the disputed domain name “mindful” was demonstrably used by the Complainant within its commercial activities, including earlier domain name registration of <mindful.sodexo.com>, thus the disputed domain name carries a risk of implied affiliation with the Complainant, which prevents finding of any legitimate non-commercial or fair use on the part of the Respondent. [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 the present case, the Panel first notes that the SODEXO trademark is registered in many jurisdictions globally, enjoys significant reputation and is well-known, as recognized by numerous earlier UDRP panel decisions (see above).

Furthermore, the Panel points out to the term “mindful” in the disputed domain name, which was demonstrably used by the Complainant within its commercial activities, including earlier domain name registration of <mindful.sodexo.com>. As a result, it is not conceivable that the Respondent registered the disputed domain name <mindful-sodexo.com> without knowledge of the Complainant’s SODEXO trademark, which supports a finding of bad faith registration.

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. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes (i) the distinctiveness and (ii) the above described reputation of the Complainant’s trademark, (iii) its well-known character and the composition of the disputed domain name <mindful-sodexo.com>, as well as the failure of the Respondent to (iv) file a relevant response within the required due date or (v) provide any evidence of actual or contemplated good-faith use 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.

8. 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 <mindful-sodexo.com> be transferred to the Complainant.

/Peter Kružliak/

Peter Kružliak

Sole Panelist

Date: September 20, 2024