Panel Decision for dispute CAC-ADREU-007764

Case number	CAC-ADREU-007764
Time of filing	2019-08-30 11:35:40
Domain names	sodexogroup.eu

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	SODEXO

Respondent

Name	Zerar Goren

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of any other legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant, founded in 1996, supplies food services and facilities management under the name “Sodexo”. The Complainant has no less than 460,000 employees serving 100 million consumers in 72 countries and is one of the largest employers in the world. In 2018, its turnover was approximately 20.5 billion Euros.

The Complainant owns many registered trade marks for “SODEXO” including EU trade mark no. 8346462, filed on 8 June 2009, registered on 1 February 2010, in international classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

The Respondent registered the disputed domain name on 13 February 2019.

The Complainant asserts that the Respondent has used the disputed domain name for a website which looked like an official website of the Complainant in connection with digital marketing services.

A. COMPLAINANT

Here is a summary of the Complainant’s submissions:

The disputed domain name is identical or confusingly similar to the Complainant’s trade mark. The disputed domain name reproduces the Complainant’s mark “Sodexo” with the addition of the descriptive term “group”, which is not sufficient to distinguish it from the Complainant’s marks. Instead this term implies an affiliation with the Complainant.

The Respondent lack rights or legitimate interests in respect of the disputed domain name.

The Respondent has no association with the Complainant, which has not authorised the Respondent to use its mark.

The Respondent has no name-related rights in the term “Sodexo” and is not commonly known by that name.

The disputed domain name was registered and is being used in bad faith.

The Complainant’s mark is well-known in Hungary, where the Respondent is located. The Respondent was most likely aware of the Complainant when registering the disputed domain name.

No one could legitimately choose the made-up word “Sodexo” unless seeking to create an association with the Complainant.

The Respondent is using the disputed domain name for a website which looks like an official website of the Complainant for digital marketing services. It is obviously designed to deceive Internet users for commercial gain.

The Respondent’s failure to carry out a trade mark search before registering the disputed domain name also contributes to bad faith.

B. RESPONDENT

The Respondent did not file a Response.

DISCUSSION AND FINDINGS

Introduction

Under Article 21(1) of Regulation (EC) 874/2004 (“the Regulation”), the disputed domain name is subject to revocation if it is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it (a) has been registered by its holder without rights or legitimate interests in the name or (b) has been registered or is being used in bad faith.

Rights

The Complainant must first establish a right that “is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1)”.

Article 10(1) of the Regulation refers to “prior rights” which are said to include “registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names…”.

The Complainant has established EU registered trade mark rights for the term “SODEXO”.

The disputed domain name is confusingly similar to the Complainant’s trade mark as it differs only by addition of the descriptive word “group”.

For the above reasons, the Panel concludes that the disputed domain name is confusingly similar to a name in respect of which the Complainant possesses a right recognised or established by national and/or Community law.

Lack of Rights or Legitimate Interest

Panels have generally held that a complainant is only required to establish a prima facie case of lack of rights or legitimate interest and the burden then shifts to the respondent. If the respondent fails to show evidence of rights or legitimate interests, then it is deemed to have none.

Article 21(2)(a) provides that legitimate interest can be demonstrated by use of the domain name or a name corresponding to the domain name in connection with an offering of goods or services or demonstrable preparations to do so.

Here, there is no evidence before the Panel of use of the disputed domain name in connection with an offering of goods or services or of demonstrable preparations for such an offering.

Nor is there any evidence that Articles 21(2)(b) or (c) apply.

In the Panel’s view, the Complainant has established a prima facie case of lack of rights or legitimate interest and there is no rebuttal by the Respondent.

Accordingly, the Panel concludes that the Respondent lacks rights or legitimate interests in the disputed domain name.

Bad faith

Under Article 21(1) of the Regulation (a) lack of rights or legitimate interests and (b) registration or use in bad faith are alternative requirements. For reasons explained above, the Panel considers that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, there is no need to separately address bad faith.

Remedy

The Complainant seeks transfer of the disputed domain name.

Article 22(11) of the Regulation states that the Panel shall decide that the domain name shall be revoked if it finds that the domain name is speculative or abusive as defined in Article 21. Article 22(11) further provides that the domain name shall be transferred to the Complainant if the Complainant applies for the domain name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) 733/2002.

Those general eligibility criteria are:

1. an undertaking having its registered office, central administration or principal place within the European Community;

2. organisations established within the European Community without prejudice to the application of national law; or

3. natural persons resident within the European Community.

The Complainant satisfies the eligibility criteria as it is an organisation established in France.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders the domain name <SODEXOGROUP.EU> to be transferred to the Complainant.

PANELISTS

Name	**Adam Taylor**

DATE OF PANEL DECISION 2019-08-30

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: SODEXOGROUP.EU

II. Country of the Complainant: France, country of the Respondent: Hungary

III. Date of registration of the domain name: 13 February 2019

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision: Word trade mark registered in the European Union, reg. No. 8346462, for the term SODEXO, filed on 8 June 2009, registered on 1 February 2010, in respect of goods and services in classes 9, 16, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45.

V. Response submitted: No

VI. Domain name is confusingly similar to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: The Respondent failed to rebut the Complainant's prima facie case.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Not considered.
2. Why: Not applicable.

IX. Other substantial facts the Panel considers relevant: None.

X. Dispute Result: Transfer of the disputed domain name.

XI. Procedural factors the Panel considers relevant: None.

XII. Is Complainant eligible? Yes