

ADMINISTRATIVE PANEL DECISION

Solvay SA v. Moses Mawanda, MRSOFT Consults
Case No. D2022-0855

1. The Parties

The Complainant is Solvay SA, Belgium, represented internally.

The Respondent is Moses Mawanda, MRSOFT Consults, Uganda.

2. The Domain Name and Registrar

The disputed domain name <solvychemicals.net> is registered with Internet Domain Service BS Corp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 11, 2022. On March 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 15, 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 on March 15, 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 amendment to the Complaint on March 21, 2022.

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 March 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 14, 2022.

The Center appointed Zoltán Takács as the sole panelist in this matter on May 11, 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 global leader in chemicals, specialized in high-performance polymers and composite technologies.

The Complainant's group was founded in 1863, has its registered offices in Brussels and employs more than 23,000 people in 64 countries of the world. The Complainant's net sale in 2020 was EUR 8.9 billion.

Among others, the Complainant owns the International Trademark Registration ("IR") No 1171614 for the word mark SOLVAY, registered since February 28, 2013, in multiple classes of goods and services of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

The disputed domain name was registered on March 3, 2022, and has not resolved to an active website since registration.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its SOLVAY trademark, because it comprises the trademark and the term "chemicals", referring to its core business.

The Complainant further alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy.

The Complainant claims that the Respondent must have known the Complainant and its trademark and has registered and is using the disputed domain name in bad faith to unlawfully exploit the Complainant's SOLVAY trademark.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

It has been a consensus view in UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A complainant must establish each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that;

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

It has been a consensus view among UDRP panels that if the complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced proper evidence of having registered rights in the SOLVAY trademark and for the purpose of this proceeding the Panel establishes that the IR No. 1171614 satisfies the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainant's trademark rights, the Panel next assesses whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

According to section 1.7 of the [WIPO Overview 3.0](#), 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. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

According to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc", or ".net" in the present case) is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

The disputed domain name incorporates the Complainant's SOLVAY trademark in its entirety. The addition of the term "chemicals", describing the primary business of the Complainant does not prevent a finding of confusing similarity.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and that requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) its use of, or demonstrable preparation to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;

- (ii) it has been commonly known by the domain name;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

In the present case, the Complainant has submitted evidence that it holds prior rights in the SOLVAY trademark.

The Complainant has never authorized the Respondent to use its SOLVAY trademark in any way, and its rights in the SOLVAY trademark precede the date of registration of the disputed domain name.

According to section 2.1 of the [WIPO Overview 3.0](#), while 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 often impossible 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 the relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Respondent failed to respond, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter the Complainant’s *prima facie* case.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.

The Complainant’s SOLVAY trademark has no dictionary meaning; it is invented by the Complainant and therefore highly distinctive.

The widely known status of the Complainant’s SOLVAY trademark has been recognized by previous UDRP panels (see *SOLVAY Société Anonyme v. Privacy service provided by Withheld for Privacy ehf / Enock Mpanga, Premium Plus*, WIPO Case No. [D2022-0377](#) and *SOLVAY Société Anonyme v. Privacy service*

provided by Withheld for Privacy ehf / Ivan Muyorjo, WIPO Case No. [D2022-0576](#)).

According to section 3.1.4 of the WIPO Overview, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark (as in the present case) by an unaffiliated entity can itself create a presumption of bad faith.

In view of the Panel, it is highly improbable that the Respondent had no knowledge of the Complainant and its SOLVAY trademark at the time of registration of the disputed domain name. The fact that the Respondent added the term “chemicals” (which refers to the Complainant’s main business activity) to the Complainant’s trademark in the disputed domain name adds to the finding of the Respondent’s knowledge of the Complainant and its trademark rights. In the Panel’s opinion, the only conceivable explanation for the Respondent’s choice to register the disputed domain name that fully reproduces the Complainant’s widely known SOLVAY trademark is to unlawfully exploit the reputation behind it.

The disputed domain name has not resolved to an active website since registration. There is no evidence that the disputed domain name has been used in any active way.

According to section 3.3 of the [WIPO Overview 3.0](#), from the inception of the UDRP, UDRP 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.

The Respondent’s lack of any rights or legitimate interests in the disputed domain name, absence of any conceivable good faith use of the disputed domain name by the Respondent, and failure to react to the Complainant’s strong case in view of this Panel support an undisputed presumption of the Respondent’s evident targeting of the Complainant’s trademark rights and suggest that the Respondent’s non-use of the disputed domain name is in bad faith.

In view of this Panel, noting the above discussed facts and circumstances, paragraph 4(a)(iii) of the Policy is satisfied.

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, <solvychemicals.net>, be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: May 20, 2022