

ADMINISTRATIVE PANEL DECISION

SOLVAY Société Anonyme v. Privacy Service Provided by Withheld for Privacy ehf / Ken Young king, Zictech
Case No. D2022-2594

1. The Parties

The Complainant is SOLVAY Société Anonyme, Belgium, represented by PETILLION, Belgium.

The Respondent is Privacy Service Provided by Withheld for Privacy ehf, Iceland / Ken Young king, Zictech, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <solvaysaving.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 15, 2022. On July 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 18, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 19, 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 on July 25, 2022.

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 July 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 15, 2022. The Respondent did not submit a formal response. However, informal communications were received from the Respondent on July 29, 2022, August 6, 2022, and August 15, 2022, respectively. Accordingly, the Center sent the Commencement of Panel Appointment Process email on August 18, 2022.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on August 24, 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 Belgian headquartered multinational chemical company.

The Complainant is the owner of several SOLVAY trade mark registrations, including the following:

- European Union Trade Mark SOLVAY, registered on May 30, 2000 under No. 000067801 in classes 1, 3, 4, 5, 7, 9, 10, 12, 17, 19, 20, and 31.

The Domain Name was registered on June 4, 2022. The Domain Name does not resolve to an active website, but rather resolves to an error page with the following message: "Error 403 – Forbidden".

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the SOLVAY trade mark in which the Complainant has rights, as the Domain Name incorporates the entire SOLVAY trade mark of the Complainant with the mere addition of the term "saving". The Complainant considers that such addition does not prevent the confusing similarity between the Domain Name and the Complainant's trade mark. The Complainant also contends that the addition of the generic Top-Level Domain ("gTLD") ".com" does not change the overall impression of the Domain Name being connected to the Complainant's SOLVAY trade mark.

The Complainant asserts that the Respondent is not commonly known by the Domain Name and that there is no link whatsoever between the Domain Name and the Respondent's name or organization. Furthermore, the Complainant submits that the Respondent has not acquired trade mark rights and that its use and registration of the Domain Name were not authorized by the Complainant and that in the absence of any license or permission from the Complainant to use its widely-known trade mark, no actual or contemplated *bona fide* or legitimate use of the Domain Name could reasonably be claimed. The Complainant also points to the choice of the Respondent to combine the SOLVAY trade mark and the term "saving" as an attempt to impersonate or at least suggest sponsorship or endorsement by the Complainant, to conclude that this cannot constitute *bona fide* or even fair use. Finally, the Complainant submits that the fact that the Domain Name points to an error page does not amount to any legitimate or fair use.

The Complainant contends that the Respondent has registered and used the Domain Name with full knowledge of the Complainant's SOLVAY trade mark and the Complainant refers to prior UDRP panels' findings that the Complainant's SOLVAY trade mark is well known. The Complainant submits that by registering the Domain Name, the Respondent prevents the Complainant from reflecting its trade mark in a corresponding domain name. The Complainant adds that the reproduction of the SOLVAY trade mark of the Complainant in the Domain Name creates a presumption of bad faith given the well-known nature of the SOLVAY trade mark. In terms of use of the Domain Name in bad faith, the Complainant contends that the passive holding of the Domain Name amounts to use in bad faith given the overall circumstances of the case, including the renown of the SOLVAY trade mark. The Complainant considers that it is impossible to imagine any plausible legitimate use of the Domain Name by the Respondent, especially in view of the global reach of the Complainant and the well-known and distinctive character of its SOLVAY trade mark. The Complainant argues that the Respondent uses the Domain Name in an intentional attempt to attract, for commercial gain, Internet users to a 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 the web site or location or of a product or service on the web site or location. The Complainant concludes that the Domain Name has been registered and is being used in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However, informal communications were received from the Respondent on July 29, 2022, August 6, 2022, and August 15, 2022, respectively, where the Respondent claims no responsibility for the Domain Name, being only a "freelance IT and software developer [...] offer[ing] service[s] online to individual and business owners" that does not "own the domain nor the website", whilst also confirming that the Domain Name has been disabled, which contradicts the claim that the Respondent does not control the Domain Name.

6. Discussion and Findings

6.1 Respondent's Identity

The Panel notes that informal communications received from the Respondent are contradictory and offer no information about who a potential beneficial holder could be and no evidence on the existence and nature of the relationship between the Respondent and the alleged beneficial holder. Irrespective of whether there is an actual beneficial holder or not, noting that Ken Young king, Zitech is the registrant confirmed by the Registrar, the Panel has decided to consider that Ken Young king, Zitech is the Respondent noting the definition of a respondent identified in paragraph 1 of the Rules. However, references to the Respondent shall include any actions by any potential beneficial holder regarding the Domain Name. In any event, the Panel considers that even if there was a beneficial holder, the registrant is still responsible, at least for the purposes of the Policy, to ensure that the Domain Name is used in a way that is not contrary to the Policy.

6.2 Substantive Issues

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met for the Domain Name, namely:

- (i) the Domain Name is identical or confusingly similar to a trade mark 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

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in the SOLVAY trade mark, which is reproduced in its entirety in the Domain Name.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the SOLVAY trade mark in which the Complainant has rights.

At the second level, the Domain Name incorporates the entire SOLVAY trade mark with the mere addition of the term "saving". The Panel finds that the well-known SOLVAY trade mark of the Complainant is instantly recognizable in the Domain Name and that the term added to the Complainant's SOLVAY trade mark does not prevent a finding of confusing similarity arising from the incorporation of the Complainant's exact SOLVAY trade mark in the Domain Name.

Then there is the addition of the gTLD “.com”. As is generally accepted, the addition of a gTLD (such as “.com”) is merely a technical registration requirement and as such is typically disregarded under the first element confusing similarity test.

Thus, the Panel finds that the Domain Name is confusingly similar to a trade mark or service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent’s] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] of the dispute, [the respondent’s] use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or

(iii) [the respondent] is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.”

Numerous previous panels have found under the UDRP that once the Complainant makes a *prima facie* showing that the respondent does not have rights or legitimate interests in the domain name, the burden of production shifts to the respondent to rebut the showing by providing evidence of its rights or legitimate interests in the domain name.

Having reviewed the Complainant’s assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent does not have rights or legitimate interests in the Domain Name.

There is no indication that the Respondent is commonly known by the Domain Name. The Complainant has stated that the Respondent has no rights in the Domain Name and has not been authorized by the Complainant to make any use of its SOLVAY trade mark.

The fact that the Domain Name does not seem to direct to an active website and triggers a 403 error web page suggests that the Domain Name is held passively by the Respondent. Given the overall circumstances of the present case including the renown of the SOLVAY trade mark of the Complainant the passive holding of the Domain Name cannot be considered *bona fide*, legitimate, or fair.

Finally, the informal communications sent by the Respondent to the Center do not indicate that the Respondent had any intention to use the Domain Name for a legitimate purpose.

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

“(i) circumstances indicating that [the respondent has] registered or acquired [a disputed] 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 trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent’s] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] 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 [the respondent’s] website or location or of a product or service on [the respondent’s] website or location.”

Given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel finds that the Domain Name was registered in bad faith.

The Domain Name reproduces the exact SOLVAY trade mark of the Complainant and this cannot be a coincidence. The Complainant has provided evidence of the renown of the SOLVAY trade mark and this has been recognized by previous panels under the Policy. Therefore, the fact that the Respondent decided to register the Domain Name reproducing the exact SOLVAY trade mark of the Complainant strongly suggests that the Respondent had the Complainant’s SOLVAY trade mark in mind and targeted it specifically at the time of registering the Domain Name.

This is even more likely given the fact that the Domain Name was registered relatively recently and many years after the registration of the Complainant’s SOLVAY trade mark.

Thus, the Panel finds that the Domain Name was registered in bad faith.

As for use of the Domain Name in bad faith, given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel is satisfied that the Domain Name is being used in bad faith.

When the Panel tried to access the website associated with the Domain Name, the following error message was triggered “Error 403 – Forbidden”. Based on the information available to the Panel this type of use can be seen as passive holding of the Domain Name. Whilst there might be an underlying malevolent use of the Domain Name there is no evidence in this respect. In any event, passive use itself would not prevent a finding of the Respondent’s bad faith given the overall circumstances here, noting in particular the renown of the Complainant’s SOLVAY trade mark and the Respondent’s failure to rebut the Complainant’s contentions.

Thus, the Panel finds that the Domain Name is being used in bad faith.

Finally, the informal communications sent by the Respondent to the Center do not indicate that the Respondent had any intention to use the Domain Name in good faith or provide any explanation for the registration of the Domain Name incorporating the Complainant’s widely-known trade mark, which reinforces the Panel’s view that the Domain Name was registered and is being used in bad faith.

Accordingly, the Complainant has met its burden of showing that the Domain Name was registered and is being used in bad faith.

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 Domain Name <solvaysaving.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: September 6, 2022