

ADMINISTRATIVE PANEL DECISION

Solvay SA v. Palm Wino

Case No. D2023-0414

1. The Parties

Complainant is Solvay SA, Belgium, represented by PETILLION, Belgium.

Respondent is Palm Wino, United States of America.

2. The Domain Name and Registrar

The disputed domain name <solwayusa.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 January 30, 2023. On January 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same day, 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 (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf). The Center sent an email communication to Complainant on February 1, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 1, 2023.

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 Respondent of the Complaint, and the proceedings commenced on February 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 23, 2023.

The Center appointed Dinant T. L. Oosterbaan as the sole panelist in this matter on March 10, 2023. 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

According to the information provided in the Complaint, Complainant is a global science company specialized in high-performance polymers and composites technologies, and a leader in chemicals. Complainant's group was founded 1863, has its registered offices in Brussels, Belgium and employs more than 21,000 people in 63 countries. Its net sale was EUR 10.1 billion in 2021.

According to the evidence submitted, Complainant owns numerous registrations for the trademark SOLVAY, including:

- European Union Trademark No. 000067801, registration date May 30, 2000; and
- International Trademark No. 1171614, date of registration February 28, 2013, covering numerous countries including the United States of America, where Respondent appears to reside.

In addition, Complainant owns the domain name <solway.com> since 1995, and uses it to refer to its official website and for its internal mailing system.

The Domain Name was registered on December 26, 2022. The Domain Name does not resolve to an active website but has been used in a fraudulent email scheme.

The trademark registrations of Complainant were issued prior to the registration of the Domain Name.

5. Parties' Contentions

A. Complainant

Complainant submits that the Domain Name is confusingly similar to trademarks in which Complainant has rights. The Domain Name incorporates Complainant's SOLVAY mark in its entirety and simply adds the geographical term "usa". According to Complainant were 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.

According to Complainant, Respondent has no rights or legitimate interests in respect of the Domain Name. A first indication that Respondent has no rights or legitimate interest in the Domain Name can be found in the fact that Respondent is not commonly known by the Domain Name. Furthermore, Respondent has not acquired trademark or service mark rights and Respondent's use and registration of the Domain Name was not authorized by Complainant.

Complainant in particular submits the following. The Domain Name appears to refer to an inactive web page. However, Complainant received evidence of actual (email) fraud linked to the Domain Name. Indeed, several persons reported that they were contacted by someone impersonating an employee of Complainant using an email address linked to the Domain Name: <hr[...]@solwayusa.com>. The person using this email address made the victims believe that they were hired by Complainant and this person even sent fake documents mentioning Complainant's SOLVAY mark and official logo in an attempt to obtain personal information and bank account details. Such use of Complainant's mark is thus clearly meant to impersonate Complainant for fraudulent purposes. UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods, phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate

interests on a respondent. For the above reasons, Complainant asserts that it is clear that Respondent has no rights or legitimate interests in the Domain Name.

According to Complainant, the Domain Name was registered and is being used in bad faith. At the time Respondent registered the Domain Name, Respondent must have known Complainant and its trademarks. This is shown by the fact that the Domain Name includes Complainant's distinctive trademark in its entirety and combines it with a geographical term referring to a country where Complainant is active. In addition Respondent used the email function of the Domain Name to send fraudulent emails impersonating an employee of Complainant, even sending fake documents mentioning Complainant's distinctive mark.

As explained above, Complainant was made aware of actual fraudulent use of an email address linked to the Domain Name, most probably for Respondent's commercial gain. In addition to the fact that the Domain Name combines Complainant's distinctive trademark with a term referring to a country where Complainant is active, Respondent intentionally aimed to attract Internet users for commercial gain, by creating a likelihood of confusion with Complainant's mark. Moreover, illegal activity such as impersonation or other types of fraud is manifestly considered evidence of bad faith use.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel to "decide a complaint 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".

Paragraph 4(a) of the Policy requires that the complainant prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this proceeding.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, Complainant must first of all establish rights in a trademark or service mark and secondly that the Domain Name is identical or confusingly similar to that trademark or service mark.

Complainant has established that it is the owner of several trademark registrations for SOLVAY. The Domain Name incorporates the trademark SOLVAY in its entirety, with the addition of the geographic term "usa". Many UDRP panels have found that a disputed domain name is confusingly similar where the relevant trademark is recognizable within the disputed domain name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The generic Top-Level Domain (“gTLD”) “.com” is disregarded under the first element confusing similarity test. See section 1.11 of the [WIPO Overview 3.0](#).

The Panel finds that Complainant has proven that the Domain Name is confusingly similar to Complainant’s trademarks under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

In the opinion of the Panel, Complainant has made a *prima facie* case that Respondent lacks rights or legitimate interests in the Domain Name. Complainant has not licensed or otherwise permitted Respondent to use any of its SOLVAY trademarks or to register the Domain Name incorporating its trademarks. Respondent is not making a legitimate noncommercial or fair use of the Domain Name without intent for commercial gain to misleadingly divert Internet users or to tarnish the trademarks of Complainant.

Based on the undisputed submission and evidence provided by Complainant, the Domain Name does not resolve to an active website. The Panel does not consider such use a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of the Domain Name. Respondent is also not commonly known by the Domain Name nor has it acquired any trademark or service mark rights. In addition, based on the undisputed submission and evidence provided by Complainant, it is clear that Respondent has used the Domain Name for fraudulent purposes as mentioned above.

In these circumstances it is clear to the Panel that Respondent is engaged in some form of deceptive and fraudulent activity with a view to commercial gain and that the Domain Name was registered with that in mind. Such activity cannot confer any rights or legitimate interests upon Respondent.

No Response to the Complaint was filed and Respondent has not rebutted Complainant’s *prima facie* case.

Under these circumstances, the Panel finds that Respondent has no rights or legitimate interests in the Domain Name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Domain Name has been registered and is being used in bad faith. The trademarks of Complainant have been existing for a long time and are well known. The Panel notes that Complainant’s registrations of its trademarks predate the registration date of the Domain Name. Respondent knew or should have known that the Domain Name included the entirety of Complainant’s SOLVAY trademark.

The Panel notes that there is no website at the Domain Name. However, the Panel accepts the undisputed submission of Complainant that the registration and use of the Domain Name was for obvious fraudulent purposes as mentioned above.

The Panel finds that Complainant has proven that the Domain Name has been registered and is being used in bad faith and paragraph 4(a)(iii) of the Policy has been 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 Domain Name, <solwayusa.com>, be transferred to Complainant.

/Dinant T. L. Oosterbaan/

Dinant T. L. Oosterbaan

Sole Panelist

Date: March 24, 2023