

ADMINISTRATIVE PANEL DECISION

SOLVAY SA v. 陈江坤 (Chen Jiang Kun)

Case No. D2023-0629

1. The Parties

The Complainant is SOLVAY SA, Belgium, represented by PETILLION, Belgium.

The Respondent is 陈江坤 (Chen Jiang Kun), China.

2. The Domain Name and Registrar

The disputed domain name <solvya.net> (the “Domain Name”) is registered with DOMAIN NAME NETWORK PTY LTD (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 10, 2023. On February 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 13, 2023, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 13, 2023 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 in English on February 13, 2023.

On February 13, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on February 13, 2023. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on February 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 13, 2023.

The Center appointed Karen Fong as the sole panelist in this matter on March 23, 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

The Complainant is a global science company specialized in high performance polymers and composites technologies. The Complainant's group was founded in 1863 and is headquartered in Brussels. Its net sales in 2021 was EUR 10.1 billion.

The Complainant's SOLVAY trade mark is registered in many jurisdictions. The earliest mark submitted in evidence is European Union Trade Mark ("EUTM") registration No. 67801 registered on May 30, 2000 (the "Trade Mark"). The SOLVAY trade mark is valued at EUR 795 million in 2020.

The Complainant owns the domain name <solvay.net> since 1999.

The Respondent, who appears to be based in China, registered the Domain Name on June 11, 2022. The Domain Name is inactive and resolves to an error page.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name has been registered and is being used in bad faith. The Complainant requests transfer of the Domain Name to the Complainant.

B. Respondent

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

6. Discussion and Findings

A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (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 was registered and is being used in bad faith.

B. Language of the Proceeding

The Rules, paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement, the language of the proceeding shall be the language of the registration agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the

administrative proceeding. According to the information received from the Registrar, the language of the Registration Agreement for the Domain Name is Chinese.

The Complainant submits that the language of the proceeding should be English for the following main reasons:

- the Domain Name is in the English language and in Latin letters rather than Chinese script;
- the Respondent's email address is composed exclusively of English words;
- the Complainant would be put to great expense and inconvenience to have to translate the Complaint in Chinese.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs.

The Panel accepts the Complainant's submissions regarding the language of the proceeding. The Panel notes that all of the communications from the Center to the Parties were transmitted in both Chinese and English. The Respondent has not challenged the Complainant's language request and in fact has failed to file a response either in Chinese or English. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner. In this case, the Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. In view of all the circumstances, the Panel determines that English be the language of the proceeding.

C. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has established that it has registered rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the Domain Name consists of a misspelling of the Trade Mark with the letter "a" at the end rather than between "v" and "y". Section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), states that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is considered by panels to be confusingly similar to the relevant mark for the purposes of the first element. In this case, the Trade Mark remains clearly recognizable in the Domain Name.

For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") which in this case is ".com". It is viewed as a standard registration requirement (section 1.11.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Domain Name is confusingly similar to the Trade Mark in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

D. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the domain name by demonstrating any of the following:

- (i) before any notice to it 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 has been commonly known by the domain name, even if it has 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.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made out, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does not come forward with such allegations and relevant evidence of rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that there is no evidence that the Respondent is commonly known by the Domain Name nor has any trade mark rights to the Trade Mark. Further, it has not authorised, licensed, sponsored, or otherwise permitted the Respondent to use the Trade Mark in the Domain Name or for any other purpose. The Domain Name is being passively held and therefore does not amount to *bona fide* offering of goods or services or a legitimate noncommercial or fair use under the Policy.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not provided any explanation of his rights or legitimate interests in relation to the Domain Name, and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.

The Panel finds that the second element is met.

E. Registered and Used in Bad Faith

To succeed under the Policy, the Complainant must show that the Domain Name has been registered and is being used in bad faith.

The Panel is satisfied that the Respondent was aware of the Trade Mark when he registered the Domain Name given the reputation of the Trade Mark and the fact that the registration of the Trade Mark predates the registration of the Domain Name – a typo of the Trade Mark – by more than 20 years; it therefore seems implausible that the Respondent was unaware of the Complainant when he registered the Domain Name.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent's choice of the Domain Name (a typo targeting the Complainant's Trade Mark) is also a significant factor to consider (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). The Domain Name falls into the category stated above and the Panel finds that registration is in bad faith.

The Domain Name is also being used in bad faith. The Domain Name directs to an inactive page. Section 3.3 of the [WIPO Overview 3.0](#) states that:

"[f]rom the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding.

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

In this case, the Trade Mark is a well-known trade mark. It is implausible in the Panel's view that there is any good faith use to which the (typo) Domain Name may be put. Further, the Respondent has failed to file a response. This is also a situation where in the absence of any arguments to the contrary, given the fame of the Trade Mark and the area of activity where it operates, it is implausible that there can be any good faith use to which the Domain Name may be put. Considering the circumstances, the Panel considers that the Domain Name is also being used in bad faith. Accordingly, the Complaint has satisfied the third element of the UDRP, *i.e.*, 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 <solvy.net> be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: April 5, 2023