

## **ADMINISTRATIVE PANEL DECISION**

### **SOLVAY Société Anonyme v. Henry Dam**

### **Case No. D2023-1055**

#### **1. The Parties**

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

The Respondent is Henry Dam, Nigeria.

#### **2. The Domain Name and Registrar**

The disputed domain name <so1vay.com> is registered with NameCheap, Inc. (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 9, 2023. On March 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 9, 2023, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 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 on March 13, 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 the Respondent of the Complaint, and the proceedings commenced on March 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 5, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on April 17, 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 information in the Complaint, the Complainant is a global science company specialised in high-performance polymers and composites technologies, and a leader in chemicals. The Complainant's group was founded in 1863, has its registered offices in Brussels and employs more than 21,000 people in 63 countries.

The Complainant has registered various trademarks consisting of SOLVAY, such as the European Union trademark registration for SOLVAY (word), registered under No. 000067801 on May 30, 2000 and the International trademark registration for SOLVAY (word), registered under No. 1171614 on February 28, 2013. The Complainant owns the domain name <solvay.com> since 1995, and uses it to refer to its official website and for its internal mailing system.

The disputed domain name was registered on March 1, 2023, and does not resolve to an active webpage. Also, the record indicates that an active mail exchange ("MX") email server for the disputed domain name has been configured.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant argues that the disputed domain name is confusingly similar to the trademark SOLVAY in which the Complainant has rights, as the disputed domain name replaces the letter "l" by the visually similar number "1" (one), being an obvious case of typosquatting.

As regards the second element, the Complainant argues that the Respondent is not commonly known by the disputed domain name. Further, the Respondent has not acquired trademark rights and the Respondent's use and registration of the disputed domain name was not authorized by the Complainant. Moreover, the misspelling of the Complainant's trademark in the disputed domain name signals an intention on the part of the Respondent to confuse users seeking or expecting to find the Complainant.

With respect to the third element, the Complainant argues that the Respondent must have known the Complainant and its trademarks at the time the Respondent registered the disputed domain name given that the disputed domain name is a typosquatted version of the Complainant's trademark, which is well known all over the world. In what concerns the use, the Complainant contends that the disputed domain name appears to refer to a blocked web page and also that it is impossible to imagine any plausible legitimate use of the disputed domain name by the Respondent, especially in view of the global reach of the Complainant and the well-known and distinctive character of its trademarks. Moreover, it cannot be excluded that the Respondent uses or will use the disputed domain name for fraudulent activity, *e.g.*, by profiting of the likelihood of confusion with the Complainant's trademark for phishing activities, since the email function of the disputed domain name is enabled.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

##### **6.1 Preliminary Matters**

No communication has been received from the Respondent in this case. However, given that the Complaint was sent to the relevant email and postal addresses disclosed by the Registrar, the Panel considers that this satisfies the requirement in paragraph 2(a) of the UDRP Rules to "employ reasonably available means

calculated to achieve actual notice”. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules and to draw inferences from the Respondent’s failure to file any Response. While the Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent’s default.

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

## **6.2 Substantive Matters**

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

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

### **A. Identical or Confusingly Similar**

The Complainant has provided evidence of its rights in the SOLVAY trademarks.

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name with the trademarks in which the Complainant holds rights. According to section 1.7 of [WIPO Overview 3.0](#), “this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name”.

Here the disputed domain name consists of the obvious misspelling of the SOLVAY trademark of the Complainant. This misspelling in the disputed domain name, also referred to as typosquatting, does not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.9).

It is well accepted by UDRP panels that a generic Top-Level Domain (“gTLD”), such as “.com”, is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

### **B. Rights or Legitimate Interests**

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark SOLVAY and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name.

There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy. Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. The Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

### **C. Registered and Used in Bad Faith**

To fulfill the third requirement of the Policy, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

According to the un rebutted assertions of the Complainant, its SOLVAY trademarks were widely used in commerce well before the registration of the disputed domain name in March 2023 and are well known. The Respondent provided no explanations for why he registered the disputed domain name. Under these circumstances, it is most likely that the Respondent was aware of the Complainant's trademark at the registration date of the disputed domain name. The typosquatting nature of the disputed domain name further supports this inference.

As regards the use, the disputed domain name is passively held.

Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain will be considered to be in bad faith: "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."

The Panel finds that passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. The trademark of the Complainant is distinctive and widely used in commerce. 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 by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible. An additional element is the DNS setup of the disputed domain name (with active MX records). Considering all the above, it is not possible to conceive any plausible actual or contemplated good faith registration and use of the disputed domain name by the Respondent.

Based on the evidence and circumstances of this case, the Panel concludes that the disputed domain name was registered and 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 disputed domain name, <so1vay.com> be transferred to the Complainant.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: April 25, 2023