

ADMINISTRATIVE PANEL DECISION

SOLVAY SA v. SIMON LUBWAMA

Case No. D2023-2015

1. The Parties

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

The Respondent is SIMON LUBWAMA, Uganda.

2. The Domain Name and Registrar

The disputed domain name <solwayfrance.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 May 5, 2023. On May 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 May 8, 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 the same day.

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 May 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 30, 2023.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on June 5, 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 Belgium corporation doing business worldwide in high-performance polymers and composites technologies. The Complainant employs 22,000 people in 61 countries.

The Complainant is the owner of different trademarks regarding SOLVAY. By way of example, European Intellectual Property Office with registration number 000067801, registered on May 30, 2000.

SOLVAY is considered as a well-known trademark in previous UDRP decisions.

The Respondent registered the disputed domain name on April 20, 2023. While the disputed domain name previously redirected to the Complainant's official site, currently it is inactive.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name incorporates the Complainant's SOLVAY mark in its entirety and simply adds the geographical term "France". Then, refers to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8 to claim a finding of confusingly similarity since such geographical terms does not avoid confusion with its trademark.

For such finding the Complainant finds that the generic Top-Level Domain ("gTLD") should be disregarded as it is well established in previous decisions.

The Complainant avers that the Respondent is not commonly known by the disputed domain name. There is no evidence is in the records showing that the Respondent has been commonly known by the disputed domain name.

Further, there is no *bona fide* or legitimate use of the disputed domain name since the Respondent has not acquired a trademark nor has ever the Complainant authorized to use its trademark as a domain name. Indeed, the Complainant highlights the lack of license or permission from the Complainant to use its trademark.

The Complainant notes that the disputed domain name's composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

Besides, the Complainant points out that the disputed domain name initially redirected to the Complainant's official website and currently appears to be inactive. None of these circumstance amount to a *bona fide* use of the disputed domain name, says the Complainant.

The Complainant also notes that the Respondent may have provided false contact information, as the address provided by the Registrar does not seem to resolve to any precise location.

Regarding the third requirement of the Policy, the Complainant affirms that it is inconceivable that the Respondent was unaware of the Complainant and its rights in the SOLVAY mark at the time of the registration of the disputed domain name. For such finding the Complainant highlights that the disputed domain includes in its entirety the Complainant's trademark, SOLVAY trademark is to be considered well known. Besides, a cursory search would have revealed the Complainant's reputation and trademarks. Accordingly, the Respondent knew or should have known the Complainant's trademark rights and nevertheless proceed to registered it as a domain name.

The Complainant supports a finding of bad faith use based on the following. By registering the disputed domain name, the Respondent prevents the Complainant from reflecting its mark in a corresponding domain name. Besides, the Complainant refers to WIPO Overview section 3.1.4, where it is stated that “Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”.

Moreover, by redirecting the disputed domain name to the Complainant’s website the Respondent retains control over the redirection, thus creating a threat to the Complainant.

Additionally, the currently inactive status of the disputed domain name allows to apply the passive use doctrine to support a finding of bad faith use.

Finally, says the Complainant, it appears that the Respondent used a privacy service when registering the disputed domain name and when the verification took place it appeared that the Respondent provided incorrect or vague contact details. Therefore, the Respondent took active steps to conceal his/her identity. This, insists the Complainant, supports bad faith registration and use of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

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

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a default, the Panel is still required “to proceed with a decision on the complaint”, whilst under paragraph 14(b) it “shall draw such inferences therefrom as it considers appropriate”. This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

A. Identical or Confusingly Similar

The first requirement of the Policy has two layers. Firstly, the Complainant must show trademark rights for UDRP purposes. As set out above, the Complainant has established its rights accordingly. Secondly, the Panel must proceed with a side-by-side comparison between the disputed domain name and the Complainant’s trademark rights to assess whether there is identity or confusingly similarity.

There is no doubt about the full reproduction of SOLVAY trademark in the disputed domain name. Further, the addition of a geographical term to a trademark, namely “France”, does not avoid a finding of confusingly similarity. See [WIPO Overview 3.0](#), section 1.8 as noted by the Complainant.

Likewise the Panel refers to the [WIPO Overview 3.0](#), section 1.11.1: “The applicable Top Level Domain (‘TLD’) in a domain name [...] is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.”

Therefore, the first requirement is met under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant's allegations support a finding of the Respondent's lack of right and legitimate interest in the disputed domain name. The Panel finds that none of the circumstances of Paragraph 4(c) of the Policy are met by the Respondent. Indeed, the Respondent is not commonly known by the disputed domain name according to the records. Besides the use of the disputed domain name, as set out above in the Complainant's allegations, do not match with Paragraph 4 (c)(i) or (iii) of the Policy. That is to say, there is no *bona fide* offering of goods or services in connection with the disputed domain name and, neither the Respondent is making a legitimate noncommercial or fair use of the disputed domain name by redirecting it to the Complainant's website or keeping it inactive.

The Panel also accepts the Complainant's allegation that the disputed domain name implies a risk of impersonation due to the full reproduction of its trademark and the addition of the geographical term, "France", suggest at very least sponsorship or endorsement by the trademark owner, which is untrue. Such risk avoids any legitimate interest in favor the Respondent.

The Panel notes that being SOLVAY a well-known trademark (see *SOLVAY Société Anonyme v. Not disclosed Not disclosed, MRSOFT Consults*, WIPO Case No. [D2021-4278](#)) and by adding the term "France" to the trademark in the disputed domain name, the Respondent is most probably targeting the Complainant, its trademarks, and its business. Redirection of the disputed domain name to the Complainant's own website also shows that the Respondent was, again, targeting the Complainant. Thus, this cannot be legitimate.

To sum up, all the circumstances of the case lead the Panel to accept that the Complainant has made out a *prima facie* case which has not been rebutted by the Respondent. As noted in the [WIPO Overview 3.0](#) section 2.1.: "If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element".

Accordingly, the Complainant succeeds on the second requirement of the Policy.

C. Registered and Used in Bad Faith

Noting that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark, the Panel now looks at the third requirement of the test.

The Respondent had been involved in a previous case relating the same parties and mark. See *SOLVAY Société Anonyme v. Privacy Service Provided by Withheld for Privacy ehf / Simon Lubwama*, WIPO Case No. [D2022-0792](#). Thus, considering the date of this decision and the date of the registration of the disputed domain name, the Respondent was fully aware of the Complainant and its trademarks at the moment of the registration of the disputed domain name. The Respondent cannot credibly claim to have been unaware of the mark and his silence reinforce this finding.

Bearing in mind WIPO Overview, section 3.1.4: "...panels have found that a respondent redirecting a domain name to the complainant's website can establish bad faith insofar as the respondent retains control over the redirection thus creating a real or implied ongoing threat to the complainant". And this matches with the case before the Panel to support a finding of bad faith use.

In addition, the "passive holding" doctrine applies in the present case since the Respondent let the disputed domain name inactive later to the initial redirection described above. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). Accordingly, and based on the degree recognition of SOLVAY, the failure of the Respondent to submit a response or to provide any evidence of actual or

contemplated good-faith use, the use of seemingly false contact details, and the implausibility of any good faith use to which the domain name may be put, the Panel accepts that the disputed domain name is used in bad faith.

Therefore, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

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, <solwayfrance.com>, be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: June 19, 2023