

ADMINISTRATIVE PANEL DECISION

Univar Solutions Inc. v. Rost Rost
Case No. D2023-2212

1. The Parties

The Complainant is Univar Solutions Inc., United States of America (“United States”), represented by SafeNames Ltd., United Kingdom.

The Respondent is Rost Rost, South Africa.

2. The Domain Name and Registrar

The disputed domain name <univasolutions.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 22, 2023. On May 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 23, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 25, 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 May 25, 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 May 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 16, 2023.

The Center appointed Miguel B. O’Farrell as the sole panelist in this matter on June 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, Univar Solutions, Inc., is a chemical and ingredient distribution company that operates across different industries and provides services in many locations within the United States, Canada, Latin America, Asia and Europe. Initially founded in 1924 by George Van Waters and Nat Rogers, after several name changes, the Complainant has recently changed its name following a 2019 merger with Nexeo Solutions from Univar Inc. to Univar Solutions, Inc.

The Complainant claims to employ over 9,700 people and in the last financial year to have had a revenue of USD 11.475 billion.

The Complainant (including under its previous name Univar, Inc.) its affiliates, subsidiaries and associated companies own trademarks within numerous jurisdictions, including the following:

United States Trademark Registration Number 1724817 UNIVAR, registered on October 20, 1992, in classes 1, 3, 4, 5, 39 and 42;

China Trademark Registration Number 3233858 UNIVAR, registered on September 21, 2003, in class 4;

European Union Trademark Registration Number 002717809 UNIVAR, registered on October 7, 2005, in classes 1-5, 7-9, 35, 39, 40 and 42;

United States Trademark Registration Number 3646062 UNIVAR, registered on June 30, 2009 in classes 2 and 5.

The Complainant and its subsidiaries have registered many domain names that either consist solely of or contain its UNIVAR marks or "Univar Solutions" name, such as: <univar.com.ua>, <univar.ee>, <univarsolutions.net>, <univarsolutions.shop> and <univarsolutions.com.br>.

The disputed domain name <univasolutions.com> was registered on October 27, 2020, and does not resolve to an active webpage.

5. Parties' Contentions

A. Complainant

The Complainant has acquired widespread consumer goodwill by virtue of its over 50 years of using the brand UNIVAR.

The Complainant claims that the disputed domain name is confusingly similar to the trademark UNIVAR in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Complainant has not authorised the Respondent to use the disputed domain name featuring the trademark UNIVAR and to the best of the Complainant's knowledge the Respondent is not commonly known by the disputed domain name. Therefore, there is no reason for the registration of the disputed domain name other than the motive of taking advantage of the goodwill and reputation attached to the UNIVAR mark.

The Complainant's trademark registrations of UNIVAR predate the date of registration of the disputed domain name by 28 years.

The Complainant sent a cease and desist notice to the Respondent via contact form on September 13, 2022

to put the Respondent on notice of the Complainant's trademark rights with a view to resolving the matter amicably which has remained unanswered.

Finally, the Complainant requests the Panel to issue a decision ordering that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

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

- (i) the disputed domain name is identical or confusingly similar with 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar to the Complainant's UNIVAR trademark.

The disputed domain name incorporates the Complainant's trademark UNIVAR with the omission of the "r" and the addition of the term "solutions" which does not prevent a finding of confusing similarity.

In accordance with section 1.9 of [WIPO Overview 3.0](#), a domain name which consists of an intentional misspelling of a trademark is considered to be confusingly similar to the relevant trademark for the purposes of the first element.

Also, section 1.8 of [WIPO Overview 3.0](#) provides that when the relevant trademark is recognizable within the disputed domain name -as it occurs in this case- the addition of other terms would not prevent a finding of confusing similarity under the first element.

The ".com" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark UNIVAR in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

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

- (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 trademark 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.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

As established in section 2.5 of [WIPO Overview 3.0](#): "Fundamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry." Here, the nature of the disputed domain name carries a risk of implied affiliation.

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 responded 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 disputed domain name.

The Panel finds that the Respondent has no rights nor legitimate interests in the disputed domain name and that the requirements of 4(a)(ii) of the Policy are fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant and the Complainant's trademark UNIVAR, "Univar Solutions" name and domain names mentioned in paragraph 4 above (Factual Background) when it registered the disputed domain name on October 27, 2020.

In accordance with section 3.1.4 of [WIPO Overview 3.0](#), the Panel considers that the inclusion of the Complainant's UNIVAR trademark with the omission of the "r" in the disputed domain name is tantamount to cybersquatting and creates a presumption of bad faith.

The Complainant has submitted evidence to support that the trademark UNIVAR mentioned in paragraph 4

above is widely known and was registered and used many years before the Respondent registered the disputed domain name.

The Respondent when registering the disputed domain name has targeted the Complainant's trademark UNIVAR with the intention to confuse Internet users and capitalize on the fame of the Complainant's name and trademark.

The inclusion of the term "solutions" in the disputed domain name only contributes to create confusion among Internet users who will think that the website to which the disputed domain name resolves is an official website of the Complainant.

The clear absence of rights or legitimate interests coupled with no explanation for the Respondent's choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered in bad faith (as stated in section 3.2.1 of [WIPO Overview 3.0](#)).

Pursuant to section 3.3 of [WIPO Overview 3.0](#), the fact that the disputed domain name does not resolve to an active website does not prevent a finding of bad faith under the doctrine of passive holding. See also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Panel finds that the Respondent has registered and used the disputed domain name 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 <univasolutions.com> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: July 5, 2023