

## **ADMINISTRATIVE PANEL DECISION**

Solvay SA v. Eduardo Kazmierczak Neto, Solvay  
Case No. DIO2022-0029

### **1. The Parties**

The Complainant is Solvay SA, Belgium, represented internally.

The Respondent is Eduardo Kazmierczak Neto, Solvay, Brazil<sup>1</sup>.

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

The disputed domain name <solvay.io> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2022. On June 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 1, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 1, 2022 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 amendment to the Complaint on July 4, 2022.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 July 5, 2022.

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<sup>1</sup> It is evident from the case file that “Domain by proxy LLC” is a privacy protection service and that “Eduardo Kazmierczak Neto, Solvay” is the underlying registrant of the disputed domain name. Therefore, unless otherwise indicated, the term “Respondent” is used by the Panel in the case at hand to refer to the latter underlying registrant only.

On July 5, 2022, the Respondent sent an informal communication.

In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2022. The Respondent did not submit any formal response. Accordingly, the Center notified the Parties that it will proceed to Panel Appointment on July 26, 2022.

The Center appointed Gareth Dickson as the sole panelist in this matter on August 2, 2022. 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 chemical company based in Belgium.

The Complainant is the owner of a number of trade mark registrations for SOLVAY (the “Mark”) around the world, including:

- European Union trade mark registration number 000067801, registered on May 30, 2000;
- European Union trade mark registration number 011664091, registered on August 13, 2013; and
- International trade mark registration number 1171614, registered on February 28, 2013.

The disputed domain name was registered on May 26, 2022. Name servers are active for the disputed domain name, albeit that it is currently inactive insofar as it does not point to any active website and merely directs users to a holding page.

#### **5. Parties’ Contentions**

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

The Complainant argues that it has rights in the Mark by virtue of its ownership of various trade mark registrations for the Mark around the world. It contends that the disputed domain name is confusingly similar to the Mark since it incorporates the Mark (which is recognisable within the disputed domain name) in its entirety, under the country-code Top-Level Domain (“ccTLD”) “.io”.

The Complainant confirms that the disputed domain name was registered by the Respondent without its permission and contends that the Respondent has not acquired trade mark or service mark rights in the SOLVAY mark, and is not a licensee of nor authorized by the Complainant. The Complainant also alleges that there is the potential for the Respondent to use the disputed domain name to further a fraud, by using the disputed domain name to send emails to customers of the Complainant while imitating the Complainant, in order to request settlement of pending invoices or to place an order unrelated in any way to the Complainant.

The Complainant submits that there is no evidence to suggest that the Respondent: has been commonly known by the disputed domain name; is making, or intends to make, a legitimate noncommercial or fair use of it; or has ever used or demonstrated preparations to use it in connection with a *bona fide* offering of goods or services.

The Complainant submits that the Respondent must have known of the Complainant and the Mark when it registered the disputed domain name. The Mark, according to the Complainant, is well known throughout the world and the fact that previous UDRP<sup>2</sup> Complaints concerning the Mark have been resolved in the Complainant’s favour. Further, a simple Internet search would have revealed the Complainant’s presence,

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<sup>2</sup> Uniform Domain Name Dispute Resolution Policy

reputation and trade marks given the extensive use of the Mark as documented in the evidence filed in support of the Complaint.

The Complainant notes too that the Respondent has used a privacy service to conceal its identity for as long as possible, which it says indicates that the Respondent is not, in fact, commonly known by the disputed domain name or the Mark.

Finally, the Complainant argues that the (current) passive holding of a domain name remains a use in bad faith under the Policy. Together, the Complainant submits that the disputed domain name has been registered and is being used in bad faith.

## **B. Respondent**

The Respondent did not reply substantively to the Complaint. He did, however, send an email to the Center on July 5, 2022, which states in relevant part: “What do I have to do in this case? Thanks for your help.” The Center responded, directing the Respondent to the Notification of Complaint and commencement of Administrative Proceedings email and document. No substantive reply to the Complaint was received from the Respondent.

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, the Complainant bears the burden of proving that:

- i) the disputed domain name is identical or confusingly similar to a trade mark 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 has been registered or is being used in bad faith.

These criteria are cumulative. The failure of the Complainant to prove any one of these elements means the Complaint must be denied.

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

The Panel accepts that the Complainant is the owner of, and therefore has rights in, the Mark.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#))<sup>3</sup> provides that: “[I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.”

The Panel therefore finds that the disputed domain name is identical to the Mark, since the disputed domain name incorporates the Mark in its entirety. The ccTLD “.io” is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

Accordingly, the Panel finds that the disputed domain name is identical to a trade mark in which the Complainant has rights.

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<sup>3</sup> Considering the substantive similarities between the .IO Policy and Rules and the UDRP, the Panel also refers to UDRP case law and analysis, where appropriate.

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

Although a complainant is required to demonstrate that a respondent has no rights or legitimate interests in respect of the domain name, as explained in section 2.1 of the [WIPO Overview 3.0](#), the consensus view of previous UDRP panels is that where a complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

In the current proceeding, the Complainant has established its *prima facie* case. The evidence before the Panel is that the Mark is neither generic nor descriptive but enjoys a degree of inherent distinctiveness that makes a coincidental adoption by the Respondent highly unlikely. The Complainant submits that it has not given the Respondent permission to use the Mark, in a domain name or otherwise, and submits that the Respondent has not been commonly known by the disputed domain name. Even though the Respondent made no attempt to deny the Complainant's contentions, the Complainant submits, and the Panel accepts, that the use of a privacy service by the Respondent tends to confirm that the Respondent has not been known by the disputed domain name, particularly where the fax and postal contact information provided by the Respondent appear to be inaccurate, as is the case here.

There is no evidence that the Respondent has acquired any common law rights to use the Mark, is commonly known by the Mark or has chosen to use the Mark in the disputed domain name in any descriptive manner or is making any use of the disputed domain name that would establish rights or legitimate interests as a result of a noncommercial or fair use of it.

In addition, the Panel finds that the disputed domain name carries a high risk of implied affiliation with the Complainant as the disputed domain name is identical to the Mark. [WIPO Overview 3.0](#), section 2.5.1.

By not participating in these proceedings, the Respondent has failed to refute the Complainant's *prima facie* case that it has met its burden under the second UDRP element.

As clearly stated in section 2.1 of the [WIPO Overview 3.0](#), "a panel's assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed".

Having reviewed and weighed the available evidence, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

The Panel notes that the Mark has already been found by previous UDRP panels to be distinctive and to have a reputation, rather than being a descriptive or generic term. The Panel also notes that the disputed domain name was registered many years after the Mark was registered and accepts that the disputed domain name was chosen by reference to the Mark.

As a result, and in the absence of evidence from the Respondent that the identity of the disputed domain name to the Mark is coincidental, the Panel must conclude that the Respondent knew of the Complainant's rights in the Mark when it registered the disputed domain name.

The Panel therefore finds that the Respondent's registration of the disputed domain name was in bad faith since it attempted to appropriate for the Respondent, without the consent or authorisation of the Complainant, rights in the Complainant's Mark.

The disputed domain name is also being used in bad faith. Although the disputed domain name does not currently resolve to a website, the Panel finds that the disputed domain name is being used in bad faith under the doctrine of passive holding.

Section 3.3 of the [WIPO Overview 3.0](#) states that relevant factors to finding bad faith in passive holding 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 [...], and
- (iv) the implausibility of any good faith use to which the domain name may be put.”

The Panel notes that the Mark is distinctive of the Complainant and further notes that the Respondent has not participated in these proceedings or sought to explain its registration and use of the disputed domain name, and has sought to conceal its identity through a privacy service. Furthermore, there is no conceivable good faith use of the disputed domain name by the Respondent. Therefore there is no basis for the Panel to conclude that the Respondent’s use of the disputed domain name is justified.

Therefore, and on the basis of the information available to it, the Panel finds that the Respondent’s use of the disputed domain name is without justification and is inconsistent with the Complainant’s exclusive rights in the Mark. Consideration of these and other factors militates in favour of a finding of bad faith.

The Panel finds that the Respondent has registered and is using 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 <solway.io> be transferred to the Complainant.

*/Gareth Dickson/*

**Gareth Dickson**

Sole Panelist

Date: August 17, 2022