

ADMINISTRATIVE PANEL DECISION

SOLVAY Société Anonyme v. Privacy service provided by Withheld for Privacy ehf / Enock Mpanga, Premium Plus
Case No. D2022-0377

1. The Parties

The Complainant is SOLVAY Société Anonyme, Belgium, represented internally.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Enock Mpanga, Premium Plus, Uganda.

2. The Domain Name and Registrar

The disputed domain name <solvaychemical.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 February 3, 2022. On February 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 3, 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 February 4, 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 amended Complaint on February 7, 2022, also excluding the domain name <solluay.com> that was part of the original Complaint from the present proceedings.

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 February 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 2, 2022.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on March 7, 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 science company specialized in high-performance polymers and composites technologies and a leader in chemicals. The Complainant's company was founded in 1863. The Complainant is headquartered in Belgium and has around 23 000 employees in 64 countries.

The Complainant is the owner of several trademarks for the word mark SOLVAY:

- European Union Trademark registration No. 000067801, registered on May 30, 2000;
- European Union Trademark registration No. 011664091, registered on August 13, 2013;
- International Trademark registration No. 1171614, registered on February 28, 2013.

The Complainant's group has been ranked in the top 10 most powerful and valuable Belgian brands.

The dispute concerns the disputed domain name <solvychemical.com> registered on January 17, 2022, resolving to an inactive website. The Disputed domain name has been used to send fraudulent emails.

5. Parties' Contentions

A. Complainant

The arguments put forward by the Complainant can be summarized as follows:

The Complainant's word mark SOLVAY is widely established and well known all over the world.

On the first element of the Policy the Complainant claims that the disputed domain name incorporates the SOLVAY mark in its entirety with addition of the term "chemical" and the generic Top-Level Domain ("gTLD") ".com". Therefore, the public will believe that the disputed domain name is linked to the Complainant's group.

On the second element, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name because the Respondent is not commonly known by the disputed domain name. However, the Respondent only uses the simulated connection to the Complainant's group to create a likelihood of confusion with the Complainant's own activities. Also, the Respondent has not been authorized, licensed or permitted by the Complainant to do so.

On the third element of the Policy, the Complainant claims that the Respondent had prior knowledge of the Complainant and its word mark SOLVAY and registered the disputed domain name in bad faith. By sending emails to external companies the Respondent made many phishing attempts and tried to make commercial gain by creating a likelihood of confusion with the Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

It has been a consensus view in previous UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely 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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) (i) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trademark or a service mark in which it has rights.

The Complainant has shown that it holds rights over the trademark SOLVAY.

The disputed domain name incorporates the SOLVAY word mark in its entirety with addition of the term "chemical" and the gTLD .com. [WIPO Overview 3.0](#), section 1.11.1 reads: "The applicable Top Level Domain ('TLD') in a domain name (*e.g.*, '.com', '.Club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test."

In many decisions, panels have found that the addition of terms does not prevent a finding of confusing similarity where the relevant trademark is recognizable within the disputed domain name. The disputed domain name is a combination of the Complainant's trademark SOLVAY and the word "chemical". The Panel finds that the inclusion of the word "chemical" does not prevent the Complainant's trademark from being recognizable in the disputed domain name (see section 1.8 of [WIPO Overview 3.0](#)) which states that "where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements".

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second element the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Regarding the second element of the Policy, section 2.1 of the [WIPO Overview 3.0](#), states, "where a complainant makes out 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”.

The Complainant has not authorized the Respondent to use the Complainant’s SOLVAY trademark, the Respondent is not commonly known by the disputed domain name, and the Respondent has not used the disputed domain name for a legitimate noncommercial or fair use, nor used it in connection with a *bona fide* offering of goods or services.

The Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent. Furthermore, the nature of the disputed domain name by adding the term “chemical” which is within the Complainant’s field of commerce to the Complainant’s trademark carries a risk of implied affiliation (see [WIPO Overview 3.0](#), section 2.5.1).

The Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the policy.

C. Registered and Used in Bad Faith

The Complainant has used the SOLVAY name for many decades and has held trademark rights for many years. The trademark SOLVAY has been ranked for several years in the top 10 most powerful and valuable Belgian brands.

Considering the reputation and public presence of the Complainant, it does not seem likely that the Respondent had no knowledge of the trademark. In addition, the Panel notes the Complainant’s business interests in the chemicals industry and finds that the addition of the word “chemical” to SOLVAY suggests, wrongly, that there is a connection between the Respondent and the Complainant. Further, in light of the lack of any rights to or legitimate interests in the disputed domain name by the Respondent and in the absence of any conceivable good faith use, the Panel finds from the present circumstances that the Respondent has intentionally attempted to attract for commercial gain the addressees of the Respondent’s phishing emails by creating a likelihood of confusion with the Complainant’s trademark. The fact that the disputed domain name at the time of this decision resolves to an inactive website does not detract from this view because of the evidence provided by the Complainant, which shows the former usage for fake requests for information and quotes for chemical goods.

The disputed domain name does not currently resolve to an active website; however, the Respondent has used the disputed domain name in bad faith to send fraudulent phishing emails. The current non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding and the former use to send phishing emails is evidence of bad faith too (see sections 3.3 and 3.4 of the [WIPO Overview 3.0](#)).

Additionally the Respondent hid its identity by using a privacy/proxy registration service. This is an additional indicator of bad faith (see section 3.6 of the [WIPO Overview 3.0](#)).

Under these circumstances, the Panel therefore finds that the Respondent registered and is using the disputed domain name in bad faith.

Thus, 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 <solvaychemical.com> be transferred to the Complainant.

/Christian Gassauer-Fleissner/
Christian Gassauer-Fleissner
Sole Panelist
Date: March 21, 2022