

## **ADMINISTRATIVE PANEL DECISION**

**SOLVAY Société Anonyme v. Matthew Son, SurlWizz**  
Case No. D2022-0413

### **1. The Parties**

The Complainant is SOLVAY Société Anonyme, Belgium, represented by Vanessa Labiau, Belgium.

The Respondent is Matthew Son, SurlWizz, United States of America.

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

The disputed domain name <soluay.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 7, 2022. On February 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 7, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 3, 2022.

The Center appointed Daniel Peña as the sole panelist in this matter on March 8, 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 company, headquartered in Belgium, producing high-performance polymers and composite technologies and chemicals.

The Complainant is the owner of numerous trademarks registrations for its SOLVAY mark, including the following:

- European Union Trade Mark No. 000067801 for SOLVAY (word mark), registered on May 30, 2000, for goods in classes 1, 3, 4, 5, 7, 9, 10, 12, 17, 19, 20, and 31;
- International registration No. 1171614 for SOLVAY (word mark), registered on February 28, 2013, for goods and services in classes 1, 2, 3, 4, 5, 7, 9, 10, 12, 17, 19, 22, 23, 24, 25, 30, 31, 34, 35, 36, 37, 39, 40, and 42.

The disputed domain name was registered on January 27, 2022 and was used to send fraudulent emails, while resolving to pay-per-click (“PPC”) page at the time of the filing of the Complaint.

## **5. Parties’ Contentions**

### **A. Complainant**

The disputed domain name is confusingly similar to the Complainant’s SOLVAY mark. The disputed domain name is a typical case of the practice of “typosquatting” which intends to create domain names that are confusingly similar to the relevant mark by changing or adding letters to a trademark.

The Complainant argues that the Respondent has no rights to or legitimate interests in respect of the disputed domain name based on the Complainant’s prior use of its trademark SOLVAY, and that the Respondent is not affiliated or related to the Complainant in any way, or licensed or otherwise authorized to use the SOLVAY mark in connection with a website or for any other purpose.

The Complainant asserts that the Respondent’s use of the disputed domain name incorporating a variation of the Complainant’s trademark, in connection with a non-active webpage, does not amount to a *bona fide* offering of goods or services or a legitimate noncommercial or fair use

According to the Complainant, the Respondent has used the disputed domain name in an unlawful attempt to impersonate one of the Complainant’s employees, by way of an email scam. The Complainant argues that the disputed domain name was registered and is being used in bad faith since the same was used for the purpose of an unlawful and fraudulent email scam to elicit a third party into transferring funds for the payment of invoices.

### **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**

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the trademark SOLVAY on the basis of its multiple trademark registrations. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see [WIPO Overview 3.0](#), section 1.2.1).

Mere addition of the letter “l” as well as the inclusion of the letter “u” instead of the letter “v” does not prevent a finding of confusing similarity with the Complainant’s marks. As noted in [WIPO Overview 3.0](#), section 1.8: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element”.

Similarly, the gTLD “.com” is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark (see also section 1.11 of [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

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

While the overall burden of proof in UDRP proceedings is on the Complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 (see section 2.1 of the [WIPO Overview 3.0](#)).

The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name, and moreover given the alleged use for a scam. The Respondent is not known under the disputed domain name.

The Panel notes that the Respondent has not filed any response and thus did not deny the Complainant’s assertions, nor brought any information or evidence for demonstrating any rights or legitimate interests.

Accordingly, the Panel finds that the Complainant satisfied the requirements of paragraph 4(a)(ii) of the Policy.

### C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

With regard to the bad faith at the time of registration, the Panel notes that it is not likely that the Respondent was not aware of the Complainant and its trademark. On the contrary, the Panel finds that it is likely that the Respondent was aware of the Complainant and its rights and reputation in the SOLVAY mark at the time the disputed domain name was registered. Bad faith can be presumed based on the widely evidenced recognition of the Complainant's marks and moreover can be imputed from the use made of the disputed domain name, such that the Respondent was aware or should have been aware of the Complainant's well-known marks and claims of rights thereto.

The Panel finds that the Respondent has registered the disputed domain name that contains the Complainant's trademark SOLVAY, merely including the letter "l" and replacing the last letter "v" by the letter "u". This kind of conduct is considered as an act of "typosquatting" or registering a domain name that is a common misspelling of a mark in which a party has rights and has often been recognized as evidence of bad faith registration *per se*. See *Paragon Gifts, Inc. v. Domain.Contact*, WIPO Case No. [D2004-0107](#) (citing *National Association of Professional Baseball Leagues, Inc., d/b/a Minor League Baseball v. John Zuccarini*, WIPO Case No. [D2002-1011](#)); *ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#) (finding that the practice of "typosquatting", by itself, is evidence of the bad faith registration of a domain name). The Panel concurs with this approach.

In the Panel's view, the Complainant's mark is famous and registration by the unrelated Respondent creates a presumption of bad faith in this case. On this subject, section 3.1.4 of the [WIPO Overview 3.0](#) says:

"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."

The disputed domain name has been used to send fraudulent emails impersonating one of the Complainant's employees. The Panel finds that Respondent, through this scheme, has intentionally attempted to attract for commercial gain Internet users by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, and endorsement of Respondent's scheme.

The disputed domain name resolved to a website that displayed various PPC commercial links at the time of the filing of the Complaint. The Panel finds that the Respondent has additionally attempted to mislead the Internet users for clicks and to gain commercial revenue by the PPC system.

The Panel concludes that the disputed domain name was registered and is being used in bad faith and that

consequently, the Complainant has satisfied the requirement under 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 <solluay.com> be transferred to the Complainant.

*/Daniel Peña/*

**Daniel Peña**

Sole Panelist

Date: March 22, 2022