

ADMINISTRATIVE PANEL DECISION

SOLVAY Société Anonyme v. Privacy service provided by Withheld for Privacy ehf / Ivan Muyonjo
Case No. D2022-0576

1. The Parties

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

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Ivan Muyonjo, Uganda.

2. The Domain Name and Registrar

The disputed domain name <solvaychemi.com> (the “Domain Name”) 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 18, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. Also on February 18, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 25, 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 February 25, 2022.

The Center verified that the Complaint together with the amendment to 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 March 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response to the Complaint was March 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 28, 2022.

On March 8, 2022, the Complainant submitted a Supplemental Filing.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on March 30, 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

Solvay Société Anonyme, the Complainant in the present proceedings, is a global science company specialized in high-performance polymers, composites technologies, and chemicals. The Complainant's group was founded in 1863. Now, it employs more than 23,000 people in 64 countries. The Complainant's net sales were EUR 8.9 billion in 2020.

The Complainant is the owner of numerous SOLVAY trademark registrations, including:

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

The Complainant also owns domain names incorporating its SOLVAY trademark, including the domain name <solway.com>.

The Domain Name was registered on November 24, 2021.

On December 7, 2021, the Complainant contacted the Respondent at the anonymized email address available in the Whois database. The Respondent did not respond.

According to the Complainant, the Domain Name originally redirected to the corporate website of the Complainant. Subsequently, the Domain Name resolved to an inactive website due to the intervention of the Internet Service Provider resulting from a complaint filed by the Complainant. As of the day of this Decision, the Domain Name resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant requests that the Domain Name be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Name is identical or confusingly similar to the trademark registrations of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant submits that the Domain Name was registered and is being used in bad faith.

In the Supplemental Filing, the Complainant provides evidence that the Domain Name has been used in bad faith to send a fraudulent emails impersonating the Complainant and seeking undue payment, including on March 8, 2022 after the Complaint was formally notified to the Respondent.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

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

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence". See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A. Supplemental Filing

On March 8, 2022 the Complainant submitted the Supplemental Filing informing about the further use of the Domain Name for sending fraudulent emails after the Complainant had been filed.

The Rules provide for the submission of the Complaint by the Complainant and the Response by the Respondent. No express provision is made for Supplemental Filings by either party, except in response to a deficiency notification or if requested by the Center or the Administrative Panel.

Paragraphs 10 and 12 of the Rules in effect grant the Panel sole discretion to determine the admissibility of supplemental filings (including further statements or documents) received from either Party. Thus, it is in the discretion of the Panel to determine whether to consider and/or admit the Supplemental Filing in rendering its decision.

UDRP panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some "exceptional" circumstance). See section 4.6 of the [WIPO Overview 3.0](#).

The Panel has reviewed the Complainant's Supplemental Filing and decided to admit it in the present proceedings. The Panel considers that the subject matter of the evidence attached to the Supplemental Filing relate to facts which occurred after the filing of the Complaint. At the same time, these facts relate explicitly to the subject matter of this dispute and are relevant for its resolution.

B. Identical or Confusingly Similar

The first element that the Complainant must establish is that the Domain Name is identical or confusingly similar to the Complainant's trademark rights.

The Complainant holds several valid SOLVAY trademark registrations. The Domain Name incorporates the Complainant's SOLVAY trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a

registered trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The addition of the term “chemi” does not prevent confusing similarity between the Domain Name and the Complainant’s trademark. UDRP panels have consistently held 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. See section 1.8 of the [WIPO Overview 3.0](#).

The Top-Level Domain “.com” in the Domain Name is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.1.

Given the above, the Panel finds that the Domain Name is confusingly similar to the Complainant’s trademark. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name.

A respondent may establish a right or legitimate interest in a disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (a) before any notice of the dispute, that it has used or made 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
- (b) that it has been commonly known by the domain name, even if it has not acquired any trademark or service mark rights; or
- (c) that it is making a legitimate noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the Complainant holds several SOLVAY trademark registrations, which predate the Respondent’s registration of the Domain Name. There is no evidence that the Complainant has licensed or otherwise permitted the Respondent to use SOLVAY trademark or to register the Domain Name incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name.

Moreover, it does not result from the evidence in the case file that the Respondent has used or made preparations to use the Domain Name in connection with a *bona fide* offering of goods or services. There is also nothing which would suggest that the Respondent is making a legitimate noncommercial or fair use of the Domain Name without intent for commercial gain. On the contrary, the Respondent uses the Domain Name for the purpose of impersonating the Complainant and sending phishing emails to external companies cooperating with the Complainant in order to request detailed information on their business activity in the area of chemicals and seek undue payment. Such use of the Domain Name certainly does not constitute a legitimate noncommercial or fair use of the Domain Name without intent for commercial gain.

Thus, the Complainant has proved the requirement under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

The third requirement the Complainant must prove is that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1 of the [WIPO Overview 3.0](#). Under paragraph 4(b) of the Policy, evidence of registration and use in bad faith include without limitation:

(i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of a trademark or to a competitor of that trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or

(ii) circumstances indicating that the domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or

(iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in SOLVAY trademark predate the registration of the Domain Name. The Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration of the Domain Name. This is supported by the content of the phishing emails sent from the Domain Name which impersonate the Complainant and refer to the business activities of the Complainant. Also, it has been proven to the Panel's satisfaction that the Complainant's SOLVAY trademark is well-known and unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of the Complainant's trademark.

Moreover, the Domain Name is being used in bad faith by the Respondent. As mentioned above, the Domain Name is used for the purpose of sending phishing emails to external companies cooperating with the Complainant in order to request detailed information on their business activity in the area of chemicals and seek undue payment. The Panel considers that by reproducing the SOLVAY trademark in the Domain Name and the email addresses connected to the Domain Name the Respondent intended to impersonate the Complainant and earn profit from the likelihood of confusion created with the recipient of the emails sent by the Respondent.

In sum, the Panel finds that the evidence in the record demonstrates that the Respondent registered and used the Domain Name deliberately in order to take advantage of the Complainant's reputation and to give credibility to its own fraudulent actions.

In addition, the Panel views the Respondent's use of a privacy service to conceal its identity as a further indication of bad faith in these circumstances. See section 3.6 of the [WIPO Overview 3.0](#).

For the reasons discussed above, the Panel finds that the Complainant has proved 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 Domain Name <solwaychemi.com> be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: April 13, 2022