

## **ADMINISTRATIVE PANEL DECISION**

Solvay Société Anonyme v. Richard Wachsberg, Apollo Health and Beauty Care

Case No. D2022-3306

### **1. The Parties**

The Complainant is Solvay Société Anonyme, Belgium, represented by PETILLION, Belgium.

The Respondent is Richard Wachsberg, Apollo Health and Beauty Care, Canada.

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

The disputed domain name <solvay.care> is registered with Network Solutions, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 6, 2022. On September 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 10, 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 September 13, 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 September 19, 2022.

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 September 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 3, 2022.

The Center appointed Tuukka Airaksinen as the sole panelist in this matter on November 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 specialized in polymers, composites technologies and chemicals. Its group was founded in 1863 and currently employs more than 21,000 people in 63 countries. It is the owner of the trademark SOLVAY, registered in many jurisdictions, such as in the European Union under No. 67801 as of May 30, 2000.

The disputed domain name was registered on August 18, 2022, and currently resolves to a pay-per-click (“PPC”) website.

#### **5. Parties’ Contentions**

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

The disputed domain name is identical to the Complainant’s trademark SOLVAY. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has not been authorized by the Complainant to register or use the disputed domain name and is not commonly known by it. The disputed domain name is not used for any *bona fide* or legitimate purpose.

The disputed domain name resolves to a parking page with sponsored links, including links referring to the Complainant’s business.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

In order to obtain the transfer of a domain name, a complainant must prove the three elements of paragraph 4(a) of the Policy, regardless of whether the respondent files a response to the complaint or not. The first element is that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The second element a complainant must prove is that the respondent has no rights or legitimate interests in respect of the domain name. The third element a complainant must establish is that the 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 that the Complainant establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Consequently, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to this trademark.

According to section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), “[t]he 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”.

The disputed domain name is identical with the Complainant’s trademark SOLVAY. This means that the first element of the Policy has been fulfilled.

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

Paragraph 4(a)(ii) of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests to the disputed domain names.

It is widely accepted among UDRP panels that once a complainant has made a *prima facie* showing indicating the absence of the respondent's rights or legitimate interests in a disputed domain name the burden of proof shifts to the respondent to come forward with evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of the Policy. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#), and section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain name, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain name and is not commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy.

Moreover, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant's trademark. See section 2.5.1 of the [WIPO Overview 3.0](#). Moreover, "[a]pplying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users". See section 2.9 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that has not been rebutted by the Respondent. Considering the Panel's findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain name. Therefore, the Panel finds that the second element of the Policy is fulfilled.

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

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides that the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

"(i) circumstances indicating that [the respondent has] registered or has 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) [the respondent has] 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) [the respondent has] registered the domain name primarily for the purpose of disrupting the business or competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location."

Considering that the Complainant's trademark registration predates for at least 20 years the disputed domain name registration, it is clear that the Respondent must have been aware of the Complainant and its trademark when registering the disputed domain name. See section 3.1.4 of the [WIPO Overview 3.0](#).

The disputed domain name has been found to be identical with the Complainant's trademark SOLVAY, and the disputed domain name resolves to a PPC website offering links to websites of competitors of the Complainant. Using a PPC website containing links to third parties' websites generate revenue for the Respondent or another party when Internet users click the links.

It is therefore evident that the Respondent has registered the disputed domain name to intentionally attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, affiliation, or endorsement of the Respondent's website.

Therefore, the Panel finds that the third element of the Policy is fulfilled.

## **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.care> be transferred to the Complainant.

*/Tuukka Airaksinen/*

**Tuukka Airaksinen**

Sole Panelist

Date: November 22, 2022