

ADMINISTRATIVE PANEL DECISION

Solvay SA v. Moses Mawanda

Case No. D2022-1229

1. The Parties

The Complainant is Solvay SA, Belgium, represented internally.

The Respondent is Moses Mawanda, Uganda.

2. The Domain Name and Registrar

The disputed domain name <solvaysolutionuglimited.com> is registered with Internet Domain Service BS Corp (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 7, 2022. On April 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 8, 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 April 11, 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 April 15, 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 April 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 18, 2022.

The Center appointed Peter Burgstaller as the sole panelist in this matter on June 17, 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 disputed domain name was registered on April 4, 2022 (Annex 1 to the Complaint).

The Complainant's company name is Solvay SA. It owns and has rights in the trademark and service mark SOLVAY (Annex 5 to the Complaint) in many jurisdictions around the world, *inter alia* the European Union trademark registration SOLVAY (word mark), registration number 67801, registered on May 30, 2000, and the International Registration (word mark), registration number 1171614, registered February 28, 2013, designated for various countries around the world.

The disputed domain name currently resolves to an inactive website (Annex 7 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant is a global science company specialized in high-performance polymers and composites technologies, and a leader in chemicals. The Complainant's group was founded 1863, has its registered offices in Brussels and employs more than 23,000 people in 64 countries. Its net sales were EUR 8.9 billion in 2020.

The Complainant's company name SOLVAY is protected as a trademark in various countries and regions around the world. The Complainant's SOLVAY mark is well known all over the world, both thanks to the Complainant's international presence and to its marketing investments. The SOLVAY mark is used extensively, including on social media, and has been recently ranked for several years in the top 10 most powerful and valuable Belgian brands. The SOLVAY mark's value is estimated at EUR 795 million in 2020.

The disputed domain name is identical or at least confusingly similar to the SOLVAY trademarks in which the Complainant has rights. Furthermore, the disputed domain name is also confusingly similar to the Complainant's company name.

The Respondent has no rights or legitimate interests in respect of the disputed domain name: It has not acquired trademark or service mark rights and the Respondent's use and registration of the disputed domain name was not authorized by the Complainant. In the absence of any license or permission from the Complainant to use its widely-known trademark, no actual or contemplated *bona fide* or legitimate use of the disputed domain name could reasonably be claimed.

Finally, the domain name was registered and is being used in bad faith: At the time the Respondent registered the disputed domain name, it must have been aware of the Complainant and its trademarks since the Respondent already targeted the Complainant and its SOLVAY trademarks by registering in total 6 domain names which contain the trademark SOLVAY. Some of these domain names are almost identical to the disputed domain name, in particular <solvaysolutionsuklimited.com> and <solvaysolutionsuk.com> or <solvaysolutionsuglimited.com>.

The Respondent also has used the disputed domain name in bad faith even though the disputed domain name does not resolve to an active website. Passive holding of a domain name can amount to bad faith use, especially where it is impossible to imagine any plausible legitimate use of the domain name by the Respondent, which is the case at present.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that

- (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 with respect to the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Following the Registrar's confirmation as to the language of the registration agreement, which is in English, the language of this proceeding is English (paragraph 11 of the Rules).

A. Identical or Confusingly Similar

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the trademark SOLVAY.

The disputed domain name is confusingly similar to the Complainant's registered trademark SOLVAY since it entirely contains this distinctive mark and only adds the terms "solution" and "ug", the two-letter country abbreviation for Uganda, where the Respondent is located, as well as "limited".

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#) ("[WIPO Overview 3.0](#)").

This is particularly true, if the entire trademark is reproduced in the domain name, as it is the case at present. (see section 1.7 of the [WIPO Overview 3.0](#)).

Finally, it has also long been held that generic Top-Level Domains are generally disregarded when evaluating the confusing similarity of a disputed domain name.

The Panel therefore finds that the Complainant has satisfied 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](#)). Here, the Complainant has put forward 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.

Noting the above, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has rights and is the owner of the well-known and highly distinctive registered trademark SOLVAY, which is registered and used in many jurisdictions, long before the registration of the disputed domain name.

It is inconceivable for this Panel that the Respondent registered and used the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's trademark and company name SOLVAY entirely.

Furthermore, noting registrant obligations under UDRP paragraph 2, panels have found that respondents who (deliberately) fail to search and/or screen registrations against available online databases would be responsible for any resulting abusive registrations under the concept of willful blindness; depending on the facts and circumstances of a case, this concept has been applied irrespective of whether the registrant is a professional domainer or not (see section 3.2.3 of the [WIPO Overview 3.0](#)).

Therefore, in the circumstances of this case, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) Although there is no evidence that the disputed domain name is being actively used, previous UDRP panels have found that bad faith use under paragraph 4(a)(iii) does not necessarily require a positive act on the part of the respondent – inaction is within the concept of paragraph 4(a)(iii) (see especially *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#)).

This Panel concludes that the present passive holding of the disputed domain name, constitutes a bad faith use, putting emphasis on the following:

- the Complainant's trademark is distinctive and used/registered globally;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name;
- the disputed domain name is inherently misleading, and is thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant's site); and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain name.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain name has been registered and used in bad faith 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 <solvaysolutionuglimited.com> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: July 1, 2022