

## ADMINISTRATIVE PANEL DECISION

Solvay SA v. Name Redacted

Case No. D2023-0235

### 1. The Parties

The Complainant is Solvay SA, Belgium, represented by PETILLION, Belgium.

The Respondent is Name Redacted.<sup>1</sup>

### 2. The Domain Name and Registrar

The disputed domain name <solwayproduction.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 January 19, 2023. On January 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 19, 2023, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 20, 2023 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 January 23, 2023.

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”).

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<sup>1</sup> The Respondent appears to have used the name of a third party when registering the Domain Name. Considering the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the Domain Name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 17, 2023. The Respondent submitted an informal reply to the Notification of Respondent Default on February 18, 2023.

The Center appointed Olga Zalomiy as the sole panelist in this matter on February 23, 2023. 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 Belgian multinational science company that engages in manufacture and distribution of high-performance polymers and composites technologies. The Complainant owns numerous trademark registrations for the SOLVAY trademarks (collectively the "SOLVAY mark") in many jurisdictions throughout the world, such as:

- SOLVAY, European word mark registered on May 30, 2000 under No. 000067801;
- SOLVAY, European word mark registered on August 13, 2013 under No. 011664091; and
- SOLVAY, international word mark registered on February 28, 2013 under No. 1171614, covering numerous countries including the United States of America ('US'), where the Respondent appears to reside.

The Domain Name was registered on November 9, 2022 in the name of a privacy service. The identity of the Respondent was disclosed by the Registrar in the course of this UDRP proceeding. However, the name of the registrant provided at the time of the Domain Name registration belongs to a famous person residing in Europe. The address of the registrant provided at the time of the Domain Name registration appears to be fake.

The Domain Name has not resolved to any active websites.

#### **5. Parties' Contentions**

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

The Complainant's contentions can be summarized as follows:

The Complainant submits that the Domain Name is confusingly similar to its trademarks. The Complainant argues that the Complainant's SOLVAY mark is recognizable within the Domain Name, so the addition of a descriptive term "production" would not prevent finding of confusing similarity between the SOLVAY mark and the Domain Name. The Complainant contends that it is generally accepted that the generic Top-Level Domain ("gTLD") suffix, such as ".com", can be disregarded when assessing the similarities between a domain name and a trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in the Domain Name for the following reasons: 1) the Respondent is commonly known by the Domain Name; 2) the Respondent who does not own any trademark rights in the Domain Name, was not authorized by the Complainant to use its well-known mark in the Domain Name; 3) the composition of the Domain Name cannot constitute fair use because it impersonates or suggests affiliation between the Respondent and the Complaint; 4) the overall use of the Domain Name does not support finding of any legitimate or fair use.

The Complainant asserts that the Domain Name was registered and is being used in bad faith. The Complainant contends that the Respondent registered the Domain Name in bad faith. The Complainant claims that the Respondent could not plausibly argue that he was not aware of the Complainant's well-known trademark at the time of the Domain Name registration because the Domain Name comprises of the Complainant's mark and a term descriptive of the Complainant's business. In the Complainant's opinion, such knowledge of the Complainant's mark suggests bad faith.

The Complainant submits that the Respondent is using the Domain Name in bad faith because by registering the Domain Name, the Respondent prevented the Complainant from reflecting its mark in a corresponding domain name. The Complainant claims that mere registration of the Domain Name similar to its well-known mark can create presumption of bad faith. The Complainant asserts that the Domain Name does not resolve to any active website, which would not prevent a finding of bad faith use under the doctrine of passive holding given the overall circumstances of the case.

## **B. Respondent**

The Respondent informally replied on February 18, 2023 stating "Hello, the complainant should compensate me before proceeding to keep the domain. I stated this earlier". The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

Pursuant to paragraph 4(a) of the UDRP, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

- (i) the 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 respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

Pursuant to paragraph 4(a)(i) of the UDRP, the Complainant must prove that the Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

The submitted evidence shows that the Complainant owns several trademark registrations for the SOLVAY mark. Pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), this satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

"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." Section 1.8, [WIPO Overview 3.0](#). It is well-established that the applicable gTLD should be disregarded under the confusingly similarity test as a standard registration requirement. Section 1.11.1, [WIPO Overview 3.0](#).

The Domain Name consists of the Complainant's SOLVAY mark, the word "production" and the gTLD ".com". Because the Complainant's SOLVAY mark is recognizable within the Domain Name, the addition of the word "production" does not prevent a finding of confusing similarity. The gTLD ".com" is disregarded as a standard registration requirement. Therefore, the Domain Name is confusingly similar to the Complainant's SOLVAY mark.

The Complainant has satisfied the first element of the UDRP.

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

Pursuant to paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on the evidence, shall demonstrate a respondent's rights or legitimate interests to a domain name for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice of the dispute, the respondent's use of, or demonstrable 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
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent 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.

To succeed under the second UDRP element, the Complainant must make out a *prima facie* case<sup>2</sup> in respect of the lack of rights or legitimate interests of the Respondent.

The Panel finds that the Complainant satisfied its burden of production for the following reasons. First, the evidence on file shows that the Respondent has not been commonly known by the Domain Name. Second, the Complainant contends, and the Respondent does not dispute that the Respondent does not own any trademarks corresponding to the Domain Name, nor did the Complainant authorize or license the Respondent's use of the Complainant's well-known trademark in the Domain Name. Third, the Respondent's use of the Domain Name does not satisfy requirements of *bona fide* offering of goods and services because the Domain Name does not resolve to an active website.<sup>3</sup> Finally, where, like here, a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.<sup>4</sup>

Based on the foregoing, the Panel finds that the Complainant has made out the *prima facie* case and the burden of producing evidence demonstrating it has rights or legitimate interests in the Domain Name has shifted to the Respondent.<sup>5</sup> Because the Respondent failed to present any rebutting evidence, the Complainant is deemed to have satisfied the second element of the UDRP.

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

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must prove that the Domain Name was registered and is being used in bad faith.

It is likely that the Respondent registered the Domain Name with the Complainant's trademark in mind because the Domain Name consists of the Complainant's well-known trademark and a term descriptive of the Complainant's business. Prior panels held that knowledge of a corresponding trademark at the time of the domain name registration suggests bad faith.<sup>6</sup> Thus, the Respondent registered the Domain Name in bad faith.

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<sup>2</sup> Section 2.1, [WIPO Overview 3.0](#).

<sup>3</sup> See *Instagram, LLC v. Zafer Demir, Yok*, WIPO Case No. [D2019-1072](#).

<sup>4</sup> Section 2.5.1, [WIPO Overview 3.0](#).

<sup>5</sup> Section 2.1, [WIPO Overview 3.0](#).

<sup>6</sup> *Lancôme Parfums et Beauté & Cie, L'Oréal v. 10 Selling*, WIPO Case No. [D2008-0226](#).

“Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.” The Complainant’s SOLVAY mark has acquired considerable goodwill and renown worldwide. The Respondent is, therefore, presumed to have registered and used the Domain Name in bad faith.

The Respondent’s non-use or passive holding of the Domain Name also constitutes evidence of the Respondent’s bad faith. It is well-established that non-use of a domain name would not prevent finding of bad faith if the totality of the circumstances of the case support a finding of bad faith.<sup>7</sup> This is exactly such a case because of the following: (i) the Respondent registered the Domain Name comprising the Complainant’s well-known mark; (ii) the Respondent failed to submit a response; (iii) the Respondent concealed his identity by using a privacy shield and a name of a famous person to whom he is not connected; and (iv) there is no plausible good faith use to which the Domain Name may be put. On the contrary, the Respondent’s email asking for a compensation suggests that the Respondent attempted to profit from its unauthorized use of the Complainant’s well-known mark in the Domain Name.

Therefore, the totality of the circumstances of this case indicate that the Respondent has registered and is using the Domain Name in bad faith.

The Complainant has satisfied the third element of the UDRP.

## **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 Domain Name, <solwayproduction.com> be transferred to the Complainant.

*/Olga Zalomiy/*

**Olga Zalomiy**

Sole Panelist

Date: March 9, 2023

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<sup>7</sup> Section 3.3, [WIPO Overview 3.0](#).