

Decision for dispute CAC-UDRP-106168

Case number **CAC-UDRP-106168**

Time of filing **2024-01-19 10:04:57**

Domain names **solvaymedicals.com**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **Solvay S.A.**

Complainant representative

Organization **Thomsen Trampedach GmbH**

Respondent

Organization **Techxora**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous trademark registrations containing the word "SOLVAY" in many jurisdictions, covering a wide range of goods and services in Classes 1, 5, 9, 17, 23, 35, 36, 37, 40, and 42. In the United Arab Emirates, where the Respondent is located, the Complainant owns rights in the trademark SOLVAY through trademark registration No. 187972, which was registered on July 22, 2015 in connection with goods in Class 17 (hereinafter referred to as the "Trademark"). The Panel is unable to fully understand the contents of the extract from the register (Provided in Annex), which is partly in Arabic. However, it is apparent that the trademark was registered in Class 17 of the Nice Agreement only, which mainly covers "Unprocessed and semi-processed rubber, gutta-percha, gum, asbestos, mica and substitutes for all these materials; plastics and resins in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, tubes and hoses, not of metal".

FACTUAL BACKGROUND

The Complainant is a Belgian multinational chemical company founded in 1863 and headquartered in Brussels, Belgium. In 2022, it realized a turnover of 13.4 billion euros. With 99 sites around the world, Complainant employs 22,000 people in 61 countries. The Complainant's official website is available online at "solvay.com".

The disputed domain name was registered on October 2, 2023 and is used in connection with a website of a certain company "Solvay Medical LLC" which, according to provided annex, offers a range of products covering the fields of "Cardiology", "IVF (In Vitro

Fertilization)", "Laboratory", "ICU (Intensive Care Unit)", "Operating Theater" and "Medical Consumables".

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant claims that the disputed domain name is confusingly similar to the well-known Trademark that has been in use for more than 160 years. It argues that "SOLVAY" is not a generic term, whereas the additional term "MEDICALS" is.

Further, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In this regard, the Complainant states that the Respondent is a software engineering and creative design company that has no business in medical equipment as described on the website linked to the disputed domain name. The Complainant further alleges that the products and services presented on the website available at the disputed domain name "are all inaccurately represented", that there is no trademark registration for "solvay medical", and that the Respondent has created "a counterfeit website with a confusingly similar title and logo to the famous SOLVAY trademark". The Complainant concludes that the inaccurate products and services "indicate that the company/website is not in connection with a bona fide offering of goods or services, whereby it is highlighting the Respondent has well acknowledge of the Complainant" and that the Respondent "has been trying to create the illusion of his actively using of the domain name". The Complainant further alleges that the third-party logos contained on the Respondent's website are used without the consent of their respective owners.

Finally, the Complainant alleges that the disputed domain name was registered and has been used in bad faith. In this regard, the Complainant contends that the Respondent is not a licensee of the Complainant and has not been authorized by the Complainant to make any use of its "solvay" trademarks, that bad faith is evidenced by the fact that the Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, that the "Respondent cannot conceivably claim that he is commonly known by the name "solvay", in accordance with paragraph 4(c)(ii) of the Policy, given the Complainant's notoriety and the fact that the trademarks "solvay" are exclusively associated with the Complainant". The Complainant further states that the Respondent registered the disputed domain name "seeking to capitalize on the good will of Complainant's pre-existing SOLVAY mark, and recognizing the importance of the Internet as a means of communication between Complainant and the public", and that the disputed domain name "redirected to a website which title is highly similar to the Complainant official website and its logo."

RESPONDENT:

No administratively complaint Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, not shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, not shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

- (i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; and
- (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.

1. The Panel accepts that the disputed domain name is confusingly similar to the Trademark because it contains the Trademark in its entirety, except for the addition of the generic word "medicals". However, the Trademark is recognizable as such within the disputed domain name and is therefore confusingly similar within the meaning of the Policy.

2. The Complainant has argued that the Respondent has no rights or legitimate interests in the disputed domain name.

However, the Panel considers that the Complainant's comments in this regard do not reflect the facts of the case.

The Complainant argues that the domain owner, as an IT company, has no expertise in the goods and services offered under the domain name. However, the website clearly identifies another company, Solvay Medical LLC, as the operator of the website. The Complainant does not provide any further information about this company and only alleges that it is a "fake company". The Complainant does not provide any evidence to support this claim, or at least any research that would indicate that Solvay Medical LLC does not exist.

According to the Complainant, the Respondent also uses a "confusingly similar title and logo". Except for the fact that both pages contain the word "SOLVAY" in blue font, the Panel finds that there is no other similarity that would indicate a clear link by the Respondent to the Complainant's website. The Complainant has also not further substantiated its claim. In addition, the Complainant alleges that the Respondent is "infringing all the public and private organizations' Intellectual Property Right by copying all the logos and names on his website" and this allegation is also not supported by any evidence. The Complainant also does not provide any evidence to support the allegation that the "owner of the domain and the owner of the website" was contacted. Finally, the Complainant alleges that the website offered by the Respondent is a counterfeit website. However, the Complainant does not provide any evidence in this regard. In particular, the Complainant does not even claim to be active in the field of "medical supplies and equipment" or provide any evidence to this effect. It is well established that Panels are generally unwilling to accept merely conclusory or wholly unsupported allegations of illegal activity, including counterfeiting, even where the respondent is in default.

As a result, the Complainant has not provided valid evidence that the website is not genuine. On the other hand, the website as such makes a thoroughly credible impression.

After due diligence and consideration of the facts and evidence presented, the Panel finds that the Complainant failed to establish a prima facie case that the Respondent lacks rights or legitimate interests under the Policy.

3. The Panel is also not convinced that the disputed domain name was registered and is being used in bad faith.

With respect to the issue of bad faith registration of the disputed domain name, the Panel has no evidence that the Respondent must have actually known the Complainant when registering the disputed domain name. The Complainant claims that its company and its products are "well known in the world", and that the Respondent's website is a "counterfeit website" that contains a "confusingly similar title and logo". As already mentioned above, are not proven and in some cases not comprehensible from the Panel's point of view. Furthermore, the Complainant has not provided any evidence concerning the scope of its business activities, such as sales figures or advertising expenses in the United Arab Emirates, where the Respondent is located. Finally, the Complainant's trademark protected in the United Arab Emirates only covers goods in Class 17, which the Respondent does not offer according to the Complainant and the website in question. Therefore, in the Panel's view, it is not proven or at least mostly probable that the Respondent must have known about the Complainant at the time of registration of the domain name.

As to the bad faith use, the Panel refers to its comments under point 2 above. It is not excluded that the use of the domain name by the Respondent is permissible and therefore no bad faith use is indicated. The Complainant's additional argument that 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 is also not valid. The facts of paragraph 4(b)(ii) of the UDRP further require that the Respondent has "engaged in a pattern of such conduct". The Complainant does not submit anything in this regard.

As a result, the Complainant has not shown the disputed domain name has been registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

Finally, the Panel has to stress the fact that the Complainant has presented the facts of the case in an incomplete and one-sided if not misleading manner.

While clearly differentiating between the "owner of the domain and the owner of the website", when asserting that both parties have been contacted before initiating this proceeding, the Complainant does not reflect both parties when discussing the requirements of paragraphs 4(a)(ii) and 4(a)(iii) of the Policy but one-sided refers to the domain owner, only.

In addition, in many instances, the Complainant makes mere allegations of what the Complainant believes to be wrongful conduct by the Respondent without attempting to substantiate those allegations or matching them with the facts of the case, even in part.

Finally, the Complainant has not provided a complete printout of the Respondent's website but only three undated partial screenshots. In particular, the Complainant has not provided the portions of the Respondent's website that contain the Respondent's contact information

and address. In addition, the Respondent's contact information as provided on the website was not included in the complaint, in violation of paragraph 3(b)(v) of the Rules and paragraph 2(a)(ii)(c) of the Policy. The latter expressly states that the Respondent shall also be contacted by email at "any e-mail address shown or e-mail links on that web page".

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **solvaymedicals.com**: Remaining with the Respondent

PANELLISTS

Name	Peter Müller (Presiding Panelist)
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DATE OF PANEL DECISION 2024-03-04

Publish the Decision
