

**DECISION OF THE THIRD-PARTY DECIDER**

**SOLVAY SA / Kurt Erwin Näther**

**Case No. 444160/solvay-chimie.be**

**1. The Parties**

1.1. Complainant: Solvay SA  
rue de Ransbeek 310  
1120 Brussels  
Belgium

Hereafter referred to as the "Complainant"

*Represented by:* Mr. Flip Petillion, attorney-at-law  
Guido Gezellestraat 126  
1654 Huizingen  
Belgium

1.2. Domain name holder: Mr. Kurt Erwin Näther  
Szarych szeregow 10 m/ 19  
Rue Solvay 39  
5190 Jemeppe-sur-Sambre  
Belgium

Hereafter referred to as the "Domain Name Holder"

*Not represented.*

**2. Domain name**

Domain name: solvay-chimie.be  
Registered on: January 18, 2022

Hereafter referred to as the "Domain Name".

### **3. Procedure**

On 21 February 2022, the Complainant filed its complaint with CEPANI, requesting the transfer of the Domain Name to the Complainant.

The Domain Name Holder did not submit any response.

On 1<sup>st</sup> March 2022, CEPANI sent a copy of the complaint at the address mentioned by the Domain Name Holder. On 7 March 2022, the company INOVYN Manufacturing Belgium SA, which is actually located at this address, replied (i) that it did not register the Domain Name, (ii) that Mr Näther is not residing at this address and (iii) that Solvay Chimie SA and INOVYN Manufacturing Belgium SA are the only entities located at this address.

On 25 March 2022, pursuant to Article 7.2 of the *CEPANI rules for domain name dispute resolution* (hereafter referred to as the "Rules"), CEPANI appointed Mr Pierre-Yves Thoumsin as the Third-Party Decider to settle the dispute regarding the Domain Name.

On 1st April 2022, pursuant to Article 13 of the Rules, the deliberations were closed.

In application of Article 6.4 and 15 of the Rules, the Third-Party Decider shall decide the dispute based on the Complaint, in the absence of any Response from the Domain Name holder.

### **4. Factual Background information**

The Complainant is a global science company specialised in high-performance polymers and composites technologies, and a leader in chemicals. The Complainant's group was founded in 1863, has its registered offices in Brussels and employs more than 23.000 people in 64 countries.

The Complainant is the holder of the following trademark rights on which its complaint is based:

- EU trademark No. 67801 registered on 30 May 2000 for "SOLVAY" in classes 1, 3, 4, 5, 7, 9, 10, 12, 17, 19, 20 and 31;
- EU trademark No. 11664091 registered on 13 August 2013 for "SOLVAY" in classes 1, 2, 3, 4, 5, 7, 9, 10, 12, 17, 19, 22, 23, 24, 25, 30, 31, 34, 35, 36, 37, 39, 40 and 42;
- international trademark registration No. 1171614 of 28 February 2013 for "SOLVAY" in classes 1, 2, 3, 4, 5, 7, 9, 10, 12, 17, 19, 22, 23, 24, 25, 30, 31, 34, 35, 36, 37, 39, 40 and 42.

(hereafter referred together to as the "SOLVAY Trademarks")

According to the Complainant, Solvay SA has used its trademarks at least since 2000 and is using the sign "SOLVAY" as a trade name since the foundation of its group in the 1860s.

The Domain Name was registered on 18 January 2022, using a privacy service concealing the Domain Name Holder's name and address.

On 17 February 2022, the Complainant sent a request to DNS Belgium, to obtain the contact details of the Domain Name Holder. DNS Belgium complied with this request and provided the complete data of the Domain Name Holder. The Domain Name Holder is a certain Kurt Erwin Näther, whom address is identical to one of the Complainant's establishment units.

The Domain Name does not resolve to any active website and refers to a registrar parking page. Nevertheless, the Domain Name has been used to send e-mails impersonating an employee of the Complainant, in an attempt to obtain information and quotes for pharmaceutical goods.

## **5. Position of the parties**

### **5.1. Position of the Complainant**

The Complainant contends that:

- the Domain Name is identical to the SOLVAY Trademarks, since it fully reproduces such earlier marks;
- the Domain Name Holder has no rights or legitimate interests to the Domain Name;
- the Domain Name Holder uses the email function linked to the Domain Name to send fraudulent phishing emails and messages to third parties, which cannot be considered as a good faith or fair use of the Domain Name.

The Complainant, therefore, requests the transfer of the Domain Name <solvay-chimie.be>.

### **5.2. Position of the Domain Name Holder**

The Domain Name Holder did not submit a response.

## 6. Discussion and findings

Pursuant to Article 16.1 of the Rules, the Third-Party Decider shall rule on domain name disputes with due regard for DNS Belgium's Terms and conditions for .be domain name registrations (hereafter the "Terms and Conditions") and the Rules.

Pursuant to Article 10b (1) of the Terms and Conditions, the Complainant must provide evidence of the following:

- *"the Domain name holder is identical or confusingly similar to a trademark, a tradename, a social name or corporation name, a geographical designation, a name of origin, a designation of source, a personal name or name of a geographical entity in which the Complainant has rights; and*
- *the Domain name holder has no rights or legitimate interests in the domain name; and*
- *the Domain name holder's domain name has been registered or is being used in bad faith."*

### 6.1. Preliminary procedural issue: language of the proceedings

6.1.1. The Complainant claims that the proceedings should be held in English, although the language indicated upon registration of the Domain Name in the WHOIS database is French.

6.1.2. Pursuant to Article 12.1 of the Rules, "the language of proceedings shall be the language indicated upon registration or renewal of registration of the Domain Name in the WHOIS database of the Registration Authority". In case, the language indicated upon registration is French.

However, according to settled UDRP case law, special circumstances can justify a change of the language of proceedings<sup>1</sup>, including *i.a.*:

- evidence showing that the respondent can understand the language of the complaint;
- potential unfairness or unwarranted delay in ordering the complainant to translate the complaint;
- other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.

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<sup>1</sup> WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereafter "WIPO Jurisprudential Overview 3.0"), section 4.5. The Third-Party Decider considers this overview and the UDRP case law relevant due to the similarities between the Terms and Conditions and the Uniform Dispute Resolution Policy (UDRP).

- 6.1.3. In view of the similarities between the Terms and Conditions and the Uniform Dispute Resolution Policy, the Third-Party Decider considers this case law relevant to decide on the preliminary procedural issue<sup>2</sup>.

Accordingly, the Third-Party Decider agrees that the continuation of the proceedings is in English. This choice is justified from a practical point of view, since the Complainant declares that it is a global group of companies, hence using English as a working language. In addition, such language choice does not prejudice the rights of the Parties. Indeed, even though the Domain Name Holder did not submit any observations, it appears from the file that he used the Domain Name to send emails in English to Third Parties. This indisputably shows that the Domain Name Holder masters this language.

6.2. The Domain Name is identical or confusingly similar to trademarks in which the Complainant has rights

- 6.2.1. The Domain Name "solvay-chimie" consists of the addition of the Complainant's SOLVAY Trademarks and the French common noun "chimie". This word meaning "chemistry" is a description of the Complainant's activities.

Adding descriptive and usual terms (like "chimie"), or a hyphen ("-") to a registered trademark in a domain name is not likely to differentiate the domain name from that registered trademark (see Cepani Case No. 44465, 29 April 2019, Umicore, SA v. Michael Hannart, umicore-group.be).

For these reasons, the Third-Party Decider rules that the Domain Name is at least confusingly similar to the SOLVAY Trademarks and trade name in which the Complainant has rights.

- 6.2.2. Considering the above, the Third-Party Decider rules that the first element of Article 10.b(1) of the Terms and Conditions is met.

6.3. The Domain Name Holder has no right or legitimate interests in the Domain Name

- 6.3.1. According to Article 10.b.1, ii) of the Terms and Conditions, the Complainant has to prove that the Domain Name Holder has no rights or legitimate interests in the Domain Name.

It is widely accepted that, considering the difficulty of proving a negative fact, a Complainant must only establish a prima facie case that the Domain Name Holder has

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<sup>2</sup> See in this respect CEPANI, case No.44150, 29 November 2021, Supervizome srl v. X., p. 5 and CEPANI, case No. 444140, 26 October 2021, Meguiar's Inc. v. W3 Company.

no rights or legitimate interests. If the Complainant succeeds, the burden of proof then shifts to the Domain Name Holder to provide relevant evidence demonstrating rights or legitimate interests in the Domain Name<sup>3</sup>.

6.3.2. The Complainant's file and arguments contain sufficient evidence of the Domain Name Holder's lack of rights and legitimate interests in the Domain Name:

- It appears from the trademark registrations submitted by the Complainant that the Complainant owned rights in the SOLVAY Trademarks before the registration of the Domain Name, on 18 January 2022 (see in this respect CEPANI No. 4088, cartebleue.be; No. 4094, emanuelungaro.be; No. 44396, belangvanlimburg.be);
- Conversely, it appears from the trademark registers that the Domain Name Holder does not own any trademark registration for SOLVAY, nor is he generally known under this name;
- The Domain Name Holder's lack of reaction to the complaint also demonstrates his lack of legitimate interest in such Domain Name.

6.3.3. Considering the above, the Third-Party Decider rules that the second element of Article 10.b(1) of the Terms and Conditions is met.

6.4. The Domain Name Holder's Domain Name has been registered or is being used in bad faith

6.4.1. In accordance with Article 10, b), 2) of the Terms and Conditions, the evidence of bad faith registration or use of a domain name can *i.a.* be demonstrated by the following circumstances:

- *the domain name was intentionally used to attract, for commercial gain, Internet users to the registrant's web site or other on-line location, by creating confusion with the complainant's trademark, trade name, registered name or company name, geographical designation, name of origin, designation of source, personal name or name of a geographical entity as to the source, sponsorship, affiliation, or endorsement of the registrant's web site or location or of a product or service on his web site or location.*

6.4.2. In the case at hand, the Domain Name Holder is aware of the existence of the Complainant prior rights on the sign "SOLVAY". Indeed, the Domain Name Holder used the email function of the Domain Name to send phishing email using the name of an employee of the Complainant, the Complainant's SOLVAY Trademarks, the address of the Complainant registered offices and even the Complainant's logo.

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<sup>3</sup> For example, see CEPANI case No. 444150, 29 November 2021, Supervizome srl v. X, sddeboucheur.be and sd-deboucheur.be

Furthermore, by impersonating the Complainant in fraudulent emails, the Domain Name Holder attempts to create confusion for commercial gain.

6.4.3. Considering the above, the Third-Party Decider rules that the third element of Article 10.b(1) of the Terms and Conditions is met.

## **7. Decision**

Consequently, pursuant to Article 10(e) of the Terms and Conditions, the Third-Party Decider hereby rules that the domain name registration for the "**solvay-chimie.be**" domain name is to be transferred to the Complainant.

Brussels, 15 April 2022.

Pierre-Yves THOUMSIN  
The Third-party Decider