Decision for dispute CAC-UDRP-101084

Case number	CAC-UDRP-101084
Time of filing	2015-09-29 12:08:20
Domain names	B2b168.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	LYONDELLBASELL Industries Holdings B.V.

Complainant representative

Organization	PORTA, CHECCACCI & ASSOCIATI S.p.A.

Respondent

Organization	shenzhenshibafangtongkejikaifayouxiangongsi

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

Complainant is the owner of a company name LyondellBasell Industries BV and of several trademark registrations “LYONDELLBASELL” in various countries.

FACTUAL BACKGROUND

LyondellBasell GROUP is one of the world’s largest plastics, chemical and refining companies, has annual revenues of approximately $41 billion and more than 14,000 employees worldwide.

Complainant is a part of LyondellBasell GROUP which consists of two holding companies: LYONDELLBASELL Industries N.V is the owner of several domain names containing the wording “LYONDELLBASELL” and the Complainant is the owner of several trademark registrations “LYONDELLBASELL” in various countries.

Complainant claims to be one of the world’s largest polymers, petrochemicals and fuels companies and a global leader in polyolefins technology, production and marketing; a pioneer in propylene oxide (PO) and derivatives, and a significant producer of fuels and refined products, including biofuels

LyondellBasell Group is a well-known name worldwide and the Complainant has obtained rights in its name prior to the Respondent’s registration of the domain name.

The present dispute covers 2 domain names, LYONDELLBASELL.EN.B2B168.COM and LYONDELLBASELL-PLASTIC.COM. The language of the registration agreement of the first domain name is English, the other is Chinese.

The Respondent performed a change of its user details on 09 November, 2015 (i.e. before filing the Response), which was reported to the Panel on 27 November, 2015. The former name of the Organization “shenzenshibafangtongkejikaifayouxiangonsi” was changed into “shenzen bafangtong keji kafa Co., Ltd.”. Most of the other user details remained the same, such as email address and address of the seat.

The Response only targets the Complainant`s claims regarding the domain LYONDELLBASELL.EN.B2B168.COM. Regarding the domain LYONDELLBASELL-PLASTIC.COM no substantial Response has been filed.

PARTIES CONTENTIONS

CONTENTIONS OF THE PARTIES

1. COMPLAINANT

Complainant states that the domain names LYONDELLBASELL.EN.B2B168.COM and LYONDELLBASELL-PLASTIC.COM are easily confused with the company name LyondellBasell Industries BV and the trade mark applications and / or trademark registrations.

Considering the worldwide awareness of the name it would be unlikely that the Respondent registered the domain names without knowing the existence of the Complainant.

Furthermore Complainant states that the mere adding of a descriptive word like "plastic" and/or letter/number like "B2B168" is insufficient to avoid confusion.

The Complainant further argues that the Respondent wrongfully benefits from the distinctiveness, fame and commercial goodwill obtained during all these years by the intensive use of the sign LYONDELLBASELL and from being linked to the fame and reputation which LYONDELLBASELL Group has built in the international market.

In Complainant’s opinion, the use of the contested domain names by the Respondent intends to catch the flow of internet users who have mistyped Complainant’s LYONDELLBASELL which is owner of several trademarks and domain names with keyword “Lyondellbasell”.

Complainant requests the Language of Proceedings for both domains to be English. He argues, that Respondent`s website is also available in English and that Complainant is a multinational chemical company, so that the English language seems most appropriate for the Proceedings.

2. RESPONDENT

Respondent states that he is only holder of the domain name LYONDELLBASELL.EN.B2B168.COM and denies its ownership with respect to the domain name LYONDELLBASELL-PLASTIC.COM.

Respondent then argues that the domain name www.B2B168.COM is not confusingly similar to the company name and trademarks of the Complainant.

According to Respondent there is no case of “mere misspelling of a mark” or “addition of a generic word”. The domain name www.b2b168.com is not an intended misspelling based on LYONDELLBASELL because the word “B2B” is an abbreviation for

Business-to-Business and the number “168” in the domain name means “always be lucky” in Chinese. In short, the domain name is not a misspelling of Complainant’s mark but a properly spelled combination of a business model and a Chinese lucky number. Nothing prohibits the registration of such a generic string on a “first come, first served basis”.

Respondent argues that the domain name “www.b2b168.com” was not created by adding a descriptive term to a generic word. Nor does the domain name incorporate Complainant’s trademark in its entirety. Indeed, the LYONDELLBASELL mark does not appear anywhere in the domain name. Here, when one compares the mark, in its entirety, to the domain name, there is no confusing similarity given the enormous difference between “b2b168” and “LYONDELLBASELL”. Alternatively, the domain name, standing alone, connotes nothing other than a B2B (Business-to-Business) network platform.

Respondent further argues that there is no likelihood of confusion between the trademarks and the domain name www.b2b168.com because they are not confusingly similar. In light of the third-party use, consumer confusion is unlikely given the dissimilarity between Complainant’s mark and the Domain name (www.b2b168.com).

Respondent points out that the disputed website link (LYONDELLBASELL.EN.B2B168.COM) is a third level domain of www.b2b168.com, and it displays a company profile page of one of Respondent`s registered members (Shanghai BinXi trade Co.,Ltd.). Respondent allows its verified members to customize the third level domain names linked to their display page, in order to facilitate them to optimize their page links.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the 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.

1. Language of proceedings

According to § 11 (a) of the Rules the language of registration agreements shall, as a principle, be the language of the administrative proceedings. However, this is subject to the authority of the Panel determining otherwise, having regard to the circumstances of the administrative proceedings. As the language of the registration agreement of one of the domain names in dispute is English and the other Chinese, and as Respondent has drafted its response in English and as, further, the websites linked to the domain names in dispute are available in English, the Panel decides that the language of the proceedings be English.

2. Identity of Respondent

It has been stated in the Response that shenzhen bafangtong keji kafa Co., Ltd. is not identical to shenzhenshibafangtongkejikaifayouxiangongsi and that shenzhen bafangtong keji kafa Co., Ltd. therefore is not entitled to argue with respect to the domain name LYONDELLBASELL-PLASTIC.com, but only the domain name B2B168.com. Via nonstandard communication dated 27 November, 2015, the Panel was informed by the CAC that Respondent changed its user details to shenzhen bafangtong keji kafa Co., Ltd., however kept its E-mail address and most of the other contact

details exactly the same. In answering the response shenzhen bafangtong keji kafa Co., Ltd. maintained to be the holder of the domain name LYONDELLBASELL-PLASTIC.com. The important contact details of shenzhenshibafangtongkejikaifayouxiangongsi (the original Respondent) and shenzhen bafangtong keji kafa Co., Ltd. are identical according to the verifications submitted by the Registrars of the disputed domain names. Therefore, the panel assumes that shenzhenshibafangtongkejikaifayouxiangongsi is identical to shenzhen bafangtong keji kafa Co., Ltd., and are in fact one entity. This is supported by the change of user details reported to the Panel.

If there is identity, Respondent has not argued substantially against the Complaint with respect to the domain name LYONDELLBASELL-PLASTIC.com. If, however, shenzhen bafangtong keji kafa Co., Ltd. was not the owner of this domain name, the result would be the same, as in this case no administratively compliant Response had been filed. Thus, in both cases and with respect to this domain name, the Panel may accept the contentions of the Complainant as undisputed.

With respect to the domain name B2B168.com an administratively compliant Response was filed.

PRINCIPAL REASONS FOR THE DECISION

I. Rights:

Complainant has proven that it has at least trademark rights in the term “LYONDELLBASELL”.

1. LYONDELLBASELL-PLASTIC.com.

As the term “plastic” can be disregarded due to its generic character and due to the separation from the term LYONDELLBASELL by a hyphen, the Panel holds that the domain name is at least confusingly similar to the trademark of Complainant.

2. B2B168.com

The Panel holds that the domain name in question is not confusingly similar to the trademark of Complainant. This might apply as well, if the domain name “LYONDELLBASELL.en.b2b768.com” was assessed. However, this does not have to be decided in these proceedings. According to § 1 of the Policy the Policy is aimed to resolve disputes on the registration and use of an internet domain name registered by the registrant. A third or a fourth level domain name cannot be registered in the meaning of the Policy, as only second level domain names may be registered by a registrar. A third or fourth level domain name, however, cannot be registered by a registrar. The use of such third or fourth level domain names might be possible on the basis of an agreement with the registrant. By transferring a third or fourth level domain name to a complainant based on UDRP proceedings, the registrar would not be able to transfer such third or fourth level domain name from respondent to complainant, as this is not within its competence. Thus, the UDRP proceedings are not applicable in disputes regarding third or fourth level domain names.

In view of this, a transfer of the domain name in question could only be justified in case the domain name B2B168.com, thus particularly its second level domain name "b2b168", would be identical or confusingly similar to the trademark rights of Complainant. This is obviously not the case, as the terms “LYONDELLBASELL” and “b2b168” are completely different. Thus, the domain name B2B168.com is not identical or confusingly similar to the trademark rights of Complainant.

II. No Rights or legitimate interests

As Respondent has not substantially argued to have rights or legitimate interests with respect to the domain name LYONDELLBASELL-PLASTIC.com, the contentions of Complainant may be accepted as correct (see § 14 (b) Rules).

Complainant has argued that Respondent is not known by the name or by using a trademark LYONDELLBASELL. Complainant further stated that there are no other indications that Respondent has any rights in this respect. Thus, the Panel holds that Respondent has no rights or legitimate interests in respect of this domain name.

III. Bad faith

As (at least) no substantial response with respect to the domain name LYONDELLBASELL-PLASTIC.com was filed, the Panel accepts the contentions of Complainant as correct.

Complainant has argued that Respondent has registered and is using the domain name in bad faith. Adding the term “plastic” to the domain name implies that Respondent knows about the business of Complainant. Otherwise, there would not be any reason to add this term. Complainant further argues that its company name and trademark rights have been in existence long before the registration of the domain name. Complainant argues that LYONDELLBASELL is a well-known name and that Respondent must have known this name at the time of the registration, therefore. Complainant further argues that Respondent registered and used the domain name for commercial gain, e.g. to attract internet users to its website, by creating a likelihood of confusion with Complainant’s trademark as to the source, sponsorship, affiliation or endorsement of its website. Complainant has further contented that Respondent receives pay-per-click fees from advertisers in case internet users follow its links on the website.

Without any substantial response, the Panel accepts these contentions as correct and holds that the domain name LYONDELLBASELL-PLASTIC.com has been registered and is being used in bad faith by Respondent.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Partially Accepted/Partially Rejected

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

1. **B2B168.COM**: Remaining with the Respondent
2. **LYONDELLBASELL-PLASTIC.COM**: Transferred

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2015-12-04

Publish the Decision