Decision for dispute CAC-UDRP-102018

Case number	CAC-UDRP-102018
Time of filing	2018-05-24 15:38:21
Domain names	LYONDELLTERMINALS.COM

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	LyondellBasell Industries Holdings B.V.

Complainant representative

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

Respondent

Organization	Wiiliams Wales - lyondell terminal

OTHER LEGAL PROCEEDINGS

To the best of its knowledge, the Panel is not aware of any other pending or decided legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks including the word “LYONDELLBASELL”, as follows:

- LYONDELLBASELL (word mark), US trademark registration No. 3634012, filed on May 7, 2008 and registered on March 24, 2009, for goods and services in classes 1, 4, 17, 35 and 42;

- LYONDELLBASELL (design mark), US trademark registration No. 5096173, filed on March 6, 2015 and registered on December 6, 2016, for goods and services in classes 1, 4, 17, 42 and 45;

- LYONDELLBASELL (word mark), EUTM registration No. 6943518, filed on May 16, 2008 and registered on January 21, 2009, for goods and services in classes 1, 4, 17, 42 and 45;

- LYONDELLBASELL (design mark), EUTM registration No. 013804091, filed on March 6, 2015 and registered on July 2, 2015, for goods and services in classes 1, 4, 17, 42 and 45.

Lyondell Chemical Company a company belonging to the LyondellBasell's group, is the owner of the following LYONDELL trademark:

- LYONDELL (word mark), EUTM registration No. 1001866, filed on November 26, 1998 and registered on May 22, 2000, for goods and services in classes 1, 4, 12, 17, 20, 25 and 42.

LyondellBasell Industries N.V. also owns various domain names consisting of, inter alia, the words "lyondellbasell" and "lyondell", such as <lyondellbasell.com> which leads to the Complainant's main website and is used since October 23, 2007, and <lyondell.com>, registered on February 21, 1987.

FACTUAL BACKGROUND

The Complainant is part of a group of companies forming the third largest plastics, chemicals and refining group and the largest licensor of polyethylene and polypropylene technologies in the world. The Complainant's group employs over 13,000 individuals worldwide and manufactures its products in 55 plants located in 17 countries. The Complainant's group sells products in approximately 100 countries worldwide.

In 2010 LyondellBasell Industries N.V. was listed in the London Stock Exchange.

In 2017, the consolidated income of the LyondellBasell's group from continuing operations amounted to USD 4,9 billion.

The Respondent registered the disputed domain name <lyondellterminals.com> on July 19, 2017.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT 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, 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, 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

According to the Complaint, "the Complainant of this administrative proceeding is LyondellBasell Industries Holdings B.V., filer of this Complaint also on behalf of the other interested parties (LyondellBasell Industries N.V. and Lyondell Chemical Company). The transfer decision is to be directed to the Complainant".

The Complainant states that "[A]ccording to the UDRP jurisprudence any one party of multiple related parties, on behalf of the other interested parties, may bring a Complaint and is to be considered to have standing in dispute". In support of this statement, the Complainant refers to Paragraph 1.4.2. of the "WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition" (hereinafter, the "WIPO Jurisprudential Overview 3.0").

The Complainant points out that "LyondellBasell Industries N.V., LyondellBasell Industries Holdings B.V. and Lyondell Chemical Company are related companies belonging to the same group and having right in the relevant marks on which this

Complaint is based".

In these UDRP proceedings, the Panel does not believe that LyondellBasell Industries N.V. has standing to file a Complaint "also on behalf of" the two other cited entities. In order to do so, the Complainant should have made clear its intention to consolidate different proceedings in a single Complaint pursuant to Paragraph 10(e) of the UDRP Rules. In such a case, the Complainant should have listed LyondellBasell Industries N.V. and Lyondell Chemical Company as co-Complainants in the Complaint, and provided the relevant supporting arguments and evidence.

The issue discussed in Paragraph 1.4.2. of the WIPO Jurisprudential Overview 3.0. refers to a different question, that is "[d]oes a trademark owner's affiliate have standing to file a UDRP Complaint?". That is the case, for example, were a UDRP Complainant wishes to rely on a trademark, which belongs to its affiliate, such as a subsidiary, parent or holding company. The Panel will examine this matter further below.

PRINCIPAL REASONS FOR THE DECISION

I. CONFUSING SIMILARITY

The Complainant argues that the disputed domain name is confusingly similar to both the trademarks LYONDELL and LYONDELLBASELL.
Before evaluating this matter, it is necessary for the Panel to assess whether or not the Complainant can rely also on the LYONDELL trademark, owned by an entity named Lyondell Chemical Company. The Complainant states in its Complaint that Lyondell Chemical Company is part of the LyondellBasell group. The Panel has found several references to Lyondell Chemical Company in the Corporate Brochure and the 2017 Annual Report, which confirm the Complainant's statement.
While the Panel would have appreciated that the Complainant spent a few words in the Complaint to support the Complainant's rights over the LYONDELL trademark, beyond the fact that the Complainant and Lyondell Chemical Company are related companies, considering that the trademark LYONDELL is fully included in the LYONDELLBASELL trademark owned by the Complainant, and the fact that the two companies belong to the same group, the Panel is prepared to accept that the Complainant has also rights over the LYONDELL trademark and is therefore entitled to base its Complaint also on this trademark.
This is confirmed by the wording of Paragraph 1.4.1 of the WIPO Jurisprudential Overview 3.0., which states: "[a] trademark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint. While panels have been prepared to infer the existence of authorization to file a UDRP case based on the facts and circumstances described in the complaint, they may expect parties to provide relevant evidence of authorization to file a UDRP complaint". There are also several prior UDRP Decisions to that effect, such as WIPO Case No. D2003-0624, Toyota Motor Sales U.S.A. Inc. v. J. Alexis Productions; WIPO Case No. D2003-0796, Grupo Televisa, S.A., Televisa, S.A. de C.V., Estrategia Televisa, S.A. de C.V., Videoserpel, Ltd. v. Party Night Inc., a/k/a Peter Carrington; WIPO Case No. D2007-0368, Teva Pharmaceutical USA, Inc. v. US Online Pharmacies, and others.
The Panel finds that the disputed domain name is confusingly similar to both trademarks LYONDELL and LYONDELLBASELL. As a matter of fact, the disputed domain name fully includes the trademark LYONDELL, and coincides with the first element of the LYONDELLBASELL trademark. The word "lyondell" is highly distinctive has it is a fanciful term. The word "terminals" is a generic term, descriptive of the activity performed by the Respondent through the website corresponding to the disputed domain name. Therefore, the addition of the generic term "terminals" to the distinctive element "lyondell" cannot prevent a finding of confusing similarity. See in this respect Paragraph 1.8 of the WIPO Jurisprudential Overview 3.0, which states that: "[W]here 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".
For all these reasons, the Panel concludes that the disputed domain name is confusingly similar to the LYONDELL and LYONDELLBASELL trademarks.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME

While the overall burden of proof under the UDRP proceedings rests on the complainant, it is generally recognized that in

order to prove the respondent's lack of rights or legitimate interest in the domain name it is sufficient for the complainant to make out a prima facie case in order to shift the burden of proof to the respondent. This is so because proving a third party's negative fact, such as the respondent's lack of rights or legitimate interest, would otherwise result in an almost impossible task for the complainant.
In the instant case, the Complainant maintains that the Respondent has no relationship with the Complainant, or with other related parties. The Respondent has never received any approval, either expressed or implied, to use the Complainant's trademark as part of the disputed domain name. There is no evidence that the Respondent has acquired rights in a trademark or trade name corresponding to the dispute domain name. To the contrary, the Respondent has provided false contact data at the time of the registration of the disputed domain name, and uses false data on the website associated to such domain name: there is no legal entity registered in The Netherlands with the trade/business name "Lyondell Terminal(s)" or "Lyondell Europoort Terminal". Lastly, the Complainant points out that the disputed domain name has been found involved in phishing activities, in particular storage spoofing, and has been blacklisted by the Port of Rotterdam Authority.
The Panel agrees with the Complainant that the Respondent lacks rights or legitimate interests in the disputed domain name, according to Paragraph 4(c) of the Policy.
The Respondent has no relationship with the Complainant or with any of the companies of the Complainant's group. The Respondent was not authorized to use the Complainant's trademark in a domain name, and does not appear to be known by the disputed domain name or by the Complainant's trademarks.
Rather, the Complainant's evidence shows that the Respondent provided false contact data at the time of the registration of the disputed domain name (since no company named "Lyondell Terminal(s)" or "Lyondell Europoort Terminal" seems to exist in The Netherlands). Furthermore, the use of the disputed domain name does not appear to amount to a bona fide offering of goods and services, or to a legitimate non-commercial use. The disputed domain name, and the corresponding website were blacklisted by the Port of Rotterdam Authority because they have been found involved in phishing activities, and in particular in "storage spoofing". "Storage spoofing" is a term used to designate the sale of non-existing storage capacities and stocks of raw materials and materials at terminals in the Rotterdam port area. It is therefore a fraudulent activity.
The Respondent had the opportunity to object to the Complainant's assertions by filing a response to the UDRP Complaint within the given deadline, but failed to do so.
In view of these circumstances, the Panel concludes that the Complainant successfully proved that the Respondent lacks rights and legitimate interests in the disputed domain name.

III. REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

As to registration in bad faith, the Complainant asserts that given the distinctiveness and reputation of the Complainant's business and trademarks worldwide, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the LYONDELL and LYONDELLBASELL trademarks.
With respect to use in bad faith, the Complainant maintains that the Respondent is using the disputed domain name to offer non-existing services of storage and transshipment of crude oil and its derivatives at the Port of Rotterdam and that a logo confusingly similar to the well-known trademark LYONDELLBASELL is displayed on the Respondent's website. The latter was blacklisted by the Port of Rotterdam Authority because it promoted fraudulent activities Furthermore, the Respondent provided false contact data details, since no trade or business name exists under the name "Lyondell Terminal(s)" or "Lyondell Europoort Terminal", and the address of the Respondent, administrative and technical contacts of the disputed domain name coincide with the Complainant's address at the Port of Rotterdam.
The Panel shares the Complainant's view that the Respondent registered and uses the disputed domain name in bad faith. In particular, it is clear that the Respondent was well aware of the Complainant's trademark at the time of the registration of the disputed domain name. As a matter of fact, the disputed domain name includes the LYONDELL trademark, and the first element of the LYONDELLBASELL trademark. The Respondent's website displays a logo, which is similar to the LYONDELLBASELL trademark, also from a graphic point of view. The address of the Respondent, administrative and technical contacts of the disputed domain name coincides with the Complainant's address at the Port of Rotterdam. The Respondent provided false contact details at the time of the registration of the disputed domain name and is using the disputed domain name for spoofing and phishing purposes.
Thus, the Panel concludes that the disputed domain name has been registered and is being used in bad faith, to intentionally

attempted to attract, for commercial gain, Internet users to the Respondent’s website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website, or of the services promoted on the Respondent’s website.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LYONDELLTERMINALS.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2018-08-04

Publish the Decision