

Decision for dispute CAC-UDRP-104498

Case number CAC-UDRP-104498

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Domain names lyondellchemienederland.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization LyondellBasell Industries Holdings B.V.

Complainant representative

Organization Barzanò & Zanardo Milano S.p.A.

Respondent

Name Steven Smith

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 claims ownership of fifty registrations of the LYONDELLBASELL trademark in relation to a range of products and services relating to chemicals, petrochemicals, fuels, olefin polymers, and research and consultancy in the fields of chemical and petrochemical processes. Amongst these are the following:

- US Trademark Registration No. 3634012 for LYONDELLBASELL dated June 9, 2009;
- US Trademark Registration No. 5096173 for LYONDELLBASELL dated December 6, 2016;
- European Union Trademark Registration No. 006943518 for LYONDELLBASELL dated January 21, 2009; and
- European Union Trademark Registration No. 013804091 for LYONDELLBASELL dated July 2, 2015.

Many additional trademark registrations for the LYONDELL mark, which are owned by Lyondell Chemical Company, are also asserted including European Union Trademark Registration No. 001001866 for LYONDEL dated May 22, 2000 listing such goods and services as chemicals, oils and lubricants, vehicles, furniture, clothing, and design engineering services relating to chemical and petrochemical plants, pipelines, and exploration.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

LyondellBasell Group is a multinational chemical company with European and American roots going back to 1953-54. It has become the third largest plastics, chemicals and refining company and the largest licensor of polyethylene and polypropylene technologies in the world. The Complainant has over 13,000 employees around the globe and manufactures at 55 sites in 17 countries. Its products are sold into approximately 100 countries. In 2007 the company merged with Lyondell Chemical Company and Basell AF SCA. LyondellBasell Group is formed of various affiliated companies, all of them under the ultimate control of LyondellBasell Industries N.V., headquartered in The Netherlands. Complainant owns rights to the trademark LYONDELLBASELL in relation to a range of products and services relating to chemicals, petrochemicals, fuels, olefin polymers, and research and consultancy in the fields of chemical and petrochemical processes. Further, the company Lyondell Chemical Company owns a number of registrations, in several countries, for the trademark LYONDELL listing such goods and services as chemicals, oils and lubricants, vehicles, furniture, clothing, and design engineering services relating to chemical and petrochemical plants, pipelines, and exploration.

The disputed domain name was registered on January 19, 2022 and does not resolve to an active website. However, the domain name was used by the Respondent to send emails to Complainant's clients and impersonate one of Complainant's employees for the purposes of attempted phishing and fraud.

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

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.

However, a preliminary procedural question has been raised with respect to certain of the trademark rights asserted and the named Complainant in this action. The named Complainant is LyondellBasell Industries Holdings B.V. and this entity is the listed owner of the asserted registrations for the LYONDELLBASELL trademark. The Complaint also asserts rights in the trademark LYONDELL and submits evidence of registrations owned by an entity named Lyondell Chemical Company which is not listed as a Complainant in the present action. In asserting the LYONDELL trademark registrations, the Complaint claims that "According 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 (see paragraph 1.4.2 of WIPO Overview 3.0 and the decisions mentioned thereto)." Paragraph 1.4.2 of the cited WIPO Overview 3.0 states that "Where multiple related parties have rights in the relevant mark on which a UDRP complaint is based, a UDRP complaint may be brought by any one party, on behalf of the other interested parties."

The Complaint goes on to state that "LyondellBasell Group is formed of various affiliated companies, all of them under the ultimate control of LyondellBasell Industries N.V., headquartered in The Netherlands." Although it does not specifically claim

that LyondellBasell Industries Holdings B.V. and Lyondell Chemical Company are two of these “affiliated companies” under the umbrella of LyondellBasell Group, it notes that “[t]he Complainant of this administrative proceeding is LyondellBasell Industries Holdings B.V., filer of this Complaint also on behalf of the other interested parties (Lyondell Chemie Nederland B.V., LyondellBasell Industries N.V. and Lyondell Chemical Company”. Submitted into evidence are copies of a corporate brochure and a 2020 Annual Report and these mention the existence of many companies related to LyondellBasell Industries N.V. Although a more specific claim and evidence would have been preferred, under the circumstances of the present case, and in the absence of any objection by the Respondent, the Panel is prepared to accept that LyondellBasell Industries Holdings B.V. and Lyondell Chemical Company are affiliated companies and that assertion of the LYONDELL trademark registrations is appropriate.

PRINCIPAL REASONS FOR THE DECISION

A. The disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights

Paragraph 4(a)(i) of the Policy is a standing requirement which is satisfied if the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. Furthermore, it is not as extensive as the “likelihood of confusion” test for trademark infringement applied by many courts. Rather, under the Policy confusing similarity is commonly tested by comparing the Complainant’s trademark and the disputed domain name in appearance, sound, meaning, and overall impression. See *Administradora de Marcas RD, S. de R.L. de C.V. v. DNS Manager / Profile Group*, 101341 (CAC November 28, 2016).

It has been consistently held that “[r]egistration of a mark with governmental trademark agencies is sufficient to establish rights in that mark for the purposes of Policy paragraph 4(a)(i).” *Teleflex Incorporated v. Leisa Idalski*, FA 1794131 (FORUM July 31, 2018). In this case, the Complainant has submitted screenshots from the WIPO and EUIPO websites demonstrating that it owns registrations of the LYONDELLBASELL trademark and it has further submitted screenshots from these websites indicating that its affiliated entity Lyondell Chemical Company owns registrations of the LYONDELL trademark. It is also claimed that the Complainant’s affiliated entity LyondellBasell Industries N.V. also owns multiple domain names which incorporate the LYONDELLBASELL or LYONDELL trademarks.

Where a disputed domain name consists of a truncation of a trademark or adds generic or geographically descriptive terms, confusing similarity may nevertheless be found under paragraph 4(a)(i) of the Policy. *Sniffies, LLC v. See PrivacyGuardian.org / Serghei Scelcunov*, D2021-4055 (WIPO January 27, 2022) (confusing similarity found where “the disputed domain name consists of the term ‘sniff’, a dominant feature of the Complainant’s mark, followed by the descriptive word ‘map’”); Also, *BolognaFiere Cosmoprof S.p.A. v. Sensations Marcom Pvt. Ltd*, 104513 (CAC May 23, 2022) (“the disputed domain name consists of the COSMOPROF trademark followed by the term ‘Las Vegas’, a geographic term well connected with the business of the Complainant.”). Here, the disputed domain name contains the entirety of the LYONDELL trademark and a truncation of the LYONDELLBASELL trademark followed by the words “chemie” (translated to “chemistry” in English) and “Nederland”. Thus, the Complainant’s trademarks are clearly recognizable in the second level of the disputed domain name and the added generic or geographic terms do not lessen confusion but rather enhance it as they directly relate to the field of business and headquarters location of the Complainant and its affiliated companies. Lest there be any doubt, the Respondent has engaged in a fraudulent email scheme, as discussed more fully below, and so it appears that the Respondent has created the disputed domain name specifically for its value of being confused with the Complainant’s trademarks.

Of course, the extension “.com” adds no meaning to the second level of the disputed domain name. *Lesaffre et Compagnie v. Tims Dozman*, 102430 (CAC May 2, 2019) (“the top-level suffix in the domain name (i.e. the ‘.com’) must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.”).

Accordingly, the Panel finds that the Complainant has rights to the LYONDELLBASELL and LYONDELL trademarks and that the disputed domain name is confusingly similar to such trademarks. Thus, the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. The Respondent has no rights or legitimate interests in respect of the disputed domain name

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant has the burden of making a prima facie showing that the respondent has no rights or legitimate interests in a domain name. *Cephalon, Inc. v. RiskIQ, Inc.*, 100834 (CAC September 12, 2014). Once this standard is met, the burden shifts to the respondent to demonstrate that it does have rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy offers respondents several examples of how to demonstrate their rights or legitimate interests to a domain name.

With reference to 4(c)(ii), the Complaint states that the Respondent is not commonly known by the disputed domain name, that the Complainant “has no relationship with the Respondent whatsoever” and that it “has never received any approval” to use the trademarks of the Complainant and its affiliated companies. The Respondent does not contest this. Further, reference may be made to the WHOIS record when considering this issue. *MAJE v. enchong lin*, 102382 (CAC April 14, 2019) (“panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name.”). The WHOIS record for the disputed domain name lists the Registrant name as “Steven Smith” and the Registration organization as “Web Company”. These names bear no resemblance to the Complainant’s trademarks or to the disputed domain name and the Respondent has not submitted any claim or evidence that it is known otherwise. As such, the Panel finds no evidence upon which to conclude that the Respondent is commonly known by the disputed domain name.

Next, under Paragraphs 4©(i) and 4(c)(iii) of the Policy the Panel considers whether the Respondent is using the disputed domain name to make a bona fide offering of goods or services or whether it is making a legitimate non-commercial or fair use of the disputed domain name. Failing to resolve a confusingly similar domain name to any web content or resolving it to a static parking page is typically not considered to be a bona fide use. See, *Consortio Vino Chianti Classico v. Fabio Baccilli*, 104426 (CAC May 9, 2022) (no bona fide use found, in part, because the disputed domain name “does not resolve to an active website”). Here, although the Complainant has not submitted any screenshot or other evidence of the website resolution for the disputed domain name, the Panel has attempted to browse to the domain name with no success. The Respondent, having not filed a Response or made any submission in these proceedings, does not offer any explanation for its use of the disputed domain name. Considering the available evidence, it is apparent to this Panel that the Respondent is not using the disputed domain name for a bona fide offering of goods or services or in connection with a legitimate non-commercial or fair use under Paragraphs 4(c)(i) and 4(c)(iii) of the Policy.

Further, the Complainant asserts that the disputed domain name was used for impersonating and phishing emails. Such activity, if supported by evidence, indicates a lack of rights or legitimate interests. *Arla Foods Amba v. ESMM EMPIRE staincollins*, 101578 (CAC August 9, 2017) (“Respondent has used the disputed domain name to impersonate the Complainant and fraudulently attempt to obtain payments and sensitive personal information. The use of the disputed domain name in connection with such illegal activities cannot confer rights or legitimate interests on the Respondent.”). Here, the Complainant asserts that an email address constructed on the disputed domain name was used “to impersonate the sales department of Lyondell Chemie Nederland B.V. and mislead a client, recipients of the emails, requesting payments”. The Respondent “signed said message with the name of the ... ‘Sales Director and Marketing Manager’” and the Complainant submits into evidence a copy of one such email. The email discusses the reputation of Lyondell Chemie Nederland B.V., and lists for sale the chemical “Butyl acetate” at a stated price. The signature block of this email displays a copy of the LYONDELLBASELL graphic logo, names one of the Complainant’s employees, states its title as “Sales Director and Marketing Manager”, and concludes with mention of a postal address and telephone number in the Netherlands. Also included is reference to the messaging service WhatsApp followed by a phone number. The Complainant asserts that this is an example of “[s]torage spoofing (also known as terminal spoofing) [which] is a specific form of phishing. Storage spoofing covers all varieties of the sale of non-existent storage capacities and stocks of resources and materials at port terminals.” The Respondent has not disputed the Complainant’s assertions or evidence which are plausible, on their face. As such, the Panel finds that this evidence of a fraudulent phishing scheme further supports a prima facie claim that the Respondent is not making a bona fide use of the disputed domain name or a legitimate non-commercial or fair use thereof.

For all of the above-stated reasons, this Panel finds, by a preponderance of the evidence, that the Complainant has met its

burden of proof and that the Respondent has not refuted this to show that it has any rights or legitimate interests in the disputed domain name. Thus, it is held that the Respondent has no rights or legitimate interests in respect to the disputed domain name under Paragraph 4(a)(ii) of the Policy.

C. The disputed domain name was registered and is being used in bad faith

Under paragraph 4(a)(iii) of the Policy, the complainant must demonstrate both that the domain name was registered and is being used in bad faith. Further guidance on that requirement is found in paragraph 4(b) of the Policy, which sets out four examples of actions by a respondent that may satisfy this burden of proof.

A threshold question is whether, at the time that it registered the disputed domain name, Respondent was aware of the Complainant's trademarks. The registration of the Complainant's trademarks preceded the creation of the disputed domain name by many years. Further, the Complainant asserts that "[g]iven the distinctiveness and reputation of LyondellBasell's business and trademarks worldwide (see Annexes 1-2), it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of LyondellBasell and its rights in such marks." In support of this claim the Complainant submits copies of its corporate brochure and its 2020 Annual Report. It also claims that its trademarks are "also widely promoted on most popular social media with channels and pages specifically dedicated to it, i.a. on Twitter (<https://twitter.com>) and Facebook (<https://www.facebook.com>) used also for promotional and advertising purposes." However, no evidence is submitted regarding these social media channels. The Complainant's reputation aside, from the use made of the disputed domain name, i.e., for phishing emails that impersonate the Complainant, it is evident that the Respondent had actual knowledge of and was specifically targeting the Complainant's trademarks. See *Lyondellbasell Industries Holdings B.V. v. Emma Will*, DNL2022-0006 (WIPO April 14, 2022) (where phishing emails were sent using the asserted trademark, "in view of the use that the Respondent has made of the Domain Name, it is inconceivable that the Respondent does not was aware of Plaintiff and the Mark at the time of registration."). Supporting this assertion is a submission of one the Respondent's phishing emails which copies the graphic logo and full LYONDELLBASELL trademark and targets one of the Complainant's clients. This definitively indicates the Respondent's actual knowledge of the Complainant's trademarks and leads to the conclusion that the disputed domain name was registered in bad faith.

Next, attention is given to the Complainant's claim that the Respondent uses the disputed domain name in bad faith. Here, the disputed domain name was created on January 19, 2022 which is long after the issuance of the Complainant's cited trademark registrations. The disputed domain name does not resolve to any website. It has been held in many prior UDRP decisions that non-use of a domain name for website content, will not prevent a finding of bad faith under the doctrine of passive holding. Rather "panellists will look at the totality of the circumstances in each case, including: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put." *3Shape A/S v. Michael Nadeau*, 102312 (CAC March 12, 2019), citing the seminal decision in *Telstra Corporation Limited v. Nuclear Marshmallows*, D2000-0003 (WIPO February 18, 2000). As noted above, Complainant does not submit any evidence of the website resolution for the disputed domain name but the Panel has been unable to browse to or view any such site. Moreover, the LYONDELLBASELL and LYONDELL trademarks are distinctive and the Respondent has failed to submit a response or submit any evidence of good faith use. In this case, the Respondent's failure to resolve the disputed domain name to any web page, along with the totality of the circumstances, supports the Complainant's assertion that the domain name is used in bad faith.

Further, Paragraph 4(b)(iv) of the Policy states that bad faith may be found where a respondent intentionally attempts to attract, for commercial gain, internet users to its web site or other on-line location by creating a likelihood of confusion with a complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its products or services. The Complainant asserts that the Respondent is using the disputed domain name in furtherance of an email phishing scheme. Such activity provides quite firm evidence of bad faith use, for commercial gain, based upon confusion with an asserted trademark. *Twilio Inc. v. Namecheap baddo*, FA 1986813 (FORUM April 1, 2022) (bad faith found where the "Respondent attempts to pass itself off and impersonate Complainant to [sic] offering fake job listings and perpetuate a scheme to defraud third parties into tendering payments to Respondent's account."). As noted above, the Complainant submits a copy

of an email in which the Respondent uses the disputed domain name in the “from” address, displays the LYONDELLBASELL trademark and graphic logo, and offers to sell certain chemical products to one of the Complainant’s clients. The Complainant describes this as “[s]torage spoofing (also known as terminal spoofing)”. The Respondent has not participated in this case and so it does not dispute the Complainant’s assertions or provide an alternate explanation for its actions. As such, the Panel finds, by a preponderance of the evidence, that the disputed domain name has been used in bad faith under Paragraph 4(b)(iv) and thus under Paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. LYONDELLCHEMIENEDERLAND.COM: Transferred
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PANELLISTS

Name	Steven M. Levy, Esq.
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DATE OF PANEL DECISION 2022-05-25

Publish the Decision
