

Decision for dispute CAC-UDRP-104719

Case number	CAC-UDRP-104719
Time of filing	2022-07-25 10:38:59
Domain names	LyondellChemieNederlands.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	LyondellBasell Industries Holdings B.V.
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Complainant representative

Organization	Barzanò & Zanardo Milano S.p.A.
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Respondent

Name	Massimo Selle
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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 <LyondellChemieNederlands.com>.

IDENTIFICATION OF RIGHTS

LyondellBasell Group (the Complainant) is a multinational chemical company with European and American roots which 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 in approximately 100 countries.

The Complainant claims ownership of fifty registrations of the LYONDELLBASELL trademark, amongst these are the following:

- US Trademark Registration No. 3634012 for LYONDELLBASELL, registered on June 9, 2009;
- US Trademark Registration No. 5096173 for LYONDELLBASELL, registered on December 6, 2016;
- European Union Trademark Registration No. 006943518 for LYONDELLBASELL, registered on January 21, 2009; and
- European Union Trademark Registration No. 013804091 for LYONDELLBASEL, registered on 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.

The Complainant also owns multiple domain names consisting of the wordings "LYONDELLBASELL" and "LYONDELL", such as <lyondellbasell.com> used as the main website of LyondellBasell since October 23, 2007 and <lyondell.com> registered on February 21, 1997.

The disputed domain name <LyondellChemieNederlands.com> was registered on April 11, 2022.

FACTUAL BACKGROUND

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

PARTIES' CONTENTIONS:

COMPLAINANT:

- The disputed domain name is identical or confusingly similar to the protected mark

As regards the first element of the Policy, the Complainant states it is evident that the LYONDELLBASELL trademarks and (in particular) the LYONDELL trademarks are recognizable within the disputed domain name and, thus, the disputed domain name is confusingly similar to the marks in which the Complainant has rights.

With respect to the LYONDELL trademark, the disputed domain name is undoubtedly confusingly similar to such mark, since it incorporates the entirety of the dominant and distinctive part of the trademark (i.e. the wording LYONDELL).

In addition, comparing the disputed domain name and the LYONDELL trademarks to the domain name <lyondell.com> the only difference is the addition of the generic, non-distinctive and descriptive word "chemie" and the geographical indication "nederlands". According to the Complainant, such addition neither affects the attractive power of such trademark, nor is sufficient to prevent the finding of confusing similarity between the disputed domain name and such mark, but even enhances the likelihood of confusion.

With respect to the LYONDELLBASELL trademark, the Respondent has eliminated the part "BASELL" of the trademark and added as mentioned before the generic, non-distinctive and descriptive word "chemie" and the geographical indication "nederlands". The disputed domain name is also almost identical to the corporate name of Lyondell Chemie Nederland from which it differs only for the addition of an "s" as the last letter.

- Respondent does not have any rights or legitimate interest in the disputed domain name

As regards the second element of the Policy, the Complainant denies that the Respondent has been authorized to use the Complainant's trademarks in the disputed domain name. According to the Complainant, the Respondent has never received any approval of the Complainant (or of the other related affiliated companies), expressed or implied, to use its (their) trademarks or any other mark identical or confusingly similar to such marks, nor to register any domain name identical or confusingly similar to such marks.

In addition, there is no evidence that the Respondent has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

Finally, the Complainant claims, that the Respondent uses the disputed domain name to further a phishing scheme.

Therefore, the Complainant contends that the Respondent has no right nor legitimate interest in respect of the disputed domain name.

- The disputed domain name has been registered and is being used in bad faith

As regards the third element of the Policy, the Complainant contends that the Respondent has registered the disputed domain name and uses it in bad faith.

The Complainant claims that the Respondent registered the disputed domain name confusingly similar to the Complainant's well-known prior trademarks. Given the distinctiveness and reputation of LyondellBasell's business and trademarks worldwide, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of LyondellBasell and its rights in such marks. Thus, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainants and their marks (paragraph 4(b)(iv) of the UDRP Policy).

Furthermore, according to the Complainant, the disputed domain name is registered in name of Massimo Selle: it is clearly a false information as Massimo Selle is the key account manager of sales department of LYONDELLBASELL INDUSTRIES HOLDINGS B.V. and it is not involved in the registration of the disputed domain name.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

RESPONDENT:

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

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 case.

In asserting the LYONDELL trademark registrations, the Complaint claims that "LyondellBasell Industries N.V., LyondellBasell Industries Holdings B.V., Lyondell Chemie Nederland 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". The Complainant further 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.

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

PRINCIPAL REASONS FOR THE DECISION

The UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (the “Policy”) provides that complainant must prove each of the following to obtain transfer or cancellation of the domain name:

1. that respondent’s domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
2. that respondent has no rights or legitimate interests in respect of the domain name; and
3. the domain name has been registered and is being used in bad faith.

1) The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights

The Panel is satisfied that the Complainant is the owner of LYONDELLBASELL and LYONDELL trademark registrations that predate the registration of the disputed domain name. 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.

Here, the disputed domain name contains the entirety of the LYONDELL trademark and a truncation of the LYONDELLBASELL trademark followed by the words “chemie” and “Nederlands”.

With respect to the LYONDELL trademark, the disputed domain name is undoubtedly confusingly similar to such mark, since it incorporates the entirety of the dominant and distinctive part of the trademark (i.e. the wording LYONDELL).

With respect to the LYONDELLBASELL trademark, the Respondent has eliminated the part “BASELL” of the trademark and added as mentioned before the generic, non-distinctive and descriptive word “chemie” and the geographical indication “nederlands”. The disputed domain name is also almost identical to the corporate name of Lyondell Chemie Nederland from which it differs only for the addition of an “s” as the last letter.

Thus, in the Panel's view, the Complainant's trademarks are clearly recognizable 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.

Obviously, the addition of a purely generic top-level domain ("gTLD") ".com" does not add any distinctiveness or prevent the disputed domain name from being confusingly similar to the Complainant's LYONDELLBASELL and LYONDELL trademarks.

Previous UDRP panels have also held that the gTLD is not to be considered when assessing whether a domain name is identical or confusingly similar to a trademark. See, e.g., *Wiluna Holdings, LLC v. Edna Sherman*, FA 1652781 (Forum January 22, 2016) or *Red Hat Inc. v. Haecke*, FA 726010 (Forum July 24, 2006) (concluding that the <redhat.org> domain name is identical to the complainant's red hat mark because the mere addition of the gTLD was insufficient to differentiate the disputed domain name from the mark).

As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, for the purposes of the first element of the Policy.

2) The Respondent lacks rights or legitimate interests in the disputed domain name

Under the Policy, a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP (see WIPO Overview 2.0, paragraph 2.1).

The Panel finds that the Respondent does not have a legal right to use the wording "LYONDELL" as part of its disputed domain name. The Respondent is not in any way affiliated with the Complainant and its affiliated companies, nor is it authorized to register the disputed domain name.

The Complainant claims, that the Respondent uses the disputed domain name to further a phishing scheme. 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 the disputed domain name does not currently resolve to an active website, however is redirected to the official website of the Complainant and set up to send email, therefore indicating a high risk that it could be involved in phishing activities/storage Spoofing. The Panel finds that such use of the disputed domain name is clearly not a bona fide, legitimate or fair use under the UDRP Policy.

Therefore, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interest in the disputed domain name. The Respondent failed to file a Response in which it could have provided evidence in support of its rights or legitimate interests. The Respondent is not commonly known by the disputed domain name and has not been authorised by the Complainant (and its affiliated companies) to use its trademarks. The 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.

Thus, the Panel believes that the Respondent lacks rights or legitimate interests in the disputed domain name for the purposes of the second element of the Policy.

3) The disputed domain name has been registered and is being used in bad faith

The Panel agrees with the Complainant that its LYONDELLBASELL and LYONDELL trademarks are distinctive and well-

known globally. The Complainant's trademarks predate the registration of the disputed domain name. The Panel finds that there appears no reason why the Respondent would register the Complainant's trademark as part of the disputed domain name, other than to create the impression that it is connected to the Complainant's business. Given the distinctiveness of the Complainant's trademarks worldwide, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks.

The fact that the Respondent has registered the disputed domain name that is confusingly similar to them indicates and in the absence of any evidence contrary (or any administratively compliant response at all) being put forward by the Respondent, that the Respondent, according to this Panel, had knowledge of the Complainant's trademarks and that it had such knowledge before the registration and use of the disputed domain name.

Moreover, the disputed domain name is registered in name of Massimo Selle, which according to the Complainant is clearly a false information as Massimo Selle is the key account manager of sales department of LYONDELLBASELL INDUSTRIES HOLDINGS B.V. and it is not involved in the registration of the domain name. Hiding the Respondent himself behind false identity is certainly indicia of bad faith registration and use. Such finding is also supported by the fact that disputed domain name was redirected to LyondellBasell official website and it is purportedly involved in scam/phishing attempt which in the Panel's view, constitutes bad faith registration and use pursuant to the Policy.

Accordingly, the Panel concludes that the Complainant has satisfied the third element of the Policy, that is that the Respondent's registration and use of the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. LYONDELLCHEMIENEDERLANDS.COM: Transferred

PANELLISTS

Name	Mgr. Barbora Donathová, LL.M.
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DATE OF PANEL DECISION 2022-09-02

Publish the Decision
