

Decision for dispute CAC-UDRP-104789

Case number	CAC-UDRP-104789
Time of filing	2022-08-31 10:20:33
Domain names	Lyondellbasellindustries.asia, Lyondellbasellindustries.online, Lyondellbasellindustries.site

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

Organization	mojunxia
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous trademarks worldwide, including but not limited to the following:

- United States Trademark Registration No. 3634012 for LYONDELLBASELL, registered on June 9, 2009;
- United States Trademark Registration No. 5096173 for LYONDELLBASELL, registered on December 6, 2016;
- European Union Trademark Registration No. 006943518 for LYONDELLBASELL, registered on January 21, 2009;
- European Union Trademark Registration No. 013804091 for LYONDELLBASELL, registered on July 2, 2015; and
- International Trademark Registration No. 972681 for LYONDELLBASELL, registered on May 20, 2008.

FACTUAL BACKGROUND

The Complainant, LyondellBasell Industries Holdings B.V., is a multinational chemical company with European and American roots going back to 1953-54 when the predecessor company scientists Professor Karl Ziegler and Giulio Natta (jointly awarded the Nobel Prize in Chemistry in 1963) made their discoveries in the creation of polyethylene (PE) and polypropylene (PP). The Complainant is headquartered in The Netherlands and controls the LyondellBasell Group which is formed of various affiliated companies.

The Complainant is 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. According to the Complainant's 2020 annual report LyondellBasell generated \$4.9 billion in income from continuing operations, EBITDA of \$7.1 billion and \$12.28 diluted earnings per share. The Complainant is also listed on the New York Stock Exchange since 2010. The Complainant states that it is widely promoted on popular social media such as Twitter and Facebook which is also used for promotional and advertising purposes.

The Complainant states that it owns multiple domain names, consisting, inter alia, the LYONDELLBASELL mark, such as <lyondellbasell.com> which is used as the Complainant's main website since October 23, 2007.

The disputed domain names were registered by the Respondent on July 28, 2022 and do not resolve to any active website. However, the disputed domain name <lyondellbasellindustries.asia> is used in connection to email accounts.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 have been registered and are 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.

Preliminary Issue: Language of Proceedings

Paragraph 11 of the Rules provides that:

"(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The language of the Registration Agreement for the disputed domain names is Chinese.

The Complainant requested that the language of the proceeding be English for the following reasons:

- (i) neither the Complainant nor its representatives understand Chinese;
- (ii) the disputed domain names are in Latin characters and includes English terms, "industries", "site" and "Asia";
- (iii) the Respondent did not object to the request, and
- (iv) requiring the Complainant to translate the Complaint would incur additional costs and cause unnecessary delays.

The Panel cites the following with approval: "Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances

of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (See *Groupe Auchan v. xmxzl*, WIPO Case No. DCC2006 0004).

Having considered the above factors, the Panel determines that English be the language of the proceeding. The Panel agrees that the Respondent appear to be familiar with the English language, taking into account the Respondent's selection of the English-language trademark and the domain names in dispute. In the absence of an objection by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint and evidence into Chinese.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns numerous trademark registrations of the LYONDELLBASELL mark.

The differences between the disputed domain names and the Complainant's LYONDELLBASELL trademark are the addition of a descriptive term "industries" and the TLDs ".asia", ".online" and ".site" which in the Panel's view does not avoid confusing similarity with the Complainant's trademark.

It is established that where a trademark is recognizable within the disputed domain name, the addition of a descriptive term would not prevent a finding of confusing similarity under the first element. (See WIPO Overview 3.0, section 1.8). It is further established that TLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. (See WIPO Overview 3.0, section 1.11). The addition of a TLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see *Accor v. Noldc Inc.*, WIPO Case No. D2005-0016; *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *L'Oréal v Tina Smith*, WIPO Case No. 2013-0820; *Titoni AG v Runxin Wang*, WIPO Case No. D2008-0820; and *Alstom v. Itete Peru S.A.*, WIPO Case No. D2009-0877). Further, in this case, the addition of the descriptive term "industries" is related to and descriptive of the Complainant's business activities which increases the likelihood of confusion.

Therefore, the Panel finds that the disputed domain names are confusingly similar to the LYONDELLBASELL mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the LYONDELLBASELL mark (see *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. D2015-1149; *Sanofi-Aventis v. Abigail Wallace*, WIPO Case No. D2009-0735). The Complainant also submitted evidence that its registrations and use of the trademarks predate the registration of the disputed domain names by at least 14 years. In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by any of the

disputed domain names.

The Panel also notes that in the present case, the addition of the term “industries” is within the Complainant’s field of commerce or indicating goods and/or services related to the brand, as the Complainant is well-known in the plastics and chemical industries, which may trigger an inference of affiliation with the Complainant even though the Respondent is in no way affiliated with the Complainant (see WIPO Overview 3.0, section 2.5.1).

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names which is sufficient to rebut the Complainant’s prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain names and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

In this case, the evidence shows that the Complainant’s mark has attained such goodwill and reputation such that the Respondent is unlikely to have registered the disputed domain names without sight and knowledge of the Complainant’s mark and it is implausible that there is any good faith use to which the disputed domain names may be put to. It is also the Complainant’s evidence that the Respondent could not have registered the disputed domain names without prior knowledge of the Complainant’s mark as the Respondent’s name has no connection with the Complainant’s LYONDELLBASELL mark which was registered long ago.

The disputed domain names are being passively held by the Respondent as they resolved to inactive websites. Panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (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. (See WIPO Overview 3.0, Section 3.3).

Having regard to the above factors in the particular circumstances of the present case whereby the Complainant’s LYONDELLBASELL mark is sufficiently distinctive, the Respondent has failed to submit a Response and the fact that the Respondent has used a privacy service to hide its contact information, it is implausible to put any good faith use to the disputed domain names.

The Complainant further provided evidence that the Respondent has established MX records for the disputed domain name <lyondellbasellindustries.asia> which is indicative of bad faith because it “give[s] rise to the strong possibility that Respondent intended or intends to use the disputed domain name to send emails as part of a fraudulent phishing scheme.” (See Altria Group, Inc. and Altria Group Distribution Company v. Emerson Terry, WIPO Case No. D2021-0045).

In the circumstances of the present case, given the Respondent’s likely knowledge of the Complainant’s famous mark, the Complainant’s significant reputation and goodwill in its mark, the failure of the Respondent to present a credible evidence-backed rationale for registering the disputed domain names, that the disputed domain names are confusingly similar to the Complainant’s mark and proof of the MX records established for one of the disputed domain names, the Panel is of the view that the Respondent registered or acquired the disputed domain names to attract, for commercial gain, Internet users to the Respondent’s web site or other on-line location, by creating a likelihood of confusion with the Complainant and its mark.

The Panel has also taken into consideration that the Respondent did not submit a Response in this proceeding and that the Respondent used a privacy service to mask its identity during registration of the disputed domain names, which is another indication of bad faith registration and use.

Based on the evidence presented to the Panel, as presented and discussed above, the Panel draws the inference that the disputed domain names were registered and are being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. LYONDELLBASELLINDUSTRIES.ASIA: Transferred
2. LYONDELLBASELLINDUSTRIES.ONLINE: Transferred
3. LYONDELLBASELLINDUSTRIES.SITE: Transferred

PANELLISTS

Name	Mr. Jonathan Agmon
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DATE OF PANEL DECISION 2022-10-06

Publish the Decision