

Decision for dispute CAC-UDRP-104616

Case number	CAC-UDRP-104616
Time of filing	2022-08-30 10:11:20
Domain names	lyondellbasells.com, lyondellbasellinc.com, lyondiellbasell.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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	venon black, Raizen Energia
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings relating to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of various trademarks, including:

- US trademark no. 3634012 for "LYONDELLBASELL" since June 9, 2009;
- US trademark no. 5096173 for "LYONDELLBASELL" since December 6, 2016;
- European Union Trademark (EUTM) no. 006943518 for "LYONDELLBASELL" since January 21, 2009;
- EUTM no. 013804091 for "LYONDELLBASELL" since July 2, 2015;
- EUTM no. 001001866 for "LYONDELL" since May 22, 2000.

FACTUAL BACKGROUND

The Complainant 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).

Ever since, the Complainant has become the third-largest plastics, chemicals, and refining company and the world's largest licensor of polyethylene and polypropylene technologies. 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.

According to the 2020 annual report, the Complainant generated \$4.9 billion in income from continuing operations, EBITDA of \$7.1 billion, and \$12.28 diluted earnings per share.

The Complainant has been listed on the New York Stock Exchange since 2010.

On December 20, 2017, the Complainant celebrated the 10th anniversary of the merger of Lyondell Chemical Company and Basell AF SCA, a transaction that created one of the world's largest plastics, chemicals, and refining companies.

LyondellBasell Group is formed of various affiliated companies, all under the ultimate control of the Complainant, headquartered in The Netherlands.

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

The disputed domain names are the following:

- <lyondellbasells.com> was registered on June 8, 2022, in the name of Venon Black, Raizen Energia, as for disclosed WHOIS information provided on September 2;

- <lyondellbasellinc.com> was registered on June 3, 2022, in the name of Danny Niles for disclosed WHOIS information provided on September 2;

- <lyondiellbasell.com> was registered on June 27, 2022, in the name of James Greens for disclosed WHOIS information provided on September 2;

- <LyondellBasellChemie.com> was registered on July 6, 2022, in the name of Rachel Gobby, for disclosed WHOIS information provided on September 2.

PARTIES CONTENTIONS

COMPLAINANT:

A. PRELIMINARY PROCEDURAL QUESTIONS

The Complainant of this administrative proceeding is LyondellBasell Industries Holdings B.V., the 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). Accordingly, the Complainant requests that the transfer decision be directed to the Complainant.

Request for consolidation of the disputed Domain Names: multiple respondents Policy 4(f).

As illustrated below, despite the four domain names being prima facie and formally registered in the name of four different subjects, the Complainant argues that the four provided names are indeed only pseudonyms hiding a single subject controlling the disputed domain names.

The domain name holder was or is actively using the disputed domain names to create e-mail accounts. It has set up all the

disputed domain names with active MX records, indicating that there were, are, or intended to be used to send and receive e-mails.

In the present case, different elements concur in demonstrating the common control of the disputed domain names:

- a) The disputed domain names have been registered in a limited time frame of fewer than 30 days (the first one was registered on June 8, 2022, while the last was on July 6, 2022);
- b) The disputed domain names <lyondellbasells.com>, <lyondellbasellinc.com>, and <lyondiellbasell.com> have been registered with the same Registrar Namecheap and using the same Privacy Protect service; the only exception in this pattern is the disputed domain name <LyondellBasellChemie.com> that is using a different registrar and a different Privacy Protect service;
- c) The disputed domain names are all using the Hosting services of Namecheap;
- d) They have been used identically to create email accounts, as they all have been set up with MX records. In particular, the disputed domain names <lyondellbasells.com>, <lyondiellbasell.com>, and <LyondellBasellChemie.com> are using identical MX records offered by jellyfish.systems and with identical IP addresses: 198.54.127.242, 63.250.43.74 and 162.255.118.13;
- e) The disputed domain names reflect a clear naming pattern as they are all containing the trademark "LYONDELL BASELL", with limited modifications: <lyondellbasells.com> and <lyondiellbasell.com> differ from each other only for the final letter "s" of the first and for an "i" included in the second one, while <lyondellbasellinc.com> differs from the others in the addition of the term "Inc" and <LyondellBasellChemie.com> the word "Chemie". Please note that both Chemi and Inc are explicit references to the Complainant;
- f) As per the disclosed information obtained according to the filing of the domain name dispute procedure, the Complainant found out that formally the disputed domain names have different registrant names and contact information; however, they are using the same naming scheme: they all use the English name, e-mail address created with the free service of Google.com and provided - apart from <Lyondellbasellinc.com> - incomplete addresses (moreover those addresses are all based in USA, with the only exception of <Lyondlellbasell.com>).

In light of the above, although formally the disputed domain names are registered in the name of a different subject, the Complainant argues that it is effortless to create a free address with Gmail and make up a fake English name: the Complainant, therefore, would like to stress the more relevance of the elements in common among the disputed domain name than the minimal differences.

In the present case, the fact set upon fairly reflects that the Complainant has been the target of common conduct based on the registration and use of the disputed domain names and that such behavior affects the Complainant's rights in the Complainant's trademark.

B. THE DISPUTED DOMAIN NAMES ARE IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain names incorporate the entirety of the dominant and distinctive part of the trademark (i.e., the wording LYONDELL BASELL). While each case is judged on its own merits, in UDRP cases where a domain name incorporates the entirety of a trademark or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will typically be considered confusingly similar to that mark under the first element of the UDRP (see paragraph 1.7 WIPO Overview 3.0 and the decisions mentioned thereto).

Comparing each disputed domain name with the Complainant's trademarks, the differences are the following:

- in <lyondellbasells.com>, the addition of final "s";
- in <lyondiellbasell.com>, the addition of a letter "i";
- in <lyondellbasellinc.com>, the addition of the generic term "Inc" indicating;
- in <LyondellBasellChemie.com>, the generic, non-distinctive, and descriptive word "chemie".

All the mentioned additions neither affect the attractive power of such trademarks nor is sufficient to prevent the finding of confusing similarity between the disputed domain names and the marks. Still, they even enhance the likelihood of confusion.

Considering <LyondellBasellChemie.com>, please also consider that it is similar to the corporate name of Lyondell Chemie Nederland and Lyondell Chemical Company.

Hence, the first requirement of the UDRP Policy is satisfied.

C. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DISPUTED DOMAIN NAMES

The Complainant contends that the Respondent lacks rights or legitimate interests in the disputed domain names for the following reasons:

- The Complainant (or the other related parties) has no relationship with the Respondent whatsoever;
- The Respondent has never received any approval of the Complainant (or the other related parties), 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;
- There is no evidence that the Respondent has acquired any rights in a trademark or trade name corresponding to the disputed domain names;
- The disputed domain names are set up to send emails, indicating a high risk that they could be involved in phishing activities/storage Spoofing; Moreover, <lyondellbasells.com> was also redirected to the official website of Complainant and <lyondellbasellinc.com> is still redirected to that website. Such use of the disputed domain names is not a bona fide, legitimate or fair use under the UDRP Policy.

D. THE DISPUTED DOMAIN NAMES WERE REGISTERED AND ARE BEING USED IN BAD FAITH

The Respondent registered the disputed domain names confusingly similar to the Complainant's well-known prior trademarks.

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 names without knowing the Complainant 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).

Also consider the pattern of abusive registrations by the Respondent that has registered the disputed domain names containing "Lyondell Basell": it is another element usually considered by panels in assessing a finding of bad faith.

With regards to the use in bad faith, the Complainant refers to the fact that the disputed domain names are set up to send emails, therefore indicating a high risk that they could be involved in phishing activities/storage Spoofing; Moreover, <lyondellbasells.com> was also redirected to the official website of Complainant and <lyondellbasellinc.com> is still redirected to that website. Such use of the domain names is not a bona fide, legitimate or fair use under the UDRP Policy.

Regarding the other Domain Names not currently redirected to an active website, it is a consolidated principle of UDRP that non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding.

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 (as in the present case, in which in three WHOIS the information provided are incomplete), and (iv) the implausibility of any good faith uses to which the domain name may be put.

The high degree of distinctiveness of the Complainant's mark certainly prevents any good faith use of the domain names.

RESPONDENT

No administratively compliant Response was filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that some of the disputed domain names, as described below, are identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has shown the Respondent to have no rights or legitimate interests in respect of some of the disputed domain names, as described below (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

To the satisfaction of the Panel, the Complainant has shown that some of the disputed domain names, as described below, have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

Before moving on to the dispute's substance, the Panel must weigh in on a couple of procedural matters.

The first matter is a request for consolidation by the Complainant of this administrative proceeding, namely, LyondellBasell Industries Holdings B.V., the 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.

In this case, the interested parties all belong to the same group and are represented collectively under the Complainant and have rights in the relevant marks on which this Complaint is based. The WIPO Overview 3.0 in paragraph 4.11.1 sets forth two considerations when determining the consolidation under a case of multiple Complainants against a Respondent, namely, a common grievance while respecting equity and procedural efficiency.

In this matter, the Complainant advances persuasive arguments to the Panel. The Complainant represents the interested parties, as they all belong to the same industrial group and share trademarks where the dominant term is "LYONDELLBASELL".

Because of the above, the Panel does not believe that consolidating the interested parties under a single Complaint, represented by the Complainant, upsets the careful equitable balance of this proceeding while at the same time aiding in its procedural efficiency.

The Panel also notes that the remedy requested is transferring the disputed domain names to the Complainant, namely LyondellBasell Industries Holdings B.V., if successful.

The Panel must now turn to the matter related to the consolidation of multiple Respondents. For this, the Panel, similarly to the above procedural matter, finds guidance under paragraph 4.11.2 of the WIPO Overview 3.0, namely, "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties."

In this matter, the Complainant provided various arguments under element A above for PRELIMINARY PROCEDURAL QUESTIONS.

The Panel, to gather more evidence to base the final determination on the consolidation of multiple Respondents, issued a Panel Order per the General Powers granted under the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), specifically Rule no. 10, and Rule no. 12, on October 17, requesting the Complainant to provide any additional evidence it deemed necessary to support its request by October 19. The Panel similarly allowed the Respondent(s) until October 21 to provide comments or evidence on the request for consolidation of multiple Respondents as it deemed necessary.

The Panel informed the Parties that should no submissions be made, the Panel may make the necessary inferences based on the case record and any additional circumstances related to the lack of response to the further request.

The Complainant submitted a response to the Panel Order on October 18. The Respondent(s) did not provide submissions concerning the Panel Order.

The Panel notes that the Complainant reiterated the same arguments provided in the Complaint without substantially providing new arguments or evidence.

Based on the above, the Panel notes that the disputed domain names were all registered within 30 days. Based on the evidence on record, the disputed domain names appear to be utilizing the hosting services of Namecheap.

Additionally, three of the disputed domain names, namely, <lyondellbasells.com>, <lyondiellbasell.com>, and <LyondellBasellChemie.com>, are using identical MX records offered by jellyfish.systems and with similar IP addresses. This leaves the disputed domain name <lyondellbasellinc.com> the only one utilizing different MX records; however, this last disputed domain name uses the same Registrar Namecheap, and the same Privacy Protect service, as two of the other disputed domain names, namely, <lyondellbasells.com> and <lyondiellbasell.com>.

Finally, there is also a similar pattern in the use of the Complainant's trademark that, on the balance of probability and based on the evidence on record, indicates that the disputed domain names are indeed subject to common control. Accordingly, based on this, the Panel determines that the consolidation of Respondents would be fair and equitable to all parties.

The Panel is satisfied that all procedural requirements under UDRP have been met, and there is no other reason why it would be unsuitable for providing the Decision.

A. Identical or Confusingly Similar

Regarding the first step under this element, and as per evidence on record, the Complainant owns several trademarks containing the term "LYONDELLBASELL" since at least 2009 and "LYONDELL" since at least 2000. Therefore, based on this, the Panel is satisfied that the Complainant has shown its trademark rights in "LYONDELLBASELL" and "LYONDELL".

Turning now to the second step under this element, namely, assessing the confusing similarity between the disputed domain names and the trademarks, the Panel notes that the disputed domain names reproduce the trademark "LYONDELLBASELL" in its entirety, with some slight changes as described below.

- The disputed domain name <lyondellbasells.com> adds the letter "s" at the end of the trademark reproduction;
- The disputed domain name <lyondellbasellinc.com> adds the three letters "inc" at the end of the trademark reproduction;
- The disputed domain name <lyondiellbasell.com> adds the letter "i" in between the letter "d" and "e" of the trademark reproduction;
- The disputed domain name <LyondellBasellChemie.com> adds the term "chemie" at the end of the trademark reproduction.

These slight changes, namely through the addition of letters or terms described above, are immaterial to assess confusing similarities under the Policy.

Based on this, the Panel finds the disputed domain names to be confusingly similar to the Complainant's trademark. As a result, the Panel determines that the Complaint has satisfied the Policy's first element set under paragraph 4(a)(i).

B. Based on the evidence on record and acknowledging that the Respondent failed to produce any allegations or evidence necessary, despite the ample opportunity provided along with the above-mentioned Panel Order, to demonstrate its rights or legitimate interests in the disputed domain names, the Panel must turn to the uncontested facts.

The uncontested facts indicate that a) the Respondent is not affiliated with the Complainant; b) the Respondent is not authorized to carry out any activity for the Complainant; c) the Respondent has not acquired rights on the disputed domain names; d) the Respondent is not commonly known by the disputed domain names; e) the Respondent has set up the disputed domain names with the technical capabilities to send e-mails, and f) the disputed domain name <lyondellbasells.com> at one point redirected to the main website associated with the Complainant while the disputed domain name, <lyondellbasellinc.com>, as per evidence on record, appears to be still redirected to the main website of the Complainant.

In the Panel's view, these assertions and the evidence attached are enough to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names (see 2.1 of WIPO 3.0 Overview).

These facts lead the Panel to conclude that the Respondent did not have rights or legitimate interests in the disputed domain names.

Consequently, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain names. Subsequently, the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

C. The Panel notes that as per the evidence on record, the Respondent was more than likely aware of the Complainant and had the Complainant's trademarks in mind when registering the disputed domain names.

This conclusion is reinforced by the fact that the Respondent registered the disputed domain names incorporating the entirety of the trademark, with slight changes, namely the addition of letters, namely the letter "s" at the end of the trademark reproduction, the three letters "inc" at the end of the trademark reproduction; the term "chemie" at the end of the trademark reproduction and the letter "i" in between the letter "d" and "e" of the trademark reproduction.

This last instance and the instance related to the addition of the letter "s" seem reminiscent of the practice commonly known as typosquatting.

The instances related to the addition of "chemie" and "inc" further enhance the conclusion that the Respondent was targeting the Complainant as the term "inc" seems to indicate the reference to incorporation, and "chemie" appears to be a reference to chemicals, an area within the business of the Complainant.

Furthermore, although there is no evidence that any fraudulent e-mails originated from the disputed domain names, based on the record at hand and the balance of probability, it is plausible to believe, as the Complainant suggests, that a more than likely explanation for the potential use of the disputed domain names is its use for fraudulent e-mails to take advantage of unsuspected Internet users.

Based on the above, and as per the evidence on record and balance of probability, the Panel is left with no other option than to conclude that the most likely intention of the Respondent was to intentionally attempt to attract, for commercial gain, Internet users to its website/disputed domain name, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or disputed domain name, as per illustrated under paragraph 3.1 of WIPO 3.0 Overview.

Accordingly, the Panel finds that the Complainant has satisfied the final element required under paragraph 4(a)(iii) of the Policy.

In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain names were registered and are used in bad faith according to paragraph 4(a)(iii) of the Policy.

D. Decision

For the preceding reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain names to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. LYONDELLBASELLS.COM: Transferred
2. LYONDELLBASELLCHEMIE.COM: Transferred
3. LYONDELLBASELLINC.COM: Transferred
4. LYONDIELLBASELL.COM: Transferred

PANELLISTS

Name	Rodolfo Carlos Rivas Rea
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DATE OF PANEL DECISION 2022-10-25

Publish the Decision
