Decision for dispute CAC-UDRP-100337

Case number	CAC-UDRP-100337
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Domain names	Lyondelleurope.com

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	Lyondell Chemical Company

Complainant representative

Organization	PORTA CHECCACCI & ASSOCIATI Spa

Respondent

Organization	Domain Names Sale Lease Individual

OTHER LEGAL PROCEEDINGS

The panel is not aware of any other legal proceedings pending or decided between the same parties and relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has proved to be the owner of several registered trademarks containing the name «LYONDELL».

FACTUAL BACKGROUND

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

LyondellBasell is one of the world’s largest plastics, chemical and refining companies, has annual revenues of approximately $41 billion and more than 14,000 employees worldwide.

LYONDELLBASELL is owner of several trademarks and domain names with keyword “Lyondell” .

The domain name LYONDELLEUROPE object of the present claim was registered on August 02, 2011 by Domain Names Sale

Lease Individual Andrey Serkov

The disputed domain constitutes usurpation and violation of the rights of the Complainant Lyondell Chemical Company with regard to its company name, trademarks and domain names.

LyondellBasell claims to be one of the world's largest polymers, petrochemicals and fuels companies and a global leader in polyolefins technology, production and marketing; a pioneer in propylene oxide (PO) and derivatives; and a significant producer of fuels and refined products, including biofuels.

Identical and/or Confusingly Similar:

The domain name lyondelleurope.com can be confused with:
a) the company name Lyondell Chemical Company
b) the trade mark applications and / or trademark registrations valid in the world with keyword LYONDELL.
c) the domain names.

The disputed domain is identical / similar to the marks and / or signs of ownership of the LYONDELLBASELL Group having as "heart" the name "Lyondell".

Respondent incorporated Complainant's entire LYONDELL mark in the LYONDELLEUROPE domain name while merely adding either whole or abbreviated geographic qualifiers such as "Europe". The addition of geographic or generic terms to a mark generally does not render a disputed domain name distinct for the purposes of Policy ¶ 4(a)(i).

Lyondellbasell Group is a well-known name worldwide and the Complainant obtained rights in the name prior to the Respondent's registration of the domain name.

Given that it is unlikely that the Respondent registered the domain name without knowing the existence of the Complainant.

The disputed domain name lyondelleurope.com can become a negative vehicle of communication due to the fact that such domain is linked to a pornorgraphic site. This also creates a damage to the reputation of LYONDELLBASELL Group.

The Respondent wrongfully benefits by the distinctiveness, fame and commercial goodwill obtained during all these years by the large use of the sign LYONDELL - through the media - being linked to the fame and reputation of LYONDELLBASELL Group that have had for years in the Italian and international market.

In Complainant's opinion, the use of the domain name lyondelleurope.com that is done by the respondent it is a manner to catch the flow of internet users who have mistyped Complainant's URL address enabling Respondent to increase the traffic to its website lyondelleurope.com and derive more revenues as a result.

Rights or Legitimate Interests:

The Complainant has not authorized or licensed the Respondent to use the Complainant's trade mark or trade name so that Respondent is using a domain name confusingly identical of Lyondellbasell Group's well-known mark to ensnare unsuspecting Internet users.

Respondent has registered the domain name under the name Lyondelleurope.com (on August 2, 2011) and there is no other evidence in the record suggesting that respondent is known with the sign "LYONDELL"; on the contrary the Respondent is known as a provider with 386 domain names registered.

The Complainant could credibly state that they are unaware of any reason or circumstance which could be indicative of such right or legitimate interest in the Lyondelleurope.com domain.

Registration in bad faith:

The Respondent does not have any rights or legitimate interests in the domain name.

Respondent's use of the domain name < Lyondelleurope.com> for a pornographic website constitutes an independent ground for bad faith under UDRP Rules.

The domain name was registered in bad faith for the sole purpose of creating an interference with the well-known brand LYONDELL. Therefore, such domain name Lyondelleurope.com has been carried out with the sole purpose of exploiting the reputation of the complainant and draw on its website users.

There is no reasonable possibility that the domain name was selected by Respondent for any purpose other than a brazen attempt to create a likelihood of confusion with Complainant's marks. Such an attempt is evidence of the registration and use of a domain name in bad faith.

It is commonly understood, under WIPO case law, that the addressing of the domain names to a pornographic site is itself certainly consistent with the finding that the Domain Name was registered and is being used in bad faith".

Respondent has registered and is using the disputed domain name in bad faith because it resolves to a site offering adult-oriented materials and links to adult-oriented sites. This use does constitute bad faith registration and use under Policy ¶ 4(b)(iv).

Mr. Andrey Serkov / Domain Names Sale Lease Individual ("Respondent") was already involved in the re-assignment procedure See Devin Harris v. Andrey Serkov / Domain Names Sale Lease Individual FA1008001342145 (Nat. Arb. Forum October 12, 2010) (.. where the Complainant Devin Harris alleged that Respondent's disputed domain name resolves to a website displaying adult-oriented images… .the Panel finds that Respondent is attempting to intentionally attract Internet users to its website for commercial gain by incorporating Complainant's mark in the disputed domain name. The Panel concludes that this is evidence of bad faith registration and use pursuant to Policy ¶ 4(b)(iv).

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is confusingly similar to a trademark 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 that the Respondent has no rights or legitimate interests in respect of the 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 that the 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.

PRINCIPAL REASONS FOR THE DECISION

The Panel finds that the disputed domain name «lyondelleurope.com» is confusingly similar to the trademarks and trade name of the Complainant.

The Respondent has no connection or affiliation with the Complainant, which has not licensed or otherwise authorised the Respondent to use or apply for any domain name incorporating the Complainant's trademark. The Respondent does not appear to be commonly known as "lyondelleurope" or by a similar name, and it has not alleged any facts to justify any rights and/or legitimate interests in the disputed domain name. The Respondent does not appear to make any legitimate use of the disputed domain name for non commercial activities, on the contrary it uses the domain name for an adult oriented website. Finally, the Respondent has not replied to the Complaint, and has not proven nor alleged in any other way any right or legitimate interest in the disputed domain name.

As regards Respondent's use of the Domain Name, it appears that Respondent's website is used to direct consumers to an adult oriented website. By deflecting users, the Respondent has shown bad faith use of the Domain Name that clearly falls within the example given in article 4(a)(iv) of the Policy: "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location".

In addition, on the website www.lyondelleurope.com, the indication that the domain name is available for purchase is displayed.

Besides, as evidenced by Complainant, Respondent has already been recognized as having registered and used the domain name <devin-harris.com> in bad faith (NAF case FA1342145). Also this domain name was used to redirect Internet users to an adult oriented website.

Indeed, this same Respondent has been recognized as having registered and used in bad faith also the domain names <albertbochot.com> (WIPO Case D2011-1294) and (WIPO Case D2009-0871) <assoulinefrance.com>.

In view of the above, it results clear that the Respondent's registration and use of the disputed domain name are part of a pattern of conduct, since the Respondent appears to be engaged in the registration of third parties trademarks.

It is the Panel's opinion that this kind of behavior evidences bad faith registration and use pursuant to Policy 4(b)(ii). In this sense, Lowen Corporation d/b/a Lowen Sign Company v. Henry Chan, WIPO Case No.D2004-0430, where the Panel affirmed that the fact that the Respondent had been involved in a large number of cases under the UDRP proved that the Respondent's use and registration of the disputed Domain Names fell within the concept of bad faith.

Finally, Respondent has not denied Complainant's assertions of bad faith, has not given any justification for the registration of the disputed Domain Name nor substantiated or at least alleged any concurrent right or legitimate interest to the disputed Domain Name.

Considering the foregoing, the Panel concludes that Respondent registered and is using 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. **LYONDELLEUROPE.COM**: Transferred

PANELLISTS

Name	**Fabrizio Bedarida**

DATE OF PANEL DECISION 2012-01-02

Publish the Decision