Decision for dispute CAC-UDRP-101188

Case number	CAC-UDRP-101188
Time of filing	2016-03-02 12:14:24
Domain names	werkenbijlyondellbasell.com

Case administrator

Name	Kateřina Navrátilová

Complainant

Organization	LYONDELLBASELL Industries Holdings B.V.

Complainant representative

Organization	PORTA, CHECCACCI & ASSOCIATI S.p.A.

Respondent

Name	Peter Voogt

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings that are pending or decided and that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous trademark registrations worldwide, among which:

- the Union figurative trademark "LYONDELLBASELL" with number 013804091 registered on 2 July 2015;
- the Union word trademark "LYONDELLBASELL" with number 006943518, registered on 21 January 2009;
- the US trademark "LYONDELLBASELL" with number 3634012, registered on 9 June 2009.

(Hereafter: "the LYONDELLBASELL trademarks" or "the Complainant's trademarks")

The disputed domain name was registered on 12 September 2011, i.e. the Complainant's trademarks predate the registration of the disputed domain name.

FACTUAL BACKGROUND

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

The Complainant is a well-known multinational chemical company with American and European roots, incorporated in the

Netherlands, with U.S. operations based in Houston, Texas, and global operations in London, UK. LyondellBasell has been listed on the New York Stock Exchange since October 2010. The Complainant has more than 50 facilities all over the world (in U.S., Mexico, Brazil, Argentina, France, Germany, Netherlands, Italy, Spain, UK, China, India).

The Complainant is the owner of numerous trademark registrations worldwide, among which the LYONDELLBASELL trademarks as indicated.

The Respondent has registered and/or used the disputed domain name "werkenbijlyondellbasell.com", which is confusingly similar to the Complainant's trademarks since it wholly comprises the LYONDELLBASELL trademarks with the addition of the generic Dutch words "werkenbij", which mean "working at".

According to the Complainant, the domain "werkenbijlyondellbasell.com" can become a negative vehicle of communication, creating damage to the reputation of the LYONDELLBASELL Group.

The Complainant asserts that the Respondent takes unfair advantage of the reputation and prejudices the distinctiveness and commercial goodwill of the LYONDELLBASELL trademarks, which have been obtained through their large scale use for many years.

In the Complainant's opinion, the contested domain name is used to attract internet users who have mistyped the keyword "Lyondellbasell".

The Complainant has not authorized or licensed the Respondent to use the Complainant's trademarks.

There is no evidence suggesting that the Respondent is known as "LYONDELLBASELL".

The Complainant asserts that the damage suffered due to the disputed domain name registration can clearly be seen from the attempt to exploit the renown of the name LYONDELLBASELL, widely recognised throughout Europe and worldwide.

According to the Complainant, the Respondent uses a confusingly similar misspelling of Complainant's famous LYONDELLBASELL trademarks to attract unsuspecting Internet users. This practice strongly suggests that the Respondent commercially benefits from this diversion by receiving pay-per-click fees from advertisers when Internet users follow the links on its web site. As such, the Respondent is unfairly and opportunistically appropriating the goodwill associated with Complainant's famous LYONDELLBASELL trademarks.

These circumstances strongly evidence Respondent's bad-faith registration and use of the domain names.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the 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 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 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.

However, it should be noted that the CAC received two emails from the Respondent (on 15 March 2016 and on 21 March 2016). Both emails were uploaded to the online case file via nonstandard communications and contained a request to ask the Complainant to contact the Respondent directly. The latter non-standard communication also contained a statement that the Respondent does not find the correspondence from the CAC trustworthy for, according to the Respondent, the CAC deals only with cases related to .eu domains and the attachments contained viruses. In that regard, it should be emphasized that the Respondent submitted no evidence that the correspondence received from the CAC was infected with a virus. Furthermore, the Respondent's claim that the CAC is only dealing with the .eu domain names cases is false. The Respondent chose not to file an administratively compliant response or make any contentions on merits of the case although duly notified and given a chance to do so. Therefore, the Panel rules that the Respondent had a fair opportunity to present its case and all the requirements of the Policy and the Rules have been met and there is nothing preventing the Panel from issuing a decision.

Language of the proceedings

In its complaint, the Complainant requested the language of the proceedings to be English, even though the language of the registration agreement regarding the domain name "WERKENBIJLYONDELLBASELL.COM" is Dutch.

The Complainant asserted in this regard that since the Complainant is a multinational chemical company involved in the manufacturing of chemicals and polymers worldwide and that the Complainant's trademarks are registered in numerous countries all over the world and recognized by a great number of consumers, English is the most appropriate language for these proceedings.

The Panel takes note of the fact that the Respondent, upon receiving a bilingual message (English - Dutch) regarding the present ADR proceedings, chose to respond by email in English, thereby showing that he can communicate in English fluently. The respondent did not dispute the use of the English language.

Accordingly, no injustice will be caused to the Respondent if this dispute is being decided in English.

Therefore, the language of the proceedings is English.

PRINCIPAL REASONS FOR THE DECISION

The Domain Name "WERKENBIJLYONDELLBASELL.COM" is confusingly similar to the Complainant's LYONDELLBASELL trademarks since it wholly comprises those trademarks, with the mere adding of the generic words in Dutch "werken bij", which mean "working at".

The mere adding of such generic terms is insufficient to prevent confusing similarity.

Accordingly, the Panel finds that the Domain Name is confusingly similar to the LYONDELLBASELL trademarks of the Complainant.

The Panel further finds that the Complainant successfully asserted that the Respondent does not have any rights or legitimate interests in respect of the Domain Name and that the Respondent has used the website to attract internet users

for commercial gain by creating a likelihood of confusion with the Complainant.

These facts, including the absence of an administratively compliant response, show the bad faith of the Respondent and absence of rights or legitimate interests on the part of the Respondent.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **WERKENBIJLYONDELLBASELL.COM**: Transferred

PANELLISTS

Name	**Tom Heremans**

DATE OF PANEL DECISION 2016-04-21

Publish the Decision