Decision for dispute CAC-UDRP-102458

Case number	CAC-UDRP-102458
Time of filing	2019-10-21 13:57:03
Domain names	LYNDELLTERMINALS.COM

Case administrator

Name	Iveta Špiclová (Case admin)

Complainant

Organization	LYONDELLBASELL INDUSTRIES HOLDINGS B.V.

Complainant representative

Organization	CANTALUPPI & PARTNERS SRL

Respondent

Name	Paulet Jean

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

LyondellBasell Group is formed of various affiliated companies, all of them under the ultimate control of LyondellBasell Industries N.V., headquartered in The Netherlands:

LyondellBasell Industries Holdings B.V., owner of several trademarks including the wording “LYONDELLBASELL”, such as:

- US trademark no. 3634012 - serial no. of the application 77467965 (word) “LYONDELLBASELL” since May 7, 2008 in classes 1, 4, 17, 35, 42;

- US trademark no. 5096173 - serial no. of the application 86555801 (device) “LYONDELLBASELL” in classes 1, 4, 17, 42, 45;

- European Union Trademark (EUTM) no. 006943518 (word) “LYONDELLBASELL” since May 16, 2008 in classes 1, 4, 17, 42, 45; and

- EUTM no. 013804091 (device) “LYONDELLBASELL” since March 6, 2015 in classes 1, 4, 17, 42, 45.

FACTUAL BACKGROUND

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

LyondellBasell Group (referred to as LyondellBasell) 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, LyondellBasell 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 into approximately 100 countries.

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

The disputed domain name <lyndellterminals.com> was registered on June 6, 2019 by the Respondent not identified. The disputed domain name resolves to a website which apparently offers storage and transshipment of crude oil and its derivatives at the Port of Rotterdam. It affirms that “Lyondell Terminal provides services to large oil companies and independent trading companies in the area of the storage and handling of oil products.

With a market share of approximately 10 %, Terminal is the fourth largest independent terminal operator in the Rotterdam harbor. The terminal began with 4 tanks and now it can boost of 78 tanks with a total storage capacity of 912,000 m³.” The disputed domain name is involved in storage spoofing / phishing and has been blacklisted by the Port of Rotterdam Authority). Storage spoofing (also known as terminal spoofing) is a specific form of phishing. Storage spoofing covers all varieties of the sale of non-existent storage capacities and stocks of resources and materials at port terminals.

The target for this kind of fraud are national and multinational companies that either operate or are looking for storage facilities in the port area, as well as all potential buyers of the goods stored at these terminals. These goods are offered under false pretences but turn out to be non-existent. The phenomenon is described in details at the website of the Port of Rotterdam Authority: ferm-rotterdam.nl.

The disputed domain name and the related website are run by an individual or organization, which has provided false and misleading contact data during the registration of the domain name and on the related website. There is no any company registered in The Netherlands with the trade / business name “lyondell terminal” or “lyondell terminals” or “lyondell europoort terminal”.

Finally, the logo “lyondell Terminal” used at the website to which the disputed domain name resolves is confusingly similar to the well-known LYONDELLBASELL Trademark used, inter alia, at LyondellBasell’s main website www.lyondellbasell.com. Therefore, Internet users might likely believe that the disputed domain name is related to LyondellBasell.

PARTIES CONTENTIONS

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).

The addition of the term "terminals" in the mark is not sufficient to avoid the likelihood of confusion with the Complainant’s trademark. as it does not change the overall impression of the designation as being connected to the international trademark Lyndonbesell of the Complainant. It does not prevent the likelihood if confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

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).

According to the WIPO case D2003-0455 Croatia Airlines d.d. v. Modern Empire Internet Ltd., the 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 Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied 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).

The Complainant's trademarks are widely known. The target of the Respondent is fraud and spoofing. As the Complainant has demonstrated, for this kind of fraud are national and multinational companies that either operate or are looking for storage facilities in the port area, as well as all potential buyers of the goods stored at these terminals. These goods are offered under false pretences but turn out to be non-existent.

The disputed domain name and the related website are run by an individual or organization, which has provided false and misleading contact data during the registration of the domain name and on the related website. There is no any company registered in The Netherlands with the trade / business name "lyondell terminal" or "lyondell terminals" or "lyondell europoort terminal".

Finally, the logo "lyondell Terminal" used at the website to which the disputed domain name resolves is confusingly similar to the well-known LYONDELLBASELL Trademark used, inter alia, at LyondellBasell's main website www.lyondellbasell.com. Thus, Respondent has registered the disputed domain name and is using it in bad faith.

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

Neither licence nor authorization has been granted to the Respondent to make any use of the Complainant's trademark or apply for registration of the disputed domain name by the Complainant. The disputed domain name is a version of the trademark for the purpose of fraud and spoofing and indicates bad faith. Given the distinctiveness of the Complainant's trademarks and its reputation, it is reasonable to infer that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **LYNDELLTERMINALS.COM**: Transferred

PANELLISTS

Name	**Thomas Hoeren**

DATE OF PANEL DECISION 2019-11-14

Publish the Decision