

Decision for dispute CAC-UDRP-104271

Case number	CAC-UDRP-104271
Time of filing	2022-01-26 09:36:00
Domain names	LYONDELLBASELLINDUSTRIESNV.COM

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

Name	James Gordon
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant has evidenced to be the owner of numerous trademark registrations worldwide relating to its company name and brand "LYONDELLBASELL", including the following:

- Word mark LYONDELLBASELL, United States Patent and Trademark Office (USPTO), Registration No.: 3634012, Registration Date: June 9, 2009, Status: active;
- Word mark LYONDELLBASELL, European Union Intellectual Property Office (EUIPO), Registration No.: 006943518, Registration Date: January 21, 2009, Status: active.

Also, the Complainant has substantiated to own numerous domain names relating to its LYONDELLBASELL trademark, inter alia, the domain name <lyondellbasell.com> which redirects to the Complainant's main website at "www.lyondellbasell.com", used since 2007 to promote the Complainant's products and related services in the chemical industry.

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.

LyondellBasell manages its operations through five operating segments:

- Olefins and Polyolefins—Americas: produces and markets olefins and co-products, polyethylene and polypropylene.
- Olefins and Polyolefins—Europe, Asia, International: produces and markets olefins and co-products, polyethylene, and polypropylene, including polypropylene compounds.
- Intermediates and Derivatives: produces and markets propylene oxide and its derivatives, oxyfuels and related products and intermediate chemicals, such as styrene monomer, acetyls, ethylene oxide and ethylene glycol.
- Refining: refines heavy, high-sulfur crude oil and other crude oils of varied types and sources available on the U.S. Gulf Coast into refined products including gasoline and distillates.
- Technology: develops and licenses chemical and polyolefin process technologies and manufactures and sells polyolefin catalysts.

According to the 2017 annual report LyondellBasell generated \$4.9 billion in income from continuing operations, EBITDA of \$7.1 billion and \$12.28 diluted earnings per share.

LyondellBasell is listed on the New York Stock Exchange since 2010.

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.

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

The disputed domain name <lyondellbasellindustriesnv.com> was registered on October 9, 2021 by the Respondent, whose identity is redacted through the privacy protect service WHOIS Privacy Corp., that is therefore currently indicated as registrant.

The disputed domain name does not currently resolve to an active website, however the domain name holder has used <lyondellbasellindustriesnv.com> to create the e-mail address massimo.selle@lyondellbasellindustriesnv.com to impersonate the sales department of LYONDELLBASELL INDUSTRIES HOLDINGS B.V. and mislead a client, recipients of the e-mails, requesting payments, and signed said message with the name of the Massimo Selle "Sales Director and Marketing Manager". The disputed domain name is therefore involved in storage spoofing / phishing.

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: <https://ferm-rotterdam.nl>.

LEGAL GROUNDS

A. PRELIMINARY PROCEDURAL QUESTIONS

The Complainant of this administrative proceeding is LyondellBasell Industries Holdings B.V., filer of this Complaint also on behalf of the other interested parties (LyondellBasell Industries N.V. and Lyondell Chemical Company). The transfer decision is to be directed to the Complainant.

B. MERITS

I. IDENTITY OR CONFUSING SIMILARITY

Under the first UDRP element, the straightforward side-by-side comparison of the disputed domain name and the textual components of the marks on which this Complaint is based makes it evident that LYONDELL Trademarks and LYONDELLBASELL Trademarks are easily recognizable within the disputed domain name and, thus, the disputed domain name is confusingly similar to the marks in which the Complainant has rights.

The disputed domain name is undoubtedly confusingly similar to such marks, since it incorporates the entirety of the dominant and distinctive part of the trademark (i.e. the wording LYONDELLBASELL). 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 normally 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 the disputed domain name and the LYONDELLBASELL Trademark the only difference is the addition of the generic, non-distinctive and descriptive word “industriesnv”. Such addition neither effects the attractive power of such trademark, nor is sufficient to prevent the finding of confusing similarity between the disputed domain name and such mark, but even enhances the likelihood of confusion. Conversely, considering that the term “INDUSTRIES” and the acronym “N.V.” constitute the company name LyondellBasell Industries N.V. of one of the related companies of the Lyondell Basell Group and are included in different domain names LYONDELLBASELLINDUSTRIES registered by complaint prior to the registration to lyondellindustriesnv.com, their addition to the trademark LYONDELLBASELL in the domain name reinforce the risk of confusion for Internet Users.

The disputed domain name is registered under the top-level domain (TLD) .com, which is to be disregarded for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant’s trademark as it is a technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0 and the decisions mentioned thereto).

The Complainant therefore contends that:

- LyondellBasell is a well-known chemical company, one of the world’s largest producers of polymers, operating refineries worldwide;
- The domain name is not only identical to the trademarks LYONDELL but also identical to the Company name LyondellBasell Industries N.V.;

- The domain name has been used to create at least one account e-mail to impersonate Complainant and target its clients

II. RESPONDENT'S LACK OF RIGHTS AND LEGITIMATE INTERESTS

It is a consensus view of UDRP panels that the Complainant shall establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent (see paragraph 2.1 of the WIPO Overview 3.0: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.").

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

- The Complainant (or the other related parties) has (have) 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 name;
- the disputed domain name has been used to create an account email involved in phishing activities (storage spoofing).

Such use of the domain name is clearly not a bona fide, legitimate or fair use under the UDRP Policy.

III. REGISTRATION AND USE IN BAD FAITH

The Respondent registered the disputed domain name confusingly similar to the Complainant's well-known prior trademarks cited above and identical to the Company name LyondellBasell Industries N.V.. Given, the distinctiveness and reputation of LyondellBasell's business and trademarks worldwide, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of LyondellBasell and its rights in such marks.

The misappropriation of a well-known trademark as domain name by itself constitutes bad faith registration for the purposes of the Policy. See, inter alia, *Aktiebolaget Electrolux v. Domain ID Shield Service Co., LTD / Dorian Cosentino, Planeta Servidor*, WIPO Case No. D2010-1277; *Volvo Trademark Holding AB v. Unasi, Inc.*, WIPO Case No. D2005-0556.

In light above, it is inconceivable that Respondent was not well aware of Complainant's trademark rights at the time of the registration of the Domain Name. Indeed, Respondent's purpose in registering the Domain Name, incorporating LYONDELL BASELL, was probably to capitalize on the reputation of Complainant's trademark by diverting Internet users seeking information about this distinctive sign to its own website, where sponsored links are published. See *Hoffmann-La Roche Inc. v. Doroven*, WIPO Case No. D2010-1196.

Furthermore, the disputed domain name has been registered long after the filing/registration of the Complainant's trademarks.

The disputed domain name is currently not redirected to an active website: with respect to the use in bad faith, since the inception of the UDRP, panellists have found that the non-use of a domain name (including as in this case a blank page) would

not prevent a finding of bad faith under the doctrine of passive holding.

In this regard, different factors have been considered relevant in applying the passive holding doctrine including the degree of distinctiveness or reputation of the complainant's mark and the implausibility of any good faith use to which the domain name may be put, and both factors are indeed relevant in the present case. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, *Jupiter Limited v. Aaron Hall*, WIPO Case No. D2000-0574; *Virgin Enterprises Limited v. Ceasar Alvarez*, WIPO Case No. D2016-2140.

Such finding is also supported by the fact that the disputed domain name has been used to create an account email involved in phishing activities (storage spoofing).

Carrying out unlawful and illicit activities through the disputed domain name is to be considered evidence of the registration and use of the disputed domain name in bad faith.

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).

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).

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).

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 <lyondellbasellindustriesnv.com> is confusingly similar to the Complainant's LYONDELLBASELL trademark, since the disputed domain name incorporates the latter in its entirety, added by the descriptive terms "industries" and "nv" (designating a corporation under the laws of the Netherlands). Numerous UDRP panels have recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark. Moreover, it has also been held in many UDRP decisions and has meanwhile become a consensus view among UDRP panels that the mere addition of descriptive or other terms, such as e.g. the terms "industries" and "nv", is not capable to dispel the confusing similarity arising from such entire incorporation of the Complainant's LYONDELLBASELL trademark in the disputed domain name.

Therefore, the Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

Also, the Complainant contends, and the Respondent has not objected to these contentions, that the Respondent has neither made use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is the Respondent commonly known under the disputed domain name, nor is the Respondent making a legitimate non-commercial or fair use of the disputed domain name without intent for commercial gain. The Complainant has provided evidence that the Respondent has created an e-mail address under the disputed domain name allowing to send e-mails in order

to impersonate the Complainant’s sales department and to mislead one of the Complainant’s clients by requesting payments in a fraudulent manner. Such making use of the disputed domain name in a so-called phishing context obviously neither qualifies as a bona fide nor as a legitimate non-commercial or fair use of the disputed domain name under the UDRP.

Therefore, the Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

Finally, the Panel holds that the disputed domain name was registered and is being used by the Respondent in bad faith. It is obvious from the circumstances to this case that the Respondent was well aware of the Complainant’s rights in the LYONDELLBASELL trademark when registering the disputed domain name, and that the latter is directly targeting the Complainant’s trademark. Moreover, carrying out unlawful activities under the disputed domain name by using it in a phishing context leaves no doubts that the Respondent, by registering and making use of the disputed domain name, had the intention to somehow unjustifiably profit from the undisputed reputation attached to the Complainant’s LYONDELLBASELL trademark, which is confusingly similar to the disputed domain name, for unlawful commercial gain. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Therefore, the Complainant has also satisfied the third element under the Policy as set forth by paragraph 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. LYONDELLBASELLINDUSTRIESNV.COM: Transferred

PANELLISTS

Name	Stephanie G. Hartung, LL.M.
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DATE OF PANEL DECISION	2022-02-22
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Publish the Decision