

Decision for dispute CAC-UDRP-105271

Case number	CAC-UDRP-105271
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Time of filing	2023-03-28 09:24:49
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Domain names	lyondellbasellisten.com, lyondelbasellisten.com
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Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	LyondellBasell Industries Holdings B.V.
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Complainant representative

Organization	Claudio Tamburrino (Barzanò & Zanardo Milano S.p.A.)
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Respondent

Name	Lei Shi
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant, LyondellBasell Industries Holdings B.V., is the owner of the following American and European trademarks including the wording

LYONDELLBASELL:

- US trademark no. 3634012 - No 77467965 (word) LYONDELLBASELL filed on May 7, 2008 in classes 1, 4, 17, 35, 42, registered and renewed;

- US trademark no. 5096173 - No 86555801 (device) LYONDELLBASELL filed on March 6, 2015 in classes 1, 4, 17, 42, 45 and registered;

- European Union Trademark No 006943518 (word) LYONDELLBASELL filed on May 16, 2008 in classes 1, 4, 17, 42, 45, registered and renewed;

- EUTM no. 013804091 (device) LYONDELLBASELL filed on March 6, 2015 in classes 1, 4, 17, 42, 45 and registered.

The Complainant refers to other trademarks owned by other entities of the group to which it belongs.

These other trademarks shall not be taken into account for the purposes of this procedure.

The Complainant also relies on its domain name <lyondellbasellisten.com> registered on November 10, 2022.

The disputed domain names are:

- <lyondellbasellisten.com>
- <lyondelbasellisten.com>

Both domain names have been registered on November 11, 2022. According to the data disclosed by the Registrar for the purposes of this procedure, the registrant is a person named Lei Shi and based in China. Both domain names are redirected to a parking page with sponsored links.

FACTUAL BACKGROUND

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 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 2020 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.

The Complainant explains that it is widely promoted on most popular social media like Twitter and Facebook.

Due to its longstanding use and the huge promotional and advertising investments, it contends that the LYONDELL trademark is certainly well-known and relies on a prior UDRP decision which recognized that “*the word lyondell is highly distinctive has it is a fanciful term*” (e.g., LyondellBasell Industries Holdings B.V. v. Williams Wales - lyondell terminal, Case No 102018).

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT:

IDENTITY OR CONFUSING SIMILARITY

The disputed domain names incorporate the entirety of the dominant and distinctive part of the trademark (i.e. the wording LYONDELL BASELL).

The LYONDELLBASELL trademark is recognizable in the domain names:

- <lyondellbasellisten.com>
- <lyondelbasellisten.com>

Comparing the disputed domain names <lyondellbasellisten.com> and <lyondelbaselllisten.com> with the LYONDELLBASELL trademark the only differences are, respectively:

- the addition of the word <listen> and the elimination of the last “l” in LYONDELL BASELL;
- the addition of the word <listen> and the elimination of on the second “l” of the term LYONDELL.

Neither the addition of the generic word “listen”, or the minor typos in <lyondellbasellisten.com> and <lyondelbaselllisten.com> affect the attractive power of such trademarks, nor is sufficient to prevent the finding of confusing similarity between the disputed domain names and the LYONDELLBASELL trademark, but even enhances the likelihood of confusion as “listen” is a generic term easily associated with LYONDELL BASELLS’ activities.

RESPONDENT’S LACK OF RIGHTS AND LEGITIMATE INTERESTS

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.
- they have been registered immediately after the registration by complaint of <lyondellbaselllisten.com> using common typos. There is the high risk that it is or could be involved in phishing activities/storage Spoofing.

REGISTRATION AND USE IN BAD FAITH

The disputed domain names <lyondellbasellisten.com> and <lyondelbaselllisten.com> have been 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 LyondellBasell’s business and trademarks worldwide, it is inconceivable that the Respondent could have registered the disputed domain names without actual knowledge of LyondellBasell 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).

Furthermore, the disputed domain names have been registered long after the registration of the Complainant’s trademarks and immediately after complainant’s registration of <lyondellbaselllisten.com>.

With respect to the use in bad faith, <lyondellbasellisten.com> and <lyondelbaselllisten.com> are currently redirected to parking page with sponsored links: it is therefore clear that current holder is taking advantage of Complainant’s reputation to obtain a commercial gain through the pay-per-click links published at the corresponding landing page.

Finally, panels will normally find that employing a misspelling – in those cases constituted by the elimination of one of the double “l” contained in the trademark LYONDELL BASELL - signals an intention on the part of the respondent to confuse users seeking or expecting the complainant.

RIGHTS

The Panel checked on the relevant databases that the cited LYONDELLBASELL trademarks are valid.

The Complainant has therefore proved its prior rights on the LYONDELLBASELL trademarks.

The disputed domain names are composed with the LYONDELLBASELL trademarks and the addition of the generic term “listen”.

Adding or removing a “L” to the LYONDELLBASELL trademarks does not make any difference.

The LYONDELLBASELL trademarks are clearly recognizable in the disputed domain names.

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or

(ii) the Respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trademark or service mark at issue.

The Complainant asserts that the Respondent is not related in any way with the Complainant.

There is no indication that the Respondent is commonly known by the LYONDELLBASELL trademark.

There is no evidence of any *bona fide* use of the disputed domain name.

The Respondent did not respond to the Complainant to rebut its *prima facie* case. It did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name.

Therefore, the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in respect to the disputed domain name, which was not rebutted by the Respondent.

Moreover, considering the composition of the disputed domain names, the Panel finds that there is a risk of implied affiliation to the Complainant, which renders any fair use unlikely.

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

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by a Panel to be evidence of bad faith registration and use of the disputed domain name.

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a Domain Name in bad faith:

(i) circumstances indicating that the Respondent has registered or the respondent has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the Domain Name; or

(ii) the Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website 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 the respondent's website or location or of a product or service on the respondent's website or location.

Given the Complainant's reputation and the distinctive character of the LYONDELLBASELL trademark, it is reasonable to assume that the Respondent, who perfectly aware of the LYONDELLBASELL trademark when it registered the disputed domain names, just one day after the Complainant registered the domain name <lyondellbaselllisten.com>.

The disputed domain names are used to resolve to a parking page offering links to third parties' websites related to gas and energy.

Clicking on any of these links provides a pay-per click revenue to the Respondent.

Such a use aims at making profit out of the reputation of the LYONDELLBASELL trademark by targeting internet users who are looking for information related to the Complainant.

The use of the disputed domain names in association with a click-through site is likely to interfere with the Complainant's business.

The Panel is of the opinion that, pursuant to Par. 4 (b) (iv) of the Policy "by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website 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 the respondent's website or location or of a

product or service on the respondent’s website or location".

Under the circumstances of the case, the Panel finds that the disputed domain name has been registered and is being used in bad faith, within the meaning of paragraph 4(b)(iv) and 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.

The language of the Registration Agreement is Chinese.

The Complainant requests that the language of the proceedings shall be English.

The disputed domain names are in Latin characters.

The translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings

Pursuant to Paragraph 11(a) of the Rules, the Panel may determine the language of the proceedings having regard to all circumstances, and to help ensure fairness, and maintain an inexpensive and expeditious avenue for resolving domain disputes.

The Respondent did neither react nor submit any answer or request on the issue of the language of the proceeding

Here, in light of the Respondent’s use of the Disputed Domain Name and Respondent’s decision to register domain names that misappropriates the LYONDELLBASELL trademark, it would unduly burden Complainant to have to arrange and pay for translation.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **lyondellbasellisten.com**: Transferred
- 2. **lyondelbasellisten.com**: Transferred

PANELLISTS

Name	Marie-Emmanuelle Haas Avocat
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DATE OF PANEL DECISION 2023-05-12

Publish the Decision