

Decision for dispute CAC-UDRP-105461

Case number	CAC-UDRP-105461
Time of filing	2023-05-31 10:01:47
Domain names	eu-lyondellbasell.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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

Organization	Hosting Concepts BV d/b/a Registrar.eu
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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 is the owner of several trademarks.

In particular, LYONDELLBASELL INDUSTRIES HOLDINGS B.V. owns:

- EUTM "LYONDELLBASELL" n°006943518 filed on May 16, 2008, and regularly registered and renewed for classes 1, 4, 17, 42 and 45;
- EUTM "LYONDELLBASELL" n°01304091 filed on March 6, 2015, and regularly registered for classes 1, 4, 17, 42 and 45;
- US trademark "LYONDELLBASELL" serial n° 77467965 filed on May 7, 2008, and regularly registered and renewed for classes 1, 4, 17, 35 and 42;
- US trademark "LYONDELLBASELL" serial n° 86555801 filed on March 6, 2015, and regularly registered for classes 1, 4, 17, 42 and 45.

FACTUAL BACKGROUND

The Complainant LYONDELLBASELL INDUSTRIES HOLDINGS B.V. is part of the LyondellBasell Group which 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 Group has become the third largest plastics, chemicals and refining company and the largest licensor of polyethylene and polypropylene technologies in the world.

LyondellBasell Group 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 Group generated \$4.9 billion in income from continuing operations, EBITDA of \$7.1 billion and \$12.28 diluted earnings per share. LyondellBasell Group is listed on the New York Stock Exchange since 2010.

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 Complainant is LYONDELLBASELL INDUSTRIES HOLDINGS B.V. which owns several trademarks including the wording LYONDELLBASELL.

The disputed domain name <eu-lyondellbasell.com> was registered on August 11, 2022. The disputed domain name currently resolves to an inactive website. However, it is set up with MX records.

According to the Complainant the disputed domain name is undoubtedly confusingly similar to the "LYONDELLBASELL" mark, since it incorporates entirely the trademark, with the only addition of the prefix "eu-".

Furthermore, in the Complainant's view, the Respondent lacks rights or legitimate interests in the disputed domain name especially because (i) the Complainant has no relationship with the Respondent, (ii) the Respondent has never received any approval of the Complainant to use its trademarks "LYONDELLBASELL" and (iii) there is no evidence that the Respondent has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

Finally, the Complainant contends that the Respondent has registered a domain name containing a well-known third party's trademark without authorization and that the disputed domain name, despite not actively used, is set up to send and receive e-mail, therefore indicating a high risk that it could be involved in phishing activities.

PARTIES CONTENTIONS

Complainant's contentions are summarised above.

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

Paragraph 4(a) of the Policy provides that to obtain the transfer of the disputed domain name, the Complainant must prove that each of the following elements is present:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

1) The Complainant has demonstrated that it is the owner of numerous trademark registrations, since 2008, for the sign "LYONDELLBASELL" including registrations in the European Union, where the Respondent is located. The disputed domain name was registered only in 2022, many years after the registrations of the Complainant's trademark. In the present case, the disputed domain name incorporates the trademark "LYONDELLBASELL" in its entirety, the only distinction being the addition of the letters "EU", which corresponds to the ISO code of the European Union, where the Complainant owns two trademarks, and of a hyphen between said ISO code and the sequence "LYONDELLBASELL". The ISO code as well as the presence of the hyphen are "insignificant to the overall impression" of the disputed domain name (See e.g. *Amundi v. hilscher of lo*, CAC Case No. 101593). Besides, gTLDs such as <.com> here are not to be taken into consideration when assessing the likelihood of confusion since they are only a technical requirement (See e.g. *Crédit Agricole S.A. v. Roy M Oishi*, CAC Case No. 101545). Consequently, the Panel finds that the disputed domain name is highly similar to the Complainant's trademark and that the Complainant has, to the satisfaction of the Panel, shown that 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). Therefore, the Panel finds that the first condition of the Policy has been fulfilled.

2) The Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interests in respect of the disputed domain name as it is not commonly known under the disputed domain name and was never authorized to use it by the Complainant. The Respondent, in the absence of any response, has not shown any fact or element to justify prior rights or legitimate interests in the disputed domain name. The Complainant therefore succeeds also on the second element of the Policy.

3) The disputed domain name is inactive. This circumstance does not prevent a finding of bad faith use. Previous Panels have held that the passive holding of a domain name can be considered as use in bad faith (see, between many others, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003 and *Cleveland Browns Football Company LLC v. Andrea Denise Dinoia*, WIPO Case No. D2011-0421). Furthermore, it is the Panel's view that the disputed domain name has been registered in bad faith because the Respondent was or must have been perfectly aware of the existence of "LYONDELLBASELL" trademark, which is highly distinctive and unique for the registered goods and services, when the same Respondent registered the domain name <eu-lyondellbasell.com>. When considering this, in conjunction with the fact that the Respondent has been passively holding the disputed domain name and has not submitted any evidence suggesting that the domain name was selected for a legitimate use or purpose, an inference of bad faith registration and use is made by the Panel (see, between many others, *Incipio Technologies, inc. v. Starfield Services Ltd*, WIPO Case No. D2011-0418). Finally, the Panel has verified that the Respondent has set up "MX-records" for the disputed domain name. This entails that the Respondent can send e-mails through the e-mail address "@eu-lyondellbasell.com". The Respondent can therefore use the disputed domain name to send fraudulent e-mails such as messages containing spam and/or phishing attempts that Internet users could well assume were sent by the Complainant. (See also *Confédération Nationale du Crédit Mutuel, Crédit Industriel et Commercial v. Khodor Dimassi*, WIPO Case No. D2016-1980; *Paris Saint-Germain Football v. MHP Private*, WIPO Case No. D2019-0036). Albeit that there are no concrete examples of such use, it seems inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address. The Panel finds that the mere conduct of making preparation for sending e-mails which are very likely to confuse the recipient of such e-mails as to their origin, is without justification and is inconsistent with the Complainant's exclusive rights in the "LYONDELLBASELL" trademark (see *Accenture Global Services Limited v. Registration Private, Domains by Proxy, LLC / Richa Sharma, Name Redacted*, WIPO Case No. D2019-2453). In consideration of the above, the Panel deems that the domain name in dispute was registered and used in bad faith and accordingly that the Complainant has satisfied also the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **eu-lyondellbasell.com**: Transferred

PANELLISTS

Name	Guido Maffei
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DATE OF PANEL DECISION	2023-07-06
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Publish the Decision