

## Decision for dispute CAC-UDRP-105584

Case number CAC-UDRP-105584

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Domain names lyondellbasellbv.com

### Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

### Complainant

Organization LyondellBasell Industries Holdings B.V.

### Complainant representative

Organization Barzanò & Zanardo Milano S.p.A.

### Respondent

Name Rachel Gobby

#### 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 claims ownership of several registrations of the LYONDELLBASELL trademark in relation to a range of products and services including chemicals, petrochemicals, fuels, olefin polymers, and research and consultancy in the fields of chemical and petrochemical processes. Amongst these are the following:

- US Trademark Registration No. 3634012 for LYONDELLBASELL dated June 9, 2009;
- US Trademark Registration No. 5096173 for LYONDELLBASELL dated December 6, 2016;
- European Union Trademark Registration No. 006943518 for LYONDELLBASELL dated January 21, 2009; and
- European Union Trademark Registration No. 013804091 for LYONDELLBASELL dated July 2, 2015.

#### FACTUAL BACKGROUND

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

LyondellBasell Group is a multinational chemical company with European and American roots going back to 1953-54. It 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. The company is headquartered in The Netherlands and has been listed on the New York Stock Exchange since 2010. According to its 2020 annual report, Complainant generated USD \$4.9 billion in income from continuing operations, EBITDA of \$7.1 billion, and \$12.28 diluted earnings per share. The Complainant owns rights to the trademark LYONDELLBASELL in relation to a range of products and services relating to chemicals, petrochemicals, fuels, olefin polymers, and research and consultancy in the fields of chemical and petrochemical processes.

The disputed domain name was registered on May 12, 2023 and does not resolve to an active website. However, there is a mail exchange (MX) record associated with the disputed domain name and it was used by the Respondent to send e-mails to Complainant's clients and impersonate one of Complainant's employees for the purposes of attempted phishing and fraud.

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#### PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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#### 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).

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#### 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).

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#### 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

A. The disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights

Paragraph 4(a)(i) of the Policy is a standing requirement which is satisfied if the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. Furthermore, it is not as extensive as the "likelihood of confusion" test for trademark infringement applied by many courts. Rather, under the Policy confusing similarity is commonly tested by comparing the Complainant's trademark and the disputed domain name in appearance, sound, meaning, and overall impression. See *Administradora de Marcas RD, S. de R.L. de C.V. v. DNS Manager / Profile Group, 101341 (CAC November 28, 2016)*.

It has been consistently held that “[r]egistration of a mark with governmental trademark agencies is sufficient to establish rights in that mark for the purposes of Policy paragraph 4(a)(i).” *Teleflex Incorporated v. Leisa Idalski*, FA 1794131 (FORUM July 31, 2018). In this case, the Complainant has submitted screenshots from the WIPO, EUIPO, and USPTO websites demonstrating that it owns registrations of the LYONDELLBASELL trademark.

Where a disputed domain name consists of a disputed trademark and only adds a few letters, confusing similarity may nevertheless be found under paragraph 4(a)(i) of the Policy. *Sniffies, LLC v. See Discovery, Inc. v. Domain Admin / E-Promote*, FA 1892784 (FORUM May 19, 2020) (“The Disputed Domain Name is confusingly similar to the DISCOVERY Mark because the Disputed Domain Name incorporates the DISCOVERY Mark in its entirety and merely adds the dictionary term ‘inc.’ (an abbreviation for incorporated or incorporation), followed by the gTLD ‘.com’.”); Also, *Applied Materials, Inc. v. Proxy Protection LLC / John Smith*, D2022-0026 (WIPO March 1, 2022) (“The addition in the Domain Name of the abbreviation ‘llc’, for the phrase ‘limited liability company’, after the trademark does not prevent a finding of confusing similarity.”). Here, the disputed domain name contains the entirety of the LYONDELLBASELL trademark and adds the letters “BV” (an abbreviation for the Dutch term “besloten vennootschap”, which translates to “private limited company” in English). Thus, the Complainant’s trademark is clearly recognizable in the second level of the disputed domain name and the added letters do not lessen confusion but rather enhance it as they directly relate to the legal structure of the Complainant’s business.

Furthermore, the extension “.com” adds no meaning to the second level of the disputed domain name. *Lesaffre et Compagnie v. Tims Dozman*, 102430 (CAC May 2, 2019) (“the top-level suffix in the domain name (i.e. the ‘.com’) must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.”).

Accordingly, the Panel finds that the Complainant has rights to the LYONDELLBASELL trademark and that the disputed domain name is confusingly similar to such trademark. Thus, the Complainant has satisfied paragraph 4(a)(i) of the Policy.

#### B. The Respondent has no rights or legitimate interests in respect of the disputed domain name

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant has the burden of making prima facie showing that the respondent has no rights or legitimate interests in a domain name. *Cephalon, Inc. v. RiskIQ, Inc.*, 100834 (CAC September 12, 2014). Once this standard is met, the burden shifts to the respondent to demonstrate that it does have rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy offers respondents several examples of how to demonstrate their rights or legitimate interests to a domain name. While the Complaint makes no specific mention of Paragraph 4(c) and there is no Response or other submission from the Respondent, the Panel deems it worthwhile to consider each of these examples in turn.

To address Paragraph 4(c)(ii), the Panel takes note of the Complaint’s statement that it “has no relationship with the Respondent whatsoever” and that Respondent “has never received any approval” to use the Complainant’s trademark. Further, reference may be made to the WHOIS record when considering the question of whether Respondent is commonly known by the disputed domain name. *MAJE v. enchong lin*, 102382 (CAC April 14, 2019) (“panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name.”). The WHOIS record for the disputed domain name lists the Registrant name as “Rachel Gobby”. This name bears no resemblance to the Complainant’s trademark or to the disputed domain name and the Respondent has not submitted any claim or evidence that it is known otherwise. As such, the Panel finds no evidence upon which to conclude that the Respondent is commonly known by the disputed domain name.

Next, under Paragraphs 4(c)(i) and 4(c)(iii) of the Policy the Panel considers whether the Respondent is using the disputed domain name to make a bona fide offering of goods or services or whether it is making a legitimate non-commercial or fair use of the disputed domain name. Failing to resolve a confusingly similar domain name to any web content or resolving it to a static parking page is typically not considered to be a bona fide use. See, *Consorzio Vino Chianti Classico v. Fabio Baccilli*, 104426 (CAC May 9, 2022) (no bona fide use found, in part, because the disputed domain name “does not resolve to an active website”). Here, although the Complainant has not submitted any screenshot or other evidence of the website resolution for the disputed domain name, the Panel has attempted to browse to the disputed domain name with no success. The Respondent, having not filed a Response or made any submission in these proceedings, does not offer any explanation for its use of the disputed domain name. Upon reviewing the available evidence, the Panel finds that the Respondent is not using the disputed domain name for a bona fide offering of goods or services or in connection with a legitimate non-commercial or fair use under Paragraphs 4(c)(i) and 4(c)(iii) of the Policy.

Further, the Complainant asserts that the disputed domain name was used for impersonating and phishing emails. Such activity, if supported by evidence, indicates a lack of rights or legitimate interests. *Arla Foods Amba v. ESMM EMPIRE staincollins*, 101578 (CAC August 9, 2017) (“Respondent has used the disputed domain name to impersonate the Complainant and fraudulently attempt to obtain payments and sensitive personal information. The use of the disputed domain name in connection with such illegal activities cannot confer rights or legitimate interests on the Respondent.”). Here, the Complainant asserts that the disputed domain name is “set up to send email” and was used to send phishing e-mails to the Complainant’s business partners. The Complainant submits into evidence a copy of the MX record associated with the disputed domain name as well as a “report of fraud attempts and the invoices received by a LyondellBasell’s client, using in particular the email address sales@lyondellbasellbv.com and the name of [a] LyondellBasell manager...”. The email discusses the purchase and storage of certain chemicals and attaches a document titled “Proforma Invoice” which bears the Complainant’s graphic logo and mentions certain quantities of such chemicals as “Mono Ethyl Glycol”, “Di Ethylene Glycol”, and others. The Complainant asserts that this is an example of “[s]torage spoofing (also known as terminal spoofing) [which] 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 Respondent has not disputed the Complainant’s assertions or evidence which are plausible, on their face. As such, the Panel finds that this evidence of a fraudulent phishing scheme further supports a prima facie claim that the Respondent is not making a bona fide use of the disputed domain name or a legitimate non-commercial or fair use thereof.

For all of the above-stated reasons, this Panel finds, by a preponderance of the evidence, that the Complainant has met its burden of proof and that the Respondent has not refuted this to show that it has any rights or legitimate interests in the disputed domain name. Thus, it is held that the Respondent has no rights or legitimate interests in respect to the disputed domain name under Paragraph 4(a)(ii) of the Policy.

#### C. The disputed domain name was registered and is being used in bad faith

Under paragraph 4(a)(iii) of the Policy, the complainant must demonstrate both that the domain name was registered and is being used in bad faith. Further guidance on that requirement is found in paragraph 4(b) of the Policy, which sets out four examples of actions by a respondent that may satisfy this burden of proof.

A threshold question is whether, at the time that it registered the disputed domain name, the Respondent was aware of the Complainant’s trademark. The registration of the Complainant’s trademark preceded the creation of the disputed domain name by many years. Further, the Complainant asserts that “[g]iven 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.” In support of this claim the Complainant submits copies of its corporate brochure and its 2020 Annual Report. It also claims that its trademark is “also widely promoted on most popular social media with channels and pages specifically dedicated to it, i.a. on Twitter (<https://twitter.com>) and Facebook (<https://www.facebook.com>) used also for promotional and advertising purposes.” However, no evidence is submitted regarding these social media channels. The Complainant’s reputation aside, from the use made of the disputed domain name, i.e., for phishing e-mails that impersonate the Complainant, it is evident that the Respondent had actual knowledge of and was specifically targeting the Complainant’s trademark. See *Lyondellbasell Industries Holdings B.V. v. Emma Will*, DNL2022-0006 (WIPO April 14, 2022) (where phishing e-mails were sent using the asserted trademark, “in view of the use that the Respondent has made of the Domain Name, it is inconceivable that the Respondent does not was aware of Plaintiff and the Mark at the time of registration.”). Supporting this assertion is the above-mentioned submission of a phishing report indicating that the Respondent targeted one of the Complainant’s business clients. This definitively indicates the Respondent’s actual knowledge of the Complainant’s trademark and leads to the conclusion that the disputed domain name was registered in bad faith.

Next, attention is given to the Complainant’s claim that the Respondent uses the disputed domain name in bad faith. Here, the disputed domain name was created on May 12, 2023 which is long after the issuance of the Complainant’s cited trademark registrations. The disputed domain name does not resolve to any website. It has been held in many prior UDRP decisions that non-use of a domain name for website content, will not prevent a finding of bad faith under the doctrine of passive holding. Rather “panellists will look at the totality of the circumstances in each case, including: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.” *3Shape A/S v. Michael Nadeau*, 102312 (CAC March 12, 2019), citing the seminal decision in *Telstra Corporation Limited v. Nuclear Marshmallows*, D2000-0003 (WIPO February 18, 2000). As noted above, Complainant does not submit any evidence of the website resolution for the disputed domain name but the Panel has been unable to browse to or view any such site. Moreover, the LYONDELLBASELL trademark is distinctive and the Respondent has failed to submit a response or submit any evidence of good faith use. In this case, the Respondent’s failure to resolve the disputed domain name to any web page, along with the totality of the circumstances, supports

the Complainant's assertion that the domain name is used in bad faith.

Further, Paragraph 4(b)(iv) of the Policy states that bad faith may be found where a respondent intentionally attempts to attract, for commercial gain, internet users to its web site or other on-line location by creating a likelihood of confusion with a complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its products or services. The Complainant asserts that the Respondent is using the disputed domain name in furtherance of an e-mail phishing scheme. Such activity provides quite firm evidence of bad faith use, for commercial gain, based upon confusion with an asserted trademark. Twilio Inc. v. Namecheap baddo, FA 1986813 (FORUM April 1, 2022) (bad faith found where the "Respondent attempts to pass itself off and impersonate Complainant to [sic] offering fake job listings and perpetuate a scheme to defraud third parties into tendering payments to Respondent's account."). As noted above, the Complainant submits a copy of a report detailing and reproducing certain portions of an e-mail in which the Respondent used the disputed domain name in an e-mail address, and offered to sell certain chemical products to one of the Complainant's clients. The Complainant describes this as "[s]torage spoofing (also known as terminal spoofing)". The Respondent has not participated in this case and so it does not dispute the Complainant's assertions or provide an alternate explanation for its actions. As such, the Panel finds, by a preponderance of the evidence, that the disputed domain name has been used in bad faith under Paragraph 4(b)(iv) and thus under Paragraph 4(a)(iii) of the Policy.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

**Accepted**

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

1. **lyondellbasellbv.com**: Transferred

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## PANELLISTS

Name	<b>Steven Levy</b>
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DATE OF PANEL DECISION **2023-07-31**

Publish the Decision

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