

Decision for dispute CAC-UDRP-105592

Case number	CAC-UDRP-105592
Time of filing	2023-07-11 15:34:39
Domain names	lyondellbaseii.com, lyoudellbasell.com

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	Barzanò & Zanardo Milano S.p.A.
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Respondents

Name	Ray Jacson
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Name	Rez Water
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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 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

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 Industries N.V. owns multiple domain names consisting in, inter alia, the wordings "LYONDELLBASELL" and "LYONDELL", such as <lyondellbasell.com> used as main website of LyondellBasell since October 23, 2007 and <lyondell.com> registered on February 21, 1997.

The disputed domain names are <lyondellbaseii.com>, registered on January 13, 2022; and <lyoudellbasell.com>, registered on April 3, 2023.

Despite none of the two domain names currently redirect to active websites, <lyondellbaseii.com> is used in connection to e-mail accounts: it is in fact set up with active MX records, indicating that it is or is intended to be used to send and receive e-mails.

According to the Complainant the disputed domains names are confusingly similar with the earlier trademark rights and are used without any bona fide purpose. Furthermore, Respondent has registered a domain name containing a well-known third party's trademark without authorization and the disputed domain names, despite not actively used, are set up to send and receive e-mail, therefore indicating a high risk that it could be involved in phishing activities.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

Complainant's contentions are summarised above. Complainant requested for the consolidation of the dispute in respect of the two disputed domain names, according to Paragraph 3(c) UDRP Rules. The following arguments have been provided in order to satisfy the required "common control" of the dispute domain names Registrant entity, the Complainant put forward, inter alia:

- The disputed domain names are both registered with Chinese contact information;
- They are both registered with the same Registrar NameCheap, Inc.; They are both using the same name servers and the same privacy protect service (Privacy service provided by Withheld for Privacy ehf.);
- The two domain names reflect a clear naming pattern as they are all containing the trademark LYONDELL BASELL, with limited modifications.

From the disclosed information obtained pursuant to the filing of the Arbitration procedure it was found out that formally the two domain names have different registrant name and contact information, however they are using the same naming scheme: they both use English names, e-mails created with free services and addresses based in USA.

RIGHTS

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

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 names (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 names have been registered and are 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

A first preliminary decision to take relates the consolidation request filed by the Complainant.

In this respect, it must be recalled that the exercise of the Panel discretion in deciding the consolidation requests filed in respect of multiple domain name disputes is subject to the criteria and principles defined by the Policy and the Rules. In this sense, it is important that the consolidation could not have negative effects on the right of defence of unrelated Respondents. The Complainant provided extensive arguments to support its request, mentioning the criteria elaborated by the UDRP case-law which could be summarized as follows: similarities in or relevant aspects of (i) the registrants' identity(ies) including pseudonyms, (ii) the registrants' contact information including e-mail address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>).

This Panel is satisfied by the Complainant's submissions and does hereby grant the requested consolidation. Given the circumstance, this Panel is persuaded that "Ray Jacson" and "Rez Water" are just fictitious identities used by the same common entity to engage in a serial activity aimed at exploiting without any legitimate basis the Complainant's reputed marks and market goodwill.

It is fair and equitable for all parties that the consolidation request be granted, especially considering that no Response has been filed so to provide any explanation, which is nevertheless highly implausible.

With respect of the merit of the dispute, this Panel is satisfied with any of the arguments and evidence put forward by the Complainant, who successfully demonstrated that:

- 1) the disputed domain names are confusingly similar with its exclusive earlier rights in the well-known "LYONDELLBASELL" marks;
- 2) that no plausible legitimate use of the disputed domain names is actually detectable because of the renown of the trademark included in both disputed domain names, and
- 3) that the typical UDRP-bad faith criteria are met in the present case so to affirm the disputed domain names have been registered and used within a speculative purpose in order to damage the Complainant's well-known rights. The criteria of passive holding doctrine were also met in this case when the Panel could not find any plausible good faith use of the disputed domain names. The threat of abuse of the disputed domain names for email purposes provides (while undisputed by the Respondent) another possibility of future bad faith use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lyondellbaseii.com**: Transferred
2. **lyoudellbasell.com**: Transferred

PANELLISTS

Name	Roberto Manno
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DATE OF PANEL DECISION **2023-08-24**

Publish the Decision
