

Decision for dispute CAC-UDRP-105780

Case number	CAC-UDRP-105780
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Time of filing	2023-10-05 10:43:22
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Domain names	lyondellbasels.com
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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

Name	Gabrielle Loveday
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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

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

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

Complainant submits evidence of owning many trademark registrations and the Panel will mention here the ones that are relevant for the decision with respect to the Complaint:

- US trademark no. 3634012 - serial no. of the application 77467965 (word) "LYONDELLBASELL" since May 7, 2008 in classes 1, 4, 17, 35, 42;

- US trademark no. 5096173 - serial no. of the application 86555801 (device) "LYONDELLBASELL" in classes 1, 4, 17, 42, 45;

- European Union Trademark (EUTM) no. 006943518 (word) “LYONDELLBASELL” since May 16, 2008 in classes 1, 4, 17, 42, 45;
- EUTM no. 013804091 (device) “LYONDELLBASELL” since March 6, 2015 in classes 1, 4, 17, 42, 45.

Moreover, although not being intellectual property rights, it is valuable mentioning here that Complainant owns multiple domain names consisting in, inter alia, the wordings “LYONDELLBASELL”, such as <lyondellbasell.com> used as main website of LyondellBasell since October 23, 2007.

Further, the Complainant is also widely promoted on most popular social media with channels and pages specifically dedicated to it, i.a. on Twitter (<https://twitter.com/LyondellBasell>) and Facebook (<https://www.facebook.com/LyondellBasell>), used also for promotional and advertising purposes.

FACTUAL BACKGROUND

The disputed domain name <lyondellbasels.com> was registered on August 21, 2023 by a subject hidden by the privacy protect service organization Privacy service provided by Withheld for Privacy ehf and was disclosed in this procedure as being Gabrielle Loveday.

The disputed domain name is registered later than the registration of the Complainant’s trademarks was done.

The disputed domain name is currently redirected to a parking page in black with sponsored links depicted in blue frames. The links also related to Complainant’s services. It consists of a black page containing blue frames with links.

According to the Complainant the domain name holder is set up with active MX records, indicating that it is used to send and receive e-mails and provides evidence of it and - considering that it almost incorporates complainant trademarks – it is therefore highly possible that it is (or could be) 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>.

In light of this and in order to protect its customers, LyondellBasell Instructed to proceed with enforcing activities in order to obtain its stop.

PARTIES CONTENTIONS

Complainant’s contentions are summarised above.

No administratively compliant Response has been filed.

RIGHTS

Complainant has submitted evidence of several trademark registrations LYONDELLBASELL, registered in many countries in the world that are alive.

By demonstrating that the Complainant has been active for many years in more than 100 countries in the world and is listed at the stock exchange in New York, Complainant made it clear that, as a result of long and extensive use of the trademark, the trademark has a certain reputation in the world.

The disputed domain name is almost identical to Complainant’s LYONDELLBASELL trademarks as it differs only in one letter: the domain name <lyondellbasels.com> ends with the letter ‘s’ whereas the Complainants trademarks end with the letter ‘l’.

Considering that Complainant’s trademarks are highly distinctive a difference of one letter at the end of the trademark will not change the scope of protection but rather will be seen as a typo.

Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Uniform Domain Name Dispute Resolution Policy (hereafter “the Policy”) are met.

NO RIGHTS OR LEGITIMATE INTERESTS

According to paragraph 4(a)(ii) of the Policy Complainant has to demonstrate that the Respondent has no rights or legitimate interests in respect of the domain name.

The Complainant, in this respect, asserts that:

- the Complainant (or its Group members) has no relationship with the Respondent whatsoever;
- The Respondent has never received any approval of the Complainant, expressed or implied, to use its (it's) 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 is not redirected to an active website and it is set up to send email, therefore indicating that it is registered to be involved in phishing activities/storage spoofing.

As the Respondent did not answer, The Panel accepts the Complainant assertions as facts and therefore it 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

Complainant asserts that it is inconceivable that the Respondent could have registered the disputed domain name 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 Complainant and its trademarks. (see also the non-limited list of evidence of bad faith in paragraph 4(b)(iv) of the Policy).

Further Complainant asserts that a finding of Bad Faith is also supported by the use of the domain name set up to send e-mails and receive e-mail with an e-mail address almost identical to Complainant's ones.

According to article 4,a (iii) of the Policy Complainant has to demonstrate the domain name has been registered and is being used in bad faith.

The registration of a domain name that is almost identical to a trademark with reputation can be considered bad faith.

As to the use of the disputed domain name the Panel must mention that it is not convinced that spoofing is at stake in this case. For that more evidence is necessary.

The website of Respondent has a basic layout consisting of a black background and blue frames with links to other websites. This can be considered as a website that has no interest on its own but is only meant to attract visitors to other websites.

It is clear to the Panel that by using a domain name that is similar to a trademark that has a certain reputation in the world and that only differs in one letter from the trademark of the Complainant, that typosquatting is here at stake meaning that the Respondent has deliberately registered a domain name differing only one letter from the trademark of Complainant and hereby intends to attract to his website for commercial gain, Internet users, by creating a likelihood of confusion with the Complainant and its trademarks.

On a side note, it is worth mentioning that the Panel is aware of many similar domain names registered with a typo and used with similar website lay-outs of that of Respondent's website, consisting of a black background and blue frames with the possibility to link to other websites that may or may not comprise competitive information. This appears to be a trendy phenomenon used to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion.

Based on the above findings the Panel concludes that the disputed domain name is used in 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

As the requirements of the Policy are met as explained above the Complaint is accepted.

FOR ALL THE REASONS STATED ABOVE. THE COMPLAINT IS

Accepted

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

- 1. **lyondellbasels.com**: Transferred

PANELLISTS

Name	Marieke Westgeest
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DATE OF PANEL DECISION 2023-11-10

Publish the Decision