Decision for dispute CAC-UDRP-106102

Case number	CAC-UDRP-106102
Time of filing	2024-01-25 09:35:59
Domain names	lyondelbasellbv.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	LyondellBasell Industries Holdings B.V.

Complainant representative

Organization	Barzanò & Zanardo Milano S.p.A.

Respondent

Name	Eric Watson

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 registered owner of many trademarks consisting and/or containing LYONDELL worldwide, e.g. European Union trademark registration no. 006943518 (word) “LYONDELLBASELL” registered on 21/01/2009 for goods and services in classes 1, 4, 17, 42 and 45.

FACTUAL BACKGROUND

It results from the Complainant’s undisputed allegations that it is a multinational chemical company with European and American roots going back to 1953. Ever since, 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 Complainant further contends its trademark LYONDELL be distinctive and well-known.

Furthermore, the Complainant use the domain name < lyondellbasell.com> > (registered on October 23, 2007) to connect to its official website.

The disputed domain name was registered on July 5, 2023. Furthermore, the undisputed evidence provided by the Complainant

proves that the disputed domain names redirected to a parking page with sponsored links related to services similar to those offered by Complainant. In addition, the undisputed evidence provided by the Complainant proves that the disputed domain name has been used to send emails to Complainant's clients, while pretending to be Complainant's managers, seemingly in order to obtain improper payment.

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.

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

1.Pursuant to paragraph 4(a)(i) of the Policy, the complainant must establish rights in a trademark or service mark, and that the disputed domain name is identical or confusingly similar to a trademark in which the complainant has rights.

It results from the evidence provided, that the Complainant is the registered owner of various trademarks consisting and/or containing LYONDELL worldwide, e.g. European Union trademark registration no. 006943518 (word) "LYONDELLBASELL" registered on January 21, 2009 for goods and services in classes 1, 4, 17, 42 and 45.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety or where at least a dominant feature of the relevant mark is recognizable in the domain name (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") at section 1.7. This Panel shares this view and notes that the disputed domain name incorporates the dominant feature of the Complainant's trademark, (i.e. LYONDELBASELL, where the letter "L" is missing), which is clearly recognizable in the disputed domain name).

Although the addition of other term (here, bv) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy, see WIPO Overview 3.0, section 1.8.

Finally, the generic Top-Level Domain ("gTLD") ".com" of the disputed domain name is typically disregarded under the first element confusing similarity test (see WIPO Overview 3.0 at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainants have rights.

2.Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name.

In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondents and did, in particular, not authorize the Respondents' use of the Complainant's trademark e.g. by registering the disputed domain name, comprising the dominant feature of the Complainant's trademark. Furthermore, the Panel notes that there is no evidence showing that the Respondents might be commonly known by the disputed domain names in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, it results from the undisputed evidence before the Panel that the disputed domain name resolves to a parking website comprising PPC links that compete with or capitalize on the reputation and goodwill of the Complainant's trademark or otherwise mislead Internet users (i.e. a parking page displaying PPC links in the Complainant's area of activity). Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent bona fide offering of goods or services, where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (see WIPO Overview 3.0 at section 2.9, with further references). This Panel shares this view. Therefore, such use can neither be considered as bona fide offering of goods or services nor a legitimate noncommercial 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.

In addition, UDRP panels have categorically held that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent, e.g. phishing, impersonation/passing off, or other types of fraud (see WIPO Overview 3.0 at section 2.13.1 with further references). It results from the undisputed evidence before the Panel that the disputed domain has been used to send emails to third parties, while pretending to be managers of the Complainant, seemingly in order to obtain improper payment.

It is acknowledged that once the Panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see WIPO Overview 3.0 at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondents have no rights or legitimate interests in the disputed domain names. The Panel considers this evidence as sufficient to support the Complainants' credible claim of illegal activity by the Respondent.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

3.According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of registration and use of the disputed domain name in bad faith.

This Panel agrees with the approach taken by previous UDRP panels following which the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. Many such cases involve the respondent's use of the domain name to send deceptive emails, e.g. to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers (see WIPO Overview 3.0 at section 3.4).

As explained above, it results from the undisputed evidence submitted by the Complainant that the disputed domain name has been used for sending fraudulent emails in the name of managers of the Complainant in order to solicit payment. In addition, the use of the disputed domain name in such an illegal scheme additionally demonstrates that the Respondent not only knew of the Complainant, its business and marks, but also attempted to pass itself off as the managers of the Complainant in order to solicit payment.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lyondelbasellbv.com**: Transferred

PANELLISTS

Name	**Dr. Federica Togo**

DATE OF PANEL DECISION 2024-03-01

Publish the Decision