Decision for dispute CAC-UDRP-106242

Case number	CAC-UDRP-106242
Time of filing	2024-02-15 15:51:27
Domain names	lyondeilbasell.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	baron rez

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of various trademarks, including:

- US trademark no. 3634012 for “LYONDELLBASELL” since June 9, 2009;

- US trademark no. 5096173 for “LYONDELLBASELL” since December 6, 2016;

- European Union Trademark (EUTM) no. 006943518 for “LYONDELLBASELL” since January 21, 2009;

- EUTM no. 013804091 for “LYONDELLBASELL” since July 2, 2015;

- EUTM no. 001001866 for “LYONDELL” since May 22, 2000.

FACTUAL BACKGROUND

LyondellBasell Group (referred to as the “Complainant”) 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 Complainant 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 worldwide and manufactures at 55 sites in 17 countries. Its products are sold in approximately 100 countries.

According to the 2020 annual report, the Complainant generated $4.9 billion in income from continuing operations, EBITDA of $7.1 billion, and $12.28 diluted earnings per share.

The Complainant has been listed on the New York Stock Exchange since 2010.

On December 20, 2017, the Complainant celebrated the 10-year anniversary of the merger of Lyondell Chemical Company and Basell AF SCA, a transaction that created one of the largest plastics, chemicals, and refining companies in the world.

The Complainant 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 also 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.

Due to its longstanding use and the huge promotional and advertising investments, the “LYONDELL” trademark is certainly well-known. Previous Panelists in other UDRP procedures have recognized that “the word lyondell is highly distinctive has it is a fanciful term” (e.g., LyondellBasell Industries Holdings B.V. v. Wiiliams Wales - lyondell terminal, Case n. 102018).

The disputed domain name <lyondeilbasell.com> was registered on January 24, 2024.

PARTIES CONTENTIONS

COMPLAINANT:

1. PRELIMINARY PROCEDURAL QUESTIONS

LyondellBasell Industries N.V., LyondellBasell Industries Holdings B.V., Lyondell Chemie Nederland B.V. and Lyondell Chemical Company are related companies belonging to the same group and having right in the relevant marks on which this Complaint is based.

According to the UDRP jurisprudence, any one party of multiple related parties, on behalf of the other interested parties, may bring a Complaint and is to be considered to have standing in dispute (see paragraph 1.4.2 of WIPO Overview 3.0 and the decisions mentioned thereto).

The Complainant of this administrative proceeding is LyondellBasell Industries Holdings B.V., filer of this Complaint also on behalf of the other interested parties (Lyondell Chemie Nederland B.V., LyondellBasell Industries N.V. and Lyondell Chemical Company). The transfer decision is to be directed to the Complainant.

2. PRELIMINARY ARGUMENTS

The disputed domain name is currently redirected to a parking page with sponsored links related to services similar to those offered by the Complaint; moreover, it is set up with active MX records, indicating that it is used to send and receive e-mails. The MX records with which the disputed domain name was set up are provided as evidence, along with a report of fraud attempts and the invoices received by one of the Complainant’s clients, using in particular the e-mail addresses <klaudia.forgacz@lyondeilbasell.com>.

It is therefore clear that the disputed domain name was 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, the Complainant instructed to proceed with enforcing activities in order to obtain its stop.

3. THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR

Under the first UDRP element, the straightforward side-by-side comparison of the disputed domain name and the textual components of the marks on which this Complaint is based makes it evident that the “LYONDELLBASELL” Trademarks and the “LYONDELL” Trademarks are recognizable within the disputed domain name and, thus, the disputed domain name is confusingly similar to the marks in which the Complainant has rights. While each case is judged on its own merits, in UDRP cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark under the first element of the UDRP (see paragraph 1.7 WIPO Overview 3.0 and the decisions mentioned thereto).

Comparing - in particular - the disputed domain name and the “LYONDELLBASELL” Trademarks and to the disputed domain name <lyondellbasell.com> the only difference is the substitution of the seventh letters (the second “l”) with an “I”: a clear voluntary typosquatting.

Finally, as consistently found in several decisions, the top level “.com” is merely instrumental to the use of the Internet so the disputed domain name remain confusingly similar despite their inclusion.

4. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant contend that the Respondent lacks rights or legitimate interests in the disputed domain name for the following reasons:

- The Complainant (or the other related parties) has no relationship with the Respondent whatsoever;

- The Respondent has never received any approval of the Complainant (or the other related parties), expressed or implied, to use its (their) 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 e-mail, therefore indicating that it is registered to be involved in phishing activities/storage.

Spoofing, such use of the disputed domain name is clearly not a bona fide, legitimate or fair use under the UDRP Policy.

5. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

The disputed domain name <lyondeilbasell.com> has been registered and is being used in bad faith.

The Respondent registered the disputed domain name confusingly similar to the Complainant’s well-known prior trademarks. Given 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 the Complainant 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 Complainants and their marks (paragraph 4(b)(iv) of the UDRP Policy).

A finding of Bad Faith is also supported by the use of the disputed domain name, as described at the factual section:

- the disputed domain name is currently redirected to a parking page with sponsored links related to complainant services and products;

- the disputed domain name is used to send scam emails to complainant’s clients requesting a consistent payment.

Past panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith – as in the present case sending e-mail, phishing, identity theft.

The Complainant requests that the disputed domain name <lyondeilbasell.com> be transferred to the Complainant.

RESPONDENT

No administratively compliant Response was filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has 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

To the satisfaction of the Panel, the Complainant has 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

Before moving on to the dispute's substance, the Panel must weigh in on a procedural matter.

The matter is a request for consolidation by the Complainant of this administrative proceeding, namely, LyondellBasell Industries Holdings B.V., the filer of this Complaint, also on behalf of the other interested parties Lyondell Chemie Nederland B.V., LyondellBasell Industries N.V., and Lyondell Chemical Company.

In this case, the interested parties all belong to the same group, are represented collectively under the Complainant, and have rights in the relevant marks on which this Complaint is based. The WIPO Overview 3.0 in paragraph 4.11.1 sets forth two considerations when determining the consolidation under a case of multiple Complainants against a Respondent, namely, a common grievance while respecting equity and procedural efficiency.

In this matter, the Complainant advances persuasive arguments to the Panel. The Complainant represents the interested parties, as they all belong to the same industrial group and share trademarks where the dominant term is “LYONDELLBASELL”.

Because of the above, the Panel does not believe that consolidating the interested parties under a single Complaint, represented by the Complainant, upsets the careful equitable balance of this proceeding while at the same time aiding in its procedural efficiency.

The Panel also notes that the remedy requested is transferring the disputed domain names to the Complainant, namely LyondellBasell Industries Holdings B.V., if successful.

The Panel is satisfied that all procedural requirements under UDRP have been met, and there is no other reason why it would be unsuitable to provide the Decision.

PRINCIPAL REASONS FOR THE DECISION

1. Identical or Confusingly Similar

Regarding the first step under this element, and as per evidence on record, the Complainant owns several trademarks containing the term “LYONDELLBASELL” since at least 2009 and “LYONDELL” since at least 2000. Therefore, based on this, the Panel is satisfied that the Complainant has shown its trademark rights in "LYONDELLBASELL" and “LYONDELL”.

Turning now to the second step under this element, namely, assessing the confusing similarity between the disputed domain name and the trademarks, the Panel notes that the disputed domain name appears to reproduce the trademark "LYONDELLBASELL" in its entirety, with a slight change attributed to the letter “i” in the disputed domain name standing for the letter “L” in the trademarks. This slight difference would be imperceptible to most at first glance, making the slight difference immaterial in assessing confusing similarity under the Policy.

As discussed in paragraph 1.9 WIPO of Overview 3.0, the consensus view, which this Panel finds persuasive, is that “a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element”. The practice ‘typosquatting’ is common in this field, consisting of insignificant modifications to trademarks to seek to wrongfully take advantage of errors by users in typing domain names into their web browser’s location bar.

Consequently, the Panel determines that the Complaint has satisfied the Policy's first element set under paragraph 4(a)(i).

2. Rights or Legitimate Interests

Based on the evidence on record and acknowledging that the Respondent failed to produce any allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name, the Panel must turn to the uncontested facts.

The uncontested facts indicate that a) the Respondent is not related to the Complainant; b) the Respondent has no license or authorization to use the trademarks; c) there is no evidence that the Respondent has acquired any rights in a trademark or trade name corresponding to the disputed domain name; d) the disputed domain name is not redirected to an active website, and it is set up to send an email, therefore indicating that it is registered to be involved in phishing activities, and e) there is evidence the disputed domain name is being used in domain spoofing of the Complainant's trademark and official domain names.

In the Panel's view, these assertions and the evidence attached are enough to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names (see 2.1 of WIPO 3.0 Overview).

These facts lead the Panel to conclude that the Respondent did not have rights or legitimate interests in the disputed domain names. Furthermore, the evidence of domain spoofing can be used to prove bad faith, but that is subject to further analysis under the element below.

Consequently, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name. Subsequently, the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

3. Registered and Used in Bad Faith

Per the record and evidence at hand, the Panel finds that the Respondent was likely aware of the Complainant and had the Complainant's trademark in mind when registering the disputed domain name. Furthermore, the Respondent utilized the disputed domain name to create fake emails impersonating the Complainant.

In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

All the preceding analysis leaves the Panel no other option than to conclude that the most likely intention of the Respondent was to intentionally attempt to attract, for commercial gain, Internet users to its website/disputed domain name by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or disputed domain name, as per illustrated under paragraph 3.1 of WIPO 3.0 Overview.

In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

4. Decision

For the preceding reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lyondeilbasell.com**: Transferred

PANELLISTS

Name	**Rodolfo Rivas Rea**

DATE OF PANEL DECISION 2024-03-12

Publish the Decision