Decision for dispute CAC-UDRP-106314

Case number	CAC-UDRP-106314
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Domain names	lyondellbasel.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

Organization	Printing Dynamics

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 LyondellBasell Industries Holdings B.V. is the owner of the well-known trademark LYONDELLBASELL in several classes worldwide:

- US trademark Reg. No. 3634012 registered on May 7, 2008 in classes 1, 4, 17, 35, 42; and

- European Union Trademark (EUTM) Reg. No. 006943518 registered on May 16, 2008 in classes 1, 4, 17, 42, 45.

FACTUAL BACKGROUND

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

“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.

According to the 2020 annual report LyondellBasell generated $4.9 billion in income from continuing operations, EBITDA of $7.1 billion and $12.28 diluted earnings per share. LyondellBasell is listed on the New York Stock Exchange since 2010. On December 20, 2017 the company 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. LyondellBasell Group is formed of various affiliated companies, all of them under the ultimate control of LyondellBasell Industries N.V., headquartered in the Netherlands.

The disputed domain name was registered on March 6, 2024.

PARTIES CONTENTIONS

COMPLAINANT:

i) The Complainant has rights in the LYONDELLBASELL mark as identified in section “Identification of rights” The disputed domain name is confusingly similar to the Complainant's LYONDELLBASELL mark because it incorporates the Complainant’s mark LYONDELLBASELL merely eliminating the last letter (“L”): a clear voluntary typosquatting.

ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name: the Respondent does not have any relationships with the Complainant, nor has the Complainant ever granted the Respondent with any rights to use the LYONDELLBASELL trademark in any forms, including the disputed domain name; and there is no evidence that the Respondent has acquired any rights in a trademark or trade name corresponding to the disputed domain name. The Respondent does not use the disputed domain name for any bona fide offering of goods or services or legitimate noncommercial or fair use. The disputed domain name is not directed to an active website, and it is set up to send email, therefore indicating that it is registered to be involved in phishing activities and storage spoofing.

iii) The Respondent has registered and is using the disputed domain name in bad faith: the Respondent has registered and used the disputed domain name with actual knowledge of the Complainant's rights in the LYONDELLBASELL mark; the mere registration of the disputed domain name that is confusingly similar to the Complainant’s famous trademark can by itself create a presumption of bad faith; the disputed domain name does not resolve to any active page; and the domain name is used to send scam emails to the Complainant’s clients requesting a consistent payment.

RESPONDENT:

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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by respondent is identical or confusingly similar to a trademark or service mark in which complainant has rights; and

(2) respondent has no rights or legitimate interests in respect of the domain name; and

(3) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc., FA 95095 (FORUM July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also Talk City, Inc. v. Robertson, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Rights

The Complainant contends that it is the owner of the registered trademark LYONDELLBASELL as identified in section "Identification of rights" above. The Panel notes that a trademark registration with a national trademark agency and an international trademark organization such as the USPTO, the EUIPO, etc. is sufficient to establish rights in that mark. As such, the Panel finds that the Complainant has established its rights in the mark LYONDELLBASELL.

The Complainant further contends that the disputed domain name is confusingly similar to its mark LYONDELLBASELL on the grounds that the disputed domain name **<lyondellbasel.com>** incorporates the Complainant's mark LYONDELLBASELL merely eliminating the last letter ("L"): a clear voluntary typosquatting. The omission or addition of a single letter as well as a gTLD fails to sufficiently distinguish a disputed domain name from a mark per Policy paragraph 4(a)(i). See Webster Financial Corporation and Webster Bank, National Association v. Tanya Moulton, FA2303002034214 (Forum April 11, 2023) ("When a disputed domain name wholly incorporates another's mark, adding a single letter is insufficient to defeat a finding of confusing similarity."; finding <fwebsteronline.com> domain name confusingly similar to WEBSTER and WEBSTER ONLINE trademarks); ModCloth, Inc. v. James McAvoy, FA 1629102 (Forum Aug. 16, 2015) ("The Panel finds that the disputed domain name is confusingly similar to Complainant's mark because it differs from Complainant's mark by merely adding the letter 'L' . . . ").

The Panel notes that the disputed domain name incorporates the Complainant's mark LYONDELLBASELL and omits the single letter "L" and adds the ".com" gTLD. Therefore, the Panel finds the disputed domain name is confusingly similar to the Complainant's LYONDELLBASELL mark per Policy paragraph 4(a)(i).

No rights or legitimate interests

A complainant must first make a prima facie case that a respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), then the burden shifts to the respondent to show it does have rights or legitimate interests. See Croatia Airlines d. d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 (the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy). See also Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (FORUM Nov. 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii).

The Complainant contends that the Respondent does not have any relationship with the Complainant, nor has the Complainant ever granted the Respondent with any rights to use the LYONDELLBASELL trademark in any forms, including the disputed domain name; and there is no evidence that the Respondent has acquired any rights in a trademark or trade name corresponding to the disputed domain name. Where a response is lacking, WHOIS information may be used to determine whether a respondent is commonly known by the disputed domain name under Policy paragraph 4(c)(ii). See State Farm Mutual Automobile Insurance Company v. Dale Anderson, FA1504001613011 (Forum May 21, 2015) (concluding that because the WHOIS record lists "Dale Anderson" as the registrant of the disputed domain name, the respondent was not commonly known by the <statefarmforum.com> domain name pursuant to Policy paragraph 4(c)(ii)). Additionally, lack of authorization to use a complainant's mark may indicate that the respondent is not commonly known by the disputed domain name. See Alaska Air Group, Inc. and its subsidiary, Alaska Airlines v. Song Bin, FA1408001574905 (Forum Sept. 17, 2014) (holding that the respondent was not commonly known by the disputed domain name as demonstrated by the WHOIS information and based on the fact that the complainant had not licensed or authorized the respondent to use its ALASKA AIRLINES mark). The unmasked WHOIS information for the disputed domain name lists the registrant as "Printing Dynamics." Therefore, the Panel finds the Respondent is not commonly known by the disputed domain name pursuant to Policy paragraph 4(c)(ii).

The Complainant further contends that the Respondent does not use the disputed domain name for any bona fide offering of goods or services or legitimate noncommercial or fair use. The disputed domain name is not directed to an active website, and it is set up to send email, therefore indicating that it is registered to be involved in phishing activities and storage spoofing. The Complainant has provided screenshots of the disputed domain name's resolving webpage showing that the domain name is currently redirected

to a parking page; and the domain name is used to send scam emails to the Complainant's clients requesting a consistent payment. The Panel observes that using a disputed domain name to pass off as the Complainant or its employee for the purpose of furthering a phishing campaign may not be a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy paragraph 4(c)(i) or (iii). See Abbvie, Inc. v. James Bulow, FA 1701075 (FORUM Nov. 30, 2016) ("Respondent uses the at-issue domain name to pose as Complainant's CEO by means of email addresses at the confusingly similar domain name in an attempt to determine Complainant's ability to process a transfer. Using the domain name in this manner is neither a bona fide offering of goods and services under Policy paragraph 4(c)(i), nor a legitimate noncommercial or fair use under Policy paragraph 4(c)(iii)"). The Panel finds that Respondent's fraudulent activity, i.e., sending scam emails to the Complainant's clients requesting a consistent payment is being perpetrated through the disputed domain name to deceive third parties into believing that Respondent is affiliated with Complainant. Therefore, the Panel finds that Respondent's fraudulent activity fails to make a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy paragraph 4(c)(i) or (iii).

The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith: the Respondent has registered and used the disputed domain name with actual knowledge of the Complainant's rights in the LYONDELLBASELL mark. While constructive knowledge is insufficient for a finding of bad faith, per Policy paragraph 4(a)(iii), registration of an infringing domain name with actual knowledge of another's trademark rights is sufficient to establish bad faith, and can be shown by the notoriety of the mark and the use Respondent makes of the disputed domain name. See Orbitz Worldwide, LLC v. Domain Librarian, FA 1535826 (Forum February 6, 2014) ("The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding Policy paragraph 4(a)(iii) bad faith, the Panel here finds actual knowledge through the name used for the domain and the use made of it."); see also AutoZone Parts, Inc. v. Ken Belden, FA 1815011 (Forum December 24, 2018) ("Complainant contends that Respondent's knowledge can be presumed in light of the substantial fame and notoriety of the AUTOZONE mark, as well as the fact that Complainant is the largest retailer in the field. The Panel here finds that Respondent did have actual knowledge of Complainant's mark, demonstrating bad faith registration and use under Policy paragraph 4(a)(iii)."). The Panel agrees and infers, due to the notoriety of the Complainant's mark around the world as noted above and the manner of use of the disputed domain name that the Respondent had actual knowledge of the Complainant's rights in the LYONDELLBASELL mark at the time of registering the disputed domain name, and thus the Panel finds the bad faith registration of the disputed domain name.

Next, the Complainant contends that the disputed domain name resolves to an inactive page, and is used for sending scam emails to the Complainant's clients requesting a consistent payment. The Panel observes that the passive holding of a domain name does not necessarily circumvent a finding that the domain name is being used in bad faith within the requirements of paragraph 4(a)(iii) of the Policy. See Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 (finding that in considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of paragraph 4(a)(iii), a panel must give close attention to all the circumstances of respondent's behavior, and a remedy can be obtained under the Policy only if those circumstances show that the respondent's passive holding amounts to acting in bad faith.).

The particular circumstances of this case that the Panel has considered are:

i) The Complainant's mark LYONDELLBASELL is considered as a well-known and reputable trademark as noted in section beforehand;

ii) The Respondent uses the disputed domain name for sending scam emails to the Complainant's clients requesting a consistent payment; and

iii) The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name.

Taking into account all of the above, the Panel concludes that the Respondent's passive holding of the disputed domain name coupled with the Respondent's fraudulent activities constitutes bad faith registration and use under Policy, paragraph 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lyondellbasel.com**: Transferred

PANELLISTS

Name	**Mr. Ho-Hyun Nahm Esq.**

DATE OF PANEL DECISION 2024-05-05

Publish the Decision