Decision for dispute CAC-UDRP-106579

Case number	CAC-UDRP-106579
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Domain names	lyondellbasellnv.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	Domain Administrator

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 holder of several trademarks including:

- Unites States word mark “LYONDELLBASELL” registered under No. 3634012 on June 9, 2009, covering goods and services in classes 1, 4, 17, 35, 42;
- European Union word mark “LYONDELLBASELL” registered under No. 006943518, on January 21, 2009, covering goods and services in classes 1, 4, 17, 35, 42, 45;
- International word mark “LYONDELLBASELL” registered under No. 972681, on May 20, 2008, covering goods and services in classes 1, 4, 17, 42, 45.

FACTUAL BACKGROUND

The Complainant, LyondellBasell Industries Holdings B.V., is a plastics, chemicals and refining company. The Complainant has over 13,000 employees around the globe and manufactures at 55 sites in 17 countries. Its products are sold in approximately 100 countries.

The Complainant is the owner of several LYONDELLBASELL trademarks, including the International word mark “LYONDELLBASELL” registered under No. 972681, on May 20, 2008, covering goods and services in classes 1, 4, 17, 42, 45.

The Complainant also owns domain names such as <lyondellbasell.com>.

The disputed domain name has been registered on March 9, 2024. According to the Complainant to the Complainant's evidence, the disputed domain name appeared to resolve to an inactive website. The disputed domain name currently resolves to a parking page including pay-per-click ("PPC") links ultimately resolving to third-party websites.

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

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;2.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and

3. The disputed domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity of confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant shows

to be the holder of several registered LYONDELLBASELL trademarks, it is established that there is a trademark in which the Complainant has rights.

The disputed domain name incorporates the Complainant's LYONDELLBASELL trademark in its entirety, merely adding the term "nv". In the Panel's view, this addition does not prevent the Complainant's trademark from being recognizable within the disputed domain name (see section 1.8 WIPO Overview 3.0; IM PRODUCTION v. Xue Han, CAC Case No. 104877 <isabel-marantus.com>).

Additionally, it is well established that the Top-Level Domains ("TLDs") such as ".com" may be disregarded when considering whether the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of production to the Respondent (although the burden of proof always remains on the Complainant) (see section 2.1 WIPO Overview 3.0 and Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is known as "Domain Administrator". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant's mark is often central to this inquiry. Generally speaking, UDRP panels have found that where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 WIPO Overview 3.0). The disputed domain name incorporates the Complainant's LYONDELLBASELL trademark in its entirety, merely adding the term "nv". In the Panel's view, this combination may even increase the risk of confusion with the Complainant as "nv" is a common acronym of a type of company. At least one entity of the Complainant's group is incorporated under this legal form (LyondellBasell Industries N.V.). Therefore, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the WIPO Overview 3.0).

In this case, the Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The Panel observes the that the disputed domain name resolves to a parking page containing PPC links ultimately resolving to third-party websites.

The Panel finds that such PPC links may capitalize on the reputation and goodwill of the Complainant's mark or may mislead Internet users, which cannot be considered as a use of the disputed domain name in connection with a bona fide offering of goods or services (see section 2.9 of the WIPO Overview 3.0).

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant succeeds on the second element of the Policy.

3. Bad faith

The Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070).

In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's rights in the LYONDELLBASELL trademark when it registered the disputed domain name, since the disputed domain name incorporates the

Complainant's distinctive LYONDELLBASELL trademark in its entirety and only adds a generic acronym which can easily be linked to the Complainant. Moreover, some of the Complainant's LYONDELLBASELL marks have been registered more than 10 years before the disputed domain name.

The Respondent currently uses the disputed domain name to resolve to a parking page containing PPC links ultimately resolving to third-party websites. In the Panel's view, this indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark. While the intention to earn click-through-revenue is not in itself illegitimate, the Panel finds that the use of the disputed domain name that is confusingly similar to the Complainant's trademark (as is the case here) to obtain click-through-revenue constitutes bad faith use (see Mpire Corporation v. Michael Frey, WIPO Case No. D2009-0258; L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc, WIPO Case No. D2005-0623). The fact that the PPC links may be automatically generated by a third party cannot discharge the Respondent of any responsibility for the content appearing on the website connected to the disputed domain name under its control (see section 3.5 of the WIPO Overview 3.0).

Moreover, the Complainant shows that the disputed domain name has been set up to send and receive emails. Given the nature of the disputed domain name, the Panel finds that this is a further indication of bad faith.

The fact that the Respondent did not formally take part in the administrative proceeding serves as yet another indication of the Respondent's bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lyondellbasellnv.com**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2024-07-15

Publish the Decision