Decision for dispute CAC-UDRP-106610

Case number	CAC-UDRP-106610
Time of filing	2024-06-20 09:49:14
Domain names	lyondallbasell.cam

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

Organization	corporacioneuroblinds

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 owner of several trademarks, inter alia the European Union Trademark 006943518 LYONDELLBASELL registered on February 2, 2009 in several classes, being in effect.

FACTUAL BACKGROUND

Complainant is part of a multinational chemical company with European and American roots going back to 1953-54.

Since then, Complainant has, as part of its group, become the third largest plastics, chemicals and refining company and the largest licensor of polyethylene and polypropylene technologies in the world. The Complainant, as part of its group, 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 Complainant, as part of its group, generated $4.9 billion in income from continuing operations.

Complainant is listed on the New York Stock Exchange since 2010.

The disputed domain name was registered on May 20, 2024 and is currently not redirected to an active page. It is, however, set up with active MX records, indicating that it is used to send and receive scam e-mails to Complainant’s clients requesting a consistent

payment. The Respondent´s identity was initially concealed in the Whois-registry.

PARTIES CONTENTIONS

No administratively compliant response has been filed.

The Complainant contends that the disputed domain name <lyondallbasell.cam> is confusingly similar to Complainant´s trademark „LYONDELLBASELL“ despite the change of an „e“ to an „a“. The Complainant further contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Given the Complainant's trademark being well-known, Complainant finally contends that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.

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

In order to succeed in its claim, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

(i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) The Respondent has no rights or legitimate interests with respect to the disputed domain name; and

(iii) The disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar
The Complainant has established the fact that it has valid trademark rights for “LYONDELLBASELL".

The disputed domain name is confusingly similar to the Complainant´s mark since the exchange of the letter „e“ with the letter „a“ does not have a relevant influence on the similarity of signs, which remain phonetically highly similar.

The Panel therefore considers the disputed domain name to be confusingly similar to the trademark „**LYONDELLBASELL**“ in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks or designations

confusingly similar to its trademarks. Furthermore, the Respondent has no rights or legitimate interests in the disputed domain name, since there is no indication that the Respondent is commonly known by the name “LYONDALLBASELL“ or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services.

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The Panel does not believe that the application of a domain name being highly similar to a distinctive trademark as the one from Complainant, is accidental.

This Panel does not see any conceivable legitimate use that could be made by the Respondent of this particular domain name without the Complainant’s authorization.

Although the disputed domain name is not connected to an active website, but only to an index page, the consensus view amongst panellists since the decision Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, <telstra.org> is that “the apparent lack of so-called active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trade mark holder (passive holding), does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith include that no response to the complaint is filed, and the concealment of identity”. In the present case, the Panel is convinced that such circumstances are given. Accordingly, the present circumstances do not prevent a finding of bad faith under the UDRP. Furthermore, the set up as a MX site sending scam e-mails to Complainant´s customers, is a clear indication of bad faith.

The circumstances of this case, in particular the high similarity of the signs in connection with sending scam e-mails to Complainant´s customers indicate that the Respondent registered and uses the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to its potential website or other online locations, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location. The Panel therefore considers the disputed domain name to have been registered and used in bad faith in accordance with 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. **lyondallbasell.com**: Transferred

PANELLISTS

Name	**Dietrich Beier**

DATE OF PANEL DECISION 2024-07-23

Publish the Decision