Decision for dispute CAC-UDRP-106688

Case number	CAC-UDRP-106688
Time of filing	2024-08-21 09:45:15
Domain names	lyondellchemienederlandbv.com, lyonsdellbasell.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.

Respondents

Name	ryan morgan
Organization	Deputygroupllc

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain names <lyonsdellbasell.com> and <lyondellchemienederlandbv.com> (collectively referred to as 'the Domain Names').

IDENTIFICATION OF RIGHTS

For the purpose of this UDRP administrative proceeding, the Complainant relies upon the following registered trade marks, amongst others:

- EU trade mark registration no. 001001866, filed on 26 November 1998, for the word mark LYONDELL, in classes 1, 4, 12, 17, 20, 25, 42 of the Nice Classification;
- US trade mark registration no. 3634012, filed on 7 May 2008, for the word mark LYONDELLBASELL, in classes 1, 4, 17, 35, and 42 of the Nice Classification; and
- EU trade mark registration no. 006943518, filed on 16 May 2008, for the word mark LYONDELLBASELL, 1, 4, 17, 35, and 42 of the Nice Classification.

(Collectively referred to as 'the Complainant's trade marks').

The Domain Names were registered on the following dates:

<lyonsdellbasell.com>	3 August 2023
<lyondellchemienederlandbv.com>	8 June 2024

At the time of writing, the Domain Names resolve to parked pages featuring pay-per-click (PPC) advertisement for goods and services related to the Complainant's business segment (for present purposes, the websites are collectively referred to as 'the Respondent's websites', and the registrants/holders of the Domain Names as 'the Respondent').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant's statements of fact can be summarised as follows:

The Complainant is a multinational company in the global chemical industry, with European and American roots dating back to 1953/1954. Positioned as one of the world's largest producers of polymers and a leader in polyolefin technologies, the Complainant develops, manufactures and markets high-quality products for everyday sustainable living, from low carbon transportation solutions to quality healthcare. The Complainant has been listed on the New York Stock Exchange since 2010 and its products are sold in c. 100 countries worldwide.

In addition to the non-exhaustive list of trade marks mentioned in the above section 'Identification of rights', the Complainant is also the owner of numerous domain names bearing the sign 'lyondell' and 'lyondellbasell', most notably: 1) <lyondell.com>, which was registered in 1997; and 2) <lyondellbasell.com>, which was registered in 2007 and has since been used as the Complainant's official website.

B. Respondent's Factual Allegations

The Respondent has failed to serve a Response in this UDRP administrative proceeding. Hence, the Complainant's factual allegations are uncontested.

PARTIES CONTENTIONS

A. Complainant

A.1 Preliminary Issues

A.1.1 UDRP standing

The Complainant in this UDRP administrative proceeding, LyondellBasell Industries Holdings B.V., advances claims also on behalf of other interested parties, namely Lyondell Chemie Nederland B.V.; LyondellBasell Industries N.V.; and Lyondell Chemical Company. The Complainant requests that the Domain Names be transferred to LyondellBasell Industries Holdings B.V.

The Complainant submits that the UDRP jurisprudence has come to a view that where multiple related parties have rights in the relevant mark on which a UDRP complaint is grounded, any one party may bring a UDRP complaint on behalf of the other interested parties. See, for example, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ('the WIPO Jurisprudential Overview 3.0', paragraph 1.4.2).

A.1.2 Application for Consolidation of Complaints against Multiple Registrants

In the Complaint, the Complainant advises that the Domain Names are owned by the following individuals/entities:

<lyonsdellbasell.com>	Deputygroupllc / Jenna Johnson
<lyondellchemienederlandbv.com>	Ryan Morgan

The Complainant submits that the Domain Names are subject to a common control, thereby making the consolidation of the proceedings equitable and procedurally efficient ('the Complainant's Application for Consolidation').

The Complainant's Application for Consolidation is grounded on the following factors:

i) the Domain Names were registered with the same registrar; and

ii) the disputed domain names resolve to parking pages using the same hosting server provider SEDO.

For the foregoing reasons, the Complainant requests that the Domain Names and the named Respondents be consolidated into a single UDRP administrative proceeding.

A.2 Substantive grounds

The Complainant's contentions can be summarised as follows:

A.2.1 The Domain Names are identical or confusingly similar to trade marks in which the Complainant has rights

The Complainant submits that the Complainant's trade marks LYONDELLBASELL and LYONDELL are evidently recognisable within the Domain Names and, therefore, the Domain Names are confusingly similar to the Complainant's trade marks.

The Complainant further submits that the Domain Names contain additional words and letters which are insufficient to prevent a finding of confusing similarity, namely: 1) the Domain Name <lyonsdellbasell.com> contains an additional letter 's' after 'lyon'; and 2) the Domain Name <lyondellchemienederlandbv.com> contains the generic words 'chemie' and 'BV' as well as the geographical indication 'nederland'. The Domain Name <lyondellchemienederlandbv.com> is furthermore identical to the Complainant's related company Lyondell Chemie Nederland B.V.

A.2.2 The Respondent has no rights or legitimate interests in respect of the Domain Names

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the Domain Names. The Respondent does not carry out any activity for, or has any business with, the Complainant or the related parties. The Complainant and the related parties have not authorised the Respondent to make any use of the Complainant's trade marks or confusingly similar trade marks, or to apply for registration of the Domain Names or confusingly similar domain names.

The Complainant further submits that there is no evidence that the Respondent has acquired any rights in a trade mark or trade name corresponding to the Domain Names. In addition, the Domain Names resolve to parked pages comprising PPC commercial links, and such use is neither bona fide nor legitimate noncommercial or fair use.

A.2.3 The Respondent registered and is using the Domain Names in bad faith

A.2.3.1 Registration

The Complainant submits that it is inconceivable that the Respondent would have registered the Domain Names without actual knowledge of the Complainant owing to the distinctiveness and reputation of the Complainant’s business and the Complainant’s trade marks.

A.2.3.2 Use

The Complainant claims that the Domain Names are not used for any bona fide offerings in so far as the Respondent's websites contain PPC links, and that the Respondent has intentionally used the Domain Names to attract, for commercial gain, Internet users to the Respondent's websites by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of that website (paragraph 4(b)(iv) of the UDRP Policy).

The Complainant further claims that the Respondent has configured the Domain Names with an MX (mail exchange) record and that this is indicative of the Respondent’s intention to capitalise on the Complainant by engaging in e-mail phishing or other fraudulent activities.

The Complainant therefore concludes that the Respondent has registered and is using the Domain Names in bad faith.

B. Respondent

The Respondent has defaulted in this UDRP administrative proceeding and has therefore failed to advance any substantive case on the merits.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name <lyonsdellbasell.com> is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP Policy).

The Panel makes no ruling on this UDRP Policy ground with regard to the Domain Name <lyondellchemienederlandbv.com> for the reasons set forth in the section 'Principal Reasons for the Decision' further below.

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 <lyonsdellbasell.com> (within the meaning of paragraph 4(a)(ii) of the UDRP Policy).

The Panel makes no ruling on this UDRP Policy ground with regard to the Domain Name <lyondellchemienederlandbv.com> for the reasons set forth in the section 'Principal Reasons for the Decision' further below.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name <lyonsdellbasell.com> has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the UDRP Policy).

The Panel makes no ruling on this UDRP Policy ground with regard to the Domain Name <lyondellchemienederlandbv.com> for the reasons set forth in the section 'Principal Reasons for the Decision' further below.

PROCEDURAL FACTORS

1. UDRP standing

The Complainant has claimed that the Complainant and interested parties have a common or related interest in the Domain Names on account of these companies being part of the same group of companies.

The Panel is willing to assume that the Complainant and related companies have a common legal interest in the Complainant's trade marks on which the Complaint in respect of the Domain Names is based. Therefore, such common legal interest supports a finding that the Complainant and related companies have a common grievance against the holders of the Domain Names.

2. Complainant's Application for Consolidation

The Complainant has filed a Complaint against two respondents (identified in section A.1.2 above), in respect of two domain names. Paragraph 4(f) of the UDRP Policy and Rule 3(c) of the UDRP Rules do not expressly permit the manner in which the Complaint has been brought. On the contrary, the UDRP legal framework permits the filing of a complaint in respect of more than one domain name in the situation where the holder of the domain names is the one and the same entity. It therefore falls on the Panel to determine whether the filing of the Complaint in its current form is acceptable.

The Panel has considered the available record, the UDRP legal framework, and the WIPO Jurisprudential Overview 3.0 (paragraph 4.11.2) which enumerates circumstances underpinning the panel's consideration of a consolidation request.

Under the UDRP Rules (Rule 10(b) and Rule 10(c)), the Panel shall seek to promote procedural (cost and time) efficiency while also ensuring that the parties are treated with equality and that each party is given a fair opportunity to present its case.

The Panel considers that the consolidation request sought by the Complainant requires the Panel to apply the balance of convenience test, according to which the Panel would have a duty to consider which party would suffer the greatest inconvenience as a result of the Panel's determination. Such an exercise, however, will need to be balanced within the parameters of the UDRP legal framework.

The Panel has perused paragraph 4.11.2 of the WIPO Jurisprudential Overview 3.0, which lists a whole host of considerations which may assist panels in the determination of whether a consolidation is appropriate. Considerations conducive to a finding of common control would include commonalities, links and patterns in the registrant information, for example shared administrative or technical contacts, e-mail or postal addresses, the website to which the domain name resolve, and any other circumstances which could point in the direction of a unity of interests, such that the registrants may be treated as a single domain name holder within the scope of Rule 3(c) of the UDRP Rules.

Turning to the facts of the present case, the Panel has identified the following details related to the registrants and the Domain Names:

Registrant / Country	Domain Name	Registration date	Registrar
Deputygroupllc / Jenna Johnson (USA)	<lyonsdellbasell.com>	3 August 2023	NameSilo, LLC

Ryan Morgan (The Netherlands)	<lyondellchemienederlandbv.com>	8 June 2024	NameSilo, LLC

The Domain Names do no share readily identifiable commonalities. While the Domain Names share the same registrar, there is no pattern of domain name string structure, nor a link or connection between registrant names, country of origin, registration dates, technical/administrative contacts or email addresses. The Panel is therefore unable to find a pattern of registration that underpins the Complainant's asserted common grievance. In addition, there is no evidence that the two different registrants of record are, in fact, one and the same entity, or in some way under the control of another person, or simply aliases for a single entity.

The Panel is therefore unpersuaded by the Complainant's arguments supporting the application for consolidation and, on that basis, the application is denied. Despite the Panel's endorsement of procedural efficiency, a finding in favour of the Complainant, in the present case, would risk a bar set too low for future consolidation requests under the UDRP legal framework.

In view of the above, the UDRP claims against the respondent Ryan Morgan will be dismissed without prejudice. The Complainant is at liberty to file a separate UDRP complaint under the UDRP Policy against the above respondent and concerned domain name.

The Panel will proceed to make a determination on the merits of the case in respect of the domain name <lyonsdellbasell.com> only (from this point forward referred to as 'the disputed domain name').

3. Miscellaneous

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

A. UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the grounds which the Complainant must establish to succeed:

> i. The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
>
> ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
>
> iii. The disputed domain name has been registered and is being used in bad faith.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has UDRP-relevant rights in the registered trade mark LYONDELLBASELL since at least 2008.

The Panel notes that the Complainant's trade mark LYONDELLBASELL is wholly incorporated into the disputed domain name <lyonsdellbasell.com>. The adjacent keyboard word 's' in the disputed domain name string has no bearing on the recognisability of the Complainant's trade mark LYONDELLBASELL.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP administrative proceeding and the Panel is empowered to draw adverse inferences therefrom (Rule 14 (b) of the UDRP Rules).

The Panel is convinced that the Respondent (as an individual, business, or other organisation) has not been commonly known by the

disputed domain name, and it likewise has not been authorised by the Complainant to make any use of the disputed domain name.

Furthermore, the Panel finds on the undisputed evidence on record that the Respondent has made no use of the disputed domain name whether for a bona fide offering of goods or services, or for a legitimate noncommercial or fair use. On the contrary, the presence of PPC links on the Respondent's website is a testament to the Respondent's lack of bona fide use of the disputed domain name under paragraph 4 (c) of the UDRP Policy.

The Complainant has therefore satisfied the second requirement of the UDRP Policy.

D. Registered and Used in Bad Faith

The Panel has no hesitation in finding that the Respondent registered and has used the disputed domain name with full knowledge of, and intention to target, the Complainant. The factual matrix of this UDRP administrative proceeding supports a finding of bad faith, on the basis of: (i) the worldwide reputation of the Complainant and the Complainant's trade marks; (ii) the evident similarity between the nearly identical disputed domain name and the Complainant's trade mark LYONDELLBASELL, and the Respondent's attempt to create such unwarranted link or connection; (iii) the Respondent's default in this UDRP administrative proceeding; (iv) the Respondent's attempt to gain reputational advantage by redirecting Internet users for a likely fraudulent purpose; and (v) the absence of any conceivable good faith use of the disputed domain name, particularly in view of the Respondent’s website hosting PPC commercial links related to the Complainant’s business area.

In view of the above, the Panel finds that the Complainant has satisfied the third and final requirement of the UDRP Policy.

E. Decision

For the foregoing reasons, in accordance with paragraph 4(a) of the UDRP Policy and Rule 15 of the UDRP Rules, the Panel orders that the disputed domain name <lyonsdellbasell.com> be transferred to the Complainant.

The Panel dismisses, without prejudice, the Complainant's claims regarding the Domain Name <lyondellchemienederlandbv.com>. The Complainant is at liberty to file a separate UDRP complaint under the UDRP Policy as regards the above Domain Name against the respondent of record.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Partially Accepted/Partially Rejected

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

1. **lyondellchemienederlandbv.com**: Terminated (consolidation not granted)
2. **lyonsdellbasell.com**: Transferred

PANELLISTS

Name	**Gustavo Moser**

DATE OF PANEL DECISION 2024-09-24

Publish the Decision