Decision for dispute CAC-UDRP-106694

Case number	**CAC-UDRP-106694**
Time of filing	**2024-08-26 15:41:55**
Domain names	**lyondellbaseli.com, lynodellbasell.com, lyondellbaesll.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

Organization	**Vivek plastic LLC**
Name	**Peter Brown**
Name	**Johnson David**

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 names.

IDENTIFICATION OF RIGHTS

The Complainant owns various trademark registrations for the designation “LYONDELLBASELL”, including:

- EU trademark registration no. 006943518 “LYONDELLBASELL” (word), registered on January 21, 2009 (and duly renewed) for various goods and services in classes 1, 4, 17, 42, and 45; and
- US trademark registration no. 3634012 (US serial number 77467965) “LYONDELLBASELL” (word), registered on June 9, 2009 (and duly renewed) for various goods and services in classes 1, 4, 17, 35, and 42.

The Complainant’s affiliate LyondellBasell Industries N.V. owns, inter alia, the domain name <lyondellbasell.com>, which is used as main website of the LyondellBasell group of companies since October 23, 2007.

The disputed domain names were registered on the following dates:

- <lynodellbasell.com>: August 24, 2023;
- <lyondellbaesll.com>: April 25, 2024;

- <lyondellbaseli.com>: March 26, 2024.

The Complainant's trademark registrations cited above therefore predate the registration of the disputed domain names.

FACTUAL BACKGROUND

The Complainant and its affiliates of the LyondellBasell group of companies (together "LyondellBasell") are a multinational chemical company with European and American roots going back to 1953/54. Since then, LyondellBasell has become the third largest plastics, chemicals and refining company and the largest licensor of polyethylene and polypropylene technologies in the world. LyondellBasell 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 its 2020 annual report, LyondellBasell generated $4.9 billion in income and $7.1 billion as EBITDA in that year. LyondellBasell is listed on the New York Stock Exchange since 2010.

The three disputed domain names are not used for active websites, but they are all set up with active MX records, indicating that they are used to send and receive e-mails.

The Complainant contends that the Respondents are not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondents have no rights or legitimate interests in respect of the disputed domain names. The Complainant does not carry out any activity for, nor has any business with the Respondents. Neither license nor authorization has been granted to the Respondents to make any use of the Complainant's trademark "LYONDELLBASELL", or to apply for registration of the disputed domain names.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain names 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 names are 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 names (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 names have been registered and are 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.

The Complainant has requested to consolidate the disputes regarding the three domain names <lynodellbasell.com>, <lyondellbaesll.com>, and <lyondellbaseli.com> in a single UDRP proceeding despite the different names and contact details of the respective Respondent. Paragraph 3(c) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") provides that a "complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder." Paragraph 10(e) of the Rules grants the Panel authority to "decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules." The Panel, having regard to all relevant circumstances, concludes that the consolidation of the three domain name disputes asserted by the Complainant against the Respondents is consistent with the

Policy and Rules, and is in line with prior relevant UDRP decisions in this area (cf. Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons, WIPO Case No. D2010-0281; Archipelago Holdings LLC. v. Creative Genius Domain Sales and Robert Aragon d/b/a/ Creative Genius Domain Name Sales, WIPO Case No. D2001-0729; Yahoo! Inc. v. Mahesh Rohatgi / Prakhar Rastogi, Bestwebexperts.com / Prakhar Rastogi, Best Web Experts / Privacy Protection Service INC d/b/a PrivacyProtect.org / Prashant Mishra, Vipra Busines Solution / Rina Rohatgi / Wemo Tech Support / Charu Rohatgi / Alina Jain / Raju Hirani, Alfa Infosystem / Brijesh Pandey, IBS Infosystem / Registration Private, Domains By Proxy, LLC / Amit Singh / Satya Prakash / Rajveer Singh Chawla / Pooja Pandey, Innovative Business Solutions, WIPO Case No. D2015-2323). The Panel accepts the Complainant's contentions that (i) the disputed domain names are subject to common control, and (ii) the consolidation is fair and equitable to all Parties. Although the three disputed domain names are formally registered in the name of three different subjects, several elements demonstrate a common control: Despite being registered with three different Registrars, the three domain names use the same DNS servers (Monovm.earth.orderbox-dns.com, as per WHOIS provided), all three are used in the same way (i.e., not used for an active website, but connected with MX records, with <lyondellbaesll.com> and <lyondellbaseli.com> even having the same MX records (mx1.titan.email, IP address 3.82.33.170). Finally, all three domain names have the same naming patterns as all three are clear typosquatting versions of <lyondellbasell.com> (as discussed in more detail below). The Panel therefore considers it procedurally fair and efficient to treat the Respondents as a single domain name holder because the prima facie evidence presented by the Complainant indicates that the three Respondents are involved in a common enterprise. The Complainant's contentions and prima facie evidence were not challenged by any of the Respondents.

Given the need to consider the requested consolidation of the Complaint against three different Respondents with different names and addresses (but alleged common control), the Panel issued a procedural order on September 18, 2024, that it was appropriate for the Complainant to pay the Additional UDRP Fee of 300 Euro, having regard to the complexity of the proceeding. In accordance with this procedural order the Complainant paid the Additional UDRP Fees within 5 days of notification by the Provider.

The Complaint was filed on August 26, 2024. On that same day, the Registrar of <lynodellbasell.com> stated in its Registrar Verification to the Provider that <lynodellbasell.com> had already been deleted by its customer on August 24, 2024, i.e., this disputed domain name already had the EPP status code "redemptionPeriod" when the Complaint was filed. Paragraph 3.7.5.7 of the ICANN Registrar Accreditation Agreement ("RAA") states that where "a domain which is the subject of a UDRP dispute is deleted or expires during the course of the dispute, the complainant in the UDRP dispute will have the option to renew or restore the name under the same commercial terms as the registrant." It seems, however, that neither the Complainant nor the Respondent have used the "redemptionPeriod" to recover, renew or restore the domain name <lynodellbasell.com> pursuant to Paragraph 3.7.5.7 RAA. As of the date of this Panel decision the disputed domain name <lynodellbasell.com> is still registered but meanwhile has the EPP status code "pendingDelete". This means that the domain <lynodellbasell.com> can be purged and dropped from the registry database at any time, in which case the Registrar will no longer be able to implement this Panel decision regarding <lynodellbasell.com>. Should the domain <lynodellbasell.com> be purged and dropped from the registry database before this Panel decision is implemented, all Parties will have to accept such outcome of these proceedings because neither of them has renewed <lynodellbasell.com> pursuant to Paragraph 3.7.5.7 RAA.

PRINCIPAL REASONS FOR THE DECISION

All disputed domain names are confusingly similar to the Complainant's distinctive trademark "LYONDELLBASELL", from which they differ only in minute details (<lyondellbaesll.com> has the letters "s" and "e" inverted, <lyondellbaseli.com> has an "i" instead of the final letter "l", and <lynodellbasell.com> has the letters "n" and "o" inverted).

The Panel further finds that the Complainant successfully submitted prima facie evidence that the Respondents have neither made any use of, or demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services, nor are making a legitimate non-commercial or fair use of the disputed domain names, nor are commonly known under the disputed domain names. This prima facie evidence presented by the Complainant was not challenged by Respondents.

The Panel also finds that the Complainant successfully submitted prima facie evidence that the Respondents were aware of the Complainant's rights in the well-established and highly distinctive trademark "LYONDELLBASELL" when registering the disputed domain names. Again, this prima facie evidence was not challenged by the Respondents, which allows the conclusion that these disputed domain names were registered in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

Given the fact that the domain names do not resolve to active websites, the primary question remaining is whether the Respondents have also used them in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant's case regarding such bad faith use is that the Respondent is effectively engaged in "passive holding" of the disputed domain names within the terms originally established by Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003. The panel in Telstra noted that the question as to which circumstances of "passive holding" may constitute use in bad faith cannot be answered in the abstract. This question may only be determined on the basis of the particular facts of each case. A panel should give close attention to all the circumstances of the Respondent's behaviour, 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 (cf. Sanofi-aventis v. Gerard Scarretta, WIPO Case No. D2009-0229; Mount Gay Distilleries Limited v. shan gai gong zuo shi, CAC Case No. 100707; RueDuCommerce v. TOPNET, CAC Case No. 100617; INFRONT MOTOR SPORTS LICENCE S.r.l. v. VICTOR LEE, CAC Case No. 100385).

With this approach in mind, the Panel has identified the following circumstances as material to this issue in the present case:

- the Complainant's trademark is highly distinctive. Given the Complainant's market position with business operations in 17 countries and product sales in approximately 100 countries, its trademark is widely known and has a strong reputation;

- the Respondents have provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain names, nor can the Panel conceive of any such good faith use; and
- the configured MX servers for all three disputed domain names indicate that there may actually be some kind of active e-mail use of the disputed domain names, even though further details of such potential e-mail use remain unknown because the Respondents have not provided any information in this regard.

Considering the Respondent's overall behaviour, the Panel cannot conceive of any plausible actual or contemplated active use of any of the disputed domain names by the Respondents that would not be illegitimate. The Panel therefore finds that the Respondent's passive holding of the disputed domain names also constitutes use in bad faith. All requirements of paragraph 4(a)(iii) of the Policy are therefore met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lyondellbaseli.com**: Transferred
2. **lynodellbasell.com**: Transferred
3. **lyondellbaesll.com**: Transferred

PANELLISTS

Name	**Dr. Thomas Schafft**

DATE OF PANEL DECISION 2024-10-01

Publish the Decision