Decision for dispute CAC-UDRP-106848

Case number	CAC-UDRP-106848
Time of filing	2024-09-12 10:09:05
Domain names	lyondellbasellglobal.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.

Respondent

Name	Christopher Oidtman

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 the following valid trademarks:

- US trademark no. 3634012 - serial no. of the application 77467965 (word) “LYONDELLBASELL” since May 7, 2008 in classes 1, 4, 17, 35, 42;
- US trademark no. 5096173 - serial no. of the application 86555801 (device) “LYONDELLBASELL” in classes 1, 4, 17, 42, 45;
- European Union Trademark (EUTM) no. 006943518 (word) “LYONDELLBASELL” since May 16, 2008 in classes 1, 4, 17, 42, 45;
- EUTM no. 013804091 (device) “LYONDELLBASELL” since March 6, 2015 in classes 1, 4, 17, 42, 45.

In addition, the Complainant owns different domain names with the terms “LYONDELLBASELL” such as such as <lyondellbasell.com > registered since October 23, 2007, among many other domain names.

FACTUAL BACKGROUND

FACTS PROVIDED BY THE COMPLAINANT:

The Complainant is part of a Group of entities which is a multinational chemical company with European and American roots. The Complainant’s Group is the third largest plastics, chemicals and refining company and the largest licensor of polyethylene and

polypropylene technologies in the world. The Complainant´s 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, the Complainant generated $4.9 billion in income from continuing operations, EBITDA of $7.1 billion and $12.28 diluted earnings per share.

The Complainant is the owner of the different trademarks LYONDELLBASELL®. In addition, the Complainant is the owner of different domain names including the term LYONDELLBASELL® such as <lyondellbasell.com > registered since October 23, 2007.

The disputed domain name <lyondellbasellglobal.com> (hereinafter, the "Disputed Domain Name") was registered on August 19, 2024 and it redirects to Complainant's official website https://www.lyondellbasell.com and it is connected to MX Records.

According to Complainant's non-contested allegations, the Respondent has no rights or legitimate interest in respect of the Disputed Domain Name and he is not related in any way to the Complainant's business.

For the purpose of this case, the Registrar confirmed that the Respondent is the current registrant of the Disputed Domain Name and that the language of the registration agreement is English.

Respondent did not reply to the Complaint.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES CONTENTIONS

COMPLAINANT:

PRELIMINARY PROCEDURAL QUESTIONS

LyondellBasell Industries N.V., LyondellBasell Industries Holdings B.V., Lyondell Chemie Nederland B.V. and Lyondell Chemical Company are related companies belonging to the same group and having right in the relevant marks on which this Complaint is based.

According to the UDRP jurisprudence any one party of multiple related parties, on behalf of the other interested parties, may bring a Complaint and is to be considered to have standing in dispute (see paragraph 1.4.2 of WIPO Overview 3.0 and the decisions mentioned thereto).

The Complainant of this administrative proceeding is LyondellBasell Industries Holdings B.V., filer of this Complaint also on behalf of the other interested parties (Lyondell Chemie Nederland B.V., LyondellBasell Industries N.V. and Lyondell Chemical Company). The transfer decision is to be directed to the Complainant.

First element: Similarity

The Complainant confirms that the Disputed Domain Name <lyondellbasellglobal.com> is confusingly similar to its trademarks LYONDELLBASELL®.

The Complainant states that the Disputed Domain Name only includes the addition of the generic term generic term "global" with respect to the trademark LYONDELLBASELL®. The Complainant believes that such addition neither effects the attractive power of such trademark, nor is sufficient to prevent the finding of confusing similarity between the Disputed Domain Name and such mark, but even enhances the likelihood of confusion.

Furthermore, the Complainant indicates that the addition of the top level ".com" is merely instrumental to the use of the Internet so the Domain Name remains confusingly similar despite its inclusion.

Second element: Rights or legitimate interest

The Complainant contend that the Respondent lacks rights or legitimate interests in the Disputed Domain Name for the following reasons:

- The Complainant (or the other related parties) has no relationship with the Respondent whatsoever;

- The Respondent has never received any approval of the Complainant (or the other related parties), expressed or implied, to use its (their) trademarks or any other mark identical or confusingly similar to such marks, nor to register any domain name identical or confusingly similar to such marks;

- There is no evidence that the Respondent has acquired any rights in a trademark or trade name corresponding to the disputed domain name;

- The Disputed Domain Name contains in its entirely the highly distinctive complainant sign LYONDELLBASELL®. and is redirected

to complainant official web site, therefore indicating a high risk that it could be involved in phishing activities/storage Spoofing. Such use of the domain name is clearly not a bona fide, legitimate or fair use under the UDRP Policy;

- Respondent provide false WHOIS data: by adding the name of a Senior Manager of Lyondell Basell but it is a case of identify thief.

Third element: Bad faith

The Complainant asserts that the Respondent registered the disputed domain name confusingly similar to the Complainant's well-known prior trademarks.

Given the distinctiveness and reputation of the Complainant's business and trademarks worldwide, it is inconceivable that the Respondent could have registered the Disputed Domain Name without actual knowledge of LyondellBasell and its rights in such marks. Thus, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainants and their marks.

Furthermore, the Complainant refers to the use of the Disputed Domain Name as follows:

- The Disputed Domain Name is redirected to complainant's official website, blatantly to confuse Internet users;
- The Disputed Domain Name is set up to send emails (as for MX Records search).
- The Complainant also indicates that considering account e-mail @lyondellbasellglobal.com it is impossible to consider any legitimate use and it is highly probable that they have been created to send scam email to complainant's clients.

Such finding is also supported by the fact that it is it is not possible to conceive any legit use of Disputed Domain Name incorporating such blatant misspelling of a famous trademark and it is therefore highly possible that it has been registered to be involved in scam/phishing attempt. Therefore, the Disputed Domain Name was registered in bad faith.

RESPONDENT

Respondent did not reply to the Complaint.

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

UDRP STANDING

The Complainant LyondellBasell Industries Holdings B.V., filer of this Complaint, it has requested the consolidation of this administrative proceeding so that the Complainant also represents the interesting parties Lyondell Chemie Nederland B.V., LyondellBasell Industries N.V. and Lyondell Chemical Company.

Based on the evidence provided by the Complainant, some of the three mentioned companies also own trademark rights over the term "LYONDELL"; e.g. EUTM ""LYONDELL", Reg. Nr. 001001866 on behalf of LYONDELL CHEMICAL COMPANY, and, consequently, there is a presumption about the relationship between those companies with the Complainant but the evidence is not clear. Therefore, the Panel has decided to use its general powers articulated in paragraphs 10 and 12 of the UDRP Rules to conduct a limited online search regarding the connection of the three Complainants with respect to the same Group by doing a Google search checking for the subsidiaries of the Complainant's group. The search revealed the following document

https://www.lyondellbasell.com/4a80e1/globalassets/legal/lyb-related-entity-list.pdf showing that the interesting parties Lyondell Chemie Nederland B.V., LyondellBasell Industries N.V., and Lyondell Chemical Company are subsidiaries of the Complainant at least until December 31, 2022.

When it comes to consolidation of a complaint filed by multiple complainants against a single respondent, the WIPO Overview 3.0 in paragraph 4.11.1 sets forth two main considerations; i) a common grievance while respecting equity and ii) procedural efficiency to permit the consolidation.

From the information provided by the Complainant as well as the information gathered by the Panel, the Panel can infer that the two elements are fulfilled; i.e. there is a specific common grievance against the Respondent and the acceptance of the consolidation request is equitable and procedurally efficient. Furthermore, the Panel does not see any impediment to confirm the request of the Complainant of transferring the Disputed Domain Name to the Complainant, namely LyondellBasell Industries Holdings B.V., if successful.

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

- **THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR TO THE TRADEMARKS LYONDELLBASELL® OF THE COMPLAINANT.**

The Uniform Domain Name Dispute Resolution Policy (the Policy) in its Paragraph 4(a)(i) indicates the obligation of Complainant to demonstrate that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights.

The Complainant has submitted evidence showing the ownership of the following trademarks:

- US trademark no. 3634012 - serial no. of the application 77467965 (word) “LYONDELLBASELL” since May 7, 2008 in classes 1, 4, 17, 35, 42;
- US trademark no. 5096173 - serial no. of the application 86555801 (device) “LYONDELLBASELL” in classes 1, 4, 17, 42, 45;
- European Union Trademark (EUTM) no. 006943518 (word) “LYONDELLBASELL” since May 16, 2008 in classes 1, 4, 17, 42, 45;
- EUTM no. 013804091 (device) “LYONDELLBASELL” since March 6, 2015 in classes 1, 4, 17, 42, 45.

From the Panel’s perspective, the Disputed Domain Name <lyondellbasellglobal.com> fully incorporates the trademark **LYONDELLBASELL®**. In assessing confusing similarity, the Panel finds the Disputed Domain Name is indeed identical to the Complainant’s with the only inclusion of the generic word “GLOBAL” which from the Panel’s perspective, it does not prevent to find confusion with respect to Complainant’s trademarks “**LYONDELLBASELL®**”.

In this vein, UDRP past panels agree that where the relevant trademark is recognizable within the Disputed Domain Name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See paragraph 1.8. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition 3.0 (“WIPO Jurisprudential Overview 3.0.).

UDRP panels agree that the TLD may usually be ignored for the purpose of determination of identity or confusing similarity between a domain name and the Complainant’s trademark as it is technical requirement of registration. See paragraph 1.11.1 of WIPO Jurisprudential Overview 3.0.

Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the Disputed Domain Name is confusingly similar to Complainant’s marks.

- **RESPONDENT’S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME.**

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The generally adopted approach by UDRP panels, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it (see WIPO Jurisprudential Overview, version 3.0., paragraph 2.1).

The Complainant indicates that the Respondent is not affiliated nor authorized in any way to use the trademarks **LYONDELLBASELL®**.

Furthermore, the Complaint argues that it does not carry out any activity for, nor has any business with the Respondent. Finally, the Complainant has not granted a license or authorization to the Respondent to make any use of the trademarks.

From the information provided by Complainant, there is no evidence or reason to believe that the Respondent (as individual, business or other organization) has been commonly known by the Disputed Domain Name. The Respondent’s name provided in the Registrar’s verification refers to the name of a Senior Manager of Complainant’s Group as the owner of the Disputed Domain Name.

This point as such can be considered as identity thief. Absent of any other evidence such as a personal name, nickname or corporate identifier, the Panel is of the opinion that the Respondent is not commonly known by the Disputed Domain Name.

The Complainant also mentioned that the Disputed Domain Name is redirected to Complainant´s official website https://www.lyondellbasell.com and it is connected to MX Records. Past panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a Respondent.

Therefore, the Panel concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the Disputed Domain Name. The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

- **THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH IN ACCORDANCE WITH THE POLICY.**

Paragraph 4(a)(iii) of the Policy indicates that Complainant must assert that the Respondent registered and is using the Disputed Domain Name in bad faith. In this sense, Paragraph 4(b) of the Policy sets out four circumstances which if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Respondent has registered or acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that 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 Respondent has engaged in a pattern of such conduct; or

(iii) The Respondent has registered the Disputed 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 the Respondent's website or other on-line 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.

The evidence submitted by Complainant confirms that its trademarks LYONDELLBASELL® are distinctive and they have a strong reputation in the chemical industry. Absent of Respondent's reply, the Panel finds that Respondent, prior to the registration of the Disputed Domain Name was aware of Complainant's trademark, in particular since the Disputed Domain Name was registered on August 19, 2024 and Complainant's trademarks were registered long before the registration of the Disputed Domain Name.

In this vein, Past Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

See WIPO Jurisprudential Overview, version 3.0., paragraph 3.1.4

As indicated by Complainant, the website associated with the Disputed Domain Name redirects to Complainant´s official website https://www.lyondellbasell.com and it is connected to MX Records. Moreover, the Respondent used the name of one of Complainant's Senior Management as the owner of the Disputed Domain Name at the official who is record. Past panelists have found that the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, (iv) redirecting the domain name to a different respondent-owned website, even where such website contains a disclaimer, (v) redirecting the domain name to the complainant's (or a competitor's) website, and (vi) absence of any conceivable good faith use.

As noted in section 2.13.1, given that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith. Similarly, panels have found that a respondent redirecting a domain name to the complainant's website can establish bad faith insofar as the respondent retains control over the redirection thus creating a real or implied ongoing threat to the complainant.

See WIPO Jurisprudential Overview, version 3.0., paragraph 3.1.4

Furthermore, the Complainant provided with evidence showing that .MX records are configured. Past Panels have found that the activation of mail exchanger record (MX record) suggests that the Respondent is using or is preparing to use the disputed domain name to send and receive email communications with the purpose to mislead the recipients as to their source. This is an additional circumstance of Respondent's bad faith. (See, e.g., Decathlon v. Privacy service provided by Withheld for Privacy, WIPO Case No. D2021-4369.

In light of the above-mentioned findings, the Panel finds that the evidence submitted by the Complainant supports the argument that by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other on-line 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.

Therefore, the Panel concludes that Respondent registered and is using the Disputed Domain Name in bad faith and thus has satisfied the requirement under 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. **lyondellbasellglobal.com**: Transferred

PANELLISTS

Name	**Victor Garcia Padilla**

DATE OF PANEL DECISION 2024-10-17

Publish the Decision