Decision for dispute CAC-UDRP-106885

Case number	CAC-UDRP-106885
Time of filing	2024-10-24 08:25:50
Domain names	lyondellchemienederlandbv.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	ryan morgan

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

Complainant and its subsidiary Lyondell Chemical Company are the owner of many trademarks LYONDELLBASELL and LYONDELL in the world Complainant submits evidence material of those trademarks being an overview of the WIPO Global Brand Database, Extracts of the same database of US trademarks and an International Trademark. Further it submits Certificates of Registration of some European Union Trademarks.

As only Certificates of Registration can be considered as true and original evidence material, the Panel will focus on those, being:

- 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, together referred to as “LYONDELLBASELL Trademark”;

- EUTM no. 001001866 “LYONDELL” since 26 November 1998 in classes 1, 4, 12, 17, 20, 25, 42 owned by Lyondell Chemical Company.

FACTUAL BACKGROUND

Complainant is LyondellBasell Industries Holdings B.V. in Rotterdam, The Netherlands. filer of this Complaint also on behalf of its subsidiaries, under which Lyondell Chemie Nederland B.V., LyondellBasell Industries N.V. and Lyondell Chemical Company. Complainant will be referred to as LyondellBasell.

LyondellBasell is a multinational chemical company with European and American roots going back to 1953-54 when the predecessor company scientists Professor Karl Ziegler and Giulio Natta (jointly awarded the Nobel Prize in Chemistry in 1963) made their discoveries in the creation of polyethylene (PE) and polypropylene (PP). Ever since, LyondellBasell has become the third largest plastics, chemicals and refining company and the largest licensor of polyethylene and polypropylene technologies in the world. The Complainant has over 13,000 employees around the globe and manufactures at 55 sites in 17 countries. Its products are sold into approximately 100 countries.

LyondellBasell manages its operations through five operating segments:

- Olefins and Polyolefins—Americas: produces and markets olefins and co-products, polyethylene and polypropylene.
- Olefins and Polyolefins—Europe, Asia, International: produces and markets olefins and co-products, polyethylene, and polypropylene, including polypropylene compounds.
- Intermediates and Derivatives: produces and markets propylene oxide and its derivatives, oxyfuels and related products and intermediate chemicals, such as styrene monomer, acetyls, ethylene oxide and ethylene glycol.
- Refining: refines heavy, high-sulfur crude oil and other crude oils of varied types and sources available on the U.S. Gulf Coast into refined products including gasoline and distillates.
- Technology: develops and licenses chemical and polyolefin process technologies and manufactures and sells polyolefin catalysts.

All information above has been illustrated by the submitted Corporate Brochure.

Further, Complainant submits the 2020 annual report in which it is stated, according to Complainant, that LyondellBasell generated $4.9 billion in income from continuing operations, EBITDA of $7.1 billion and $12.28 diluted earnings per share. Complainant did not indicate on which pages these figures are mentioned.

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

On December 20, 2017 the company celebrated the 10-year anniversary of the merger of Lyondell Chemical Company and Basell AF SCA, a transaction that created one of the largest plastics, chemicals and refining companies in the world.

LyondellBasell Group is formed of various affiliated companies, all of them under the ultimate control of LyondellBasell Industries N.V., headquartered in the Netherlands.

Domain names

Complainant’s holding company LyondellBasell Industries N.V. possesses many domain names including LYONDELLBASEL or LYONDEL in various TLDs. A list of 3 pages, in which many domain names comprising LYONDELLBASELL or LYONDELL including domain names are mentioned, is included to illustrate it.

Social Media

Complainant is active on social media under the trademark LYONDELLBASELL.

Respondent

Respondent is an individual called Ryan Morgan with an incomplete address in the Netherlands and a Gmail e-mail address. The disputed domain name <lyondellchemienederlandbv.com> was registered on 8 June 2024. It is redirected to a parking page with sponsored links and set up with active MX records, indicating that it is used to send and receive e-mails.

Complainants alleges that it is clear that the disputed domain name has been registered to be involved in storage spoofing / phishing. Storage spoofing (also known as terminal spoofing) is a specific form of phishing. Storage spoofing covers all varieties of the sale of non-existent storage capacities and stocks of resources and materials at port terminals. The target for this kind of fraud are national and multinational companies that either operate or are looking for storage facilities in the port area, as well as all potential buyers of the goods stored at these terminals. These goods are offered under false pretences but turn out to be non-existent. The phenomenon is described in details at the website of the Port of Rotterdam Authority: https://ferm-rotterdam.nl.

Further Complainant informs that it has been subject of several illicit registrations used for storage spoofing / phishing and provides links to UDRP cases thereof.

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

Complainant states that under the first UDRP element, the straightforward side-by-side comparison of the disputed domain name and the textual components of the marks on which this Complaint is based makes it evident that the LYONDELLBASELL trademark and the LYONDELL trademark are recognizable within the disputed domain name and, thus, the disputed domain name is confusingly similar to the marks in which the Complainant has rights.

Complainant further states that while each case is judged on its own merits, in UDRP cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark under the first element of the UDRP (see paragraph 1.7 WIPO Overview 3.0 and the decisions mentioned thereto).

Comparing the disputed domain name <lyondellchemienederlandbv.com> to LYONDELL trademark and to the domain name <lyondell.com> the only differences are represented by the addition of the generic, non-distinctive and descriptive words “chemie” and BV and the geographical indication “nederland”. Complainant requests to also consider that the domain name is identical to the name company Lyondell Chemie Nederland B.V.

Such differences neither effects the attractive power of such trademarks, nor is sufficient to prevent the finding of confusing similarity between the disputed domain name and Complainant marks, but even enhances the likelihood of confusion.

According to the Policy paragraph 4(a)(i) it needs first to be established that:

(i)The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

The Panel agrees with Complainant that the disputed domain name is similar to the trademark LYONDELLBASELL as it incorporates a highly distinctive part of it.

Further, as will be stated in this decision under Procedural Factors, the trademark rights LYONDELL can be allocated to Complainant and therefore the disputed domain name incorporated an identical element which results in an almost identical to the LYONDELL trademark disputed domain name.

That the disputed domain name incorporates the tradename of one of Complainant’s subsidiaries as stated in the Certified Extract of the Chambers of Commerce in the Netherlands of the company Lyondell Chemie Nederland B.V. is highly illustrative for the bad faith of Respondent that will be discussed later in this decision. Possessing a trade name is however no title under the Policy.

Further, the trademark registrations predate the registration of the disputed domain name and thus the trademark rights prevail.

Thus, the Panel agrees with this assertion of Complainant.

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 Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

According to the Policy paragraph 4(a)(ii) it needs further to be established that:

(ii) Respondent has no rights or legitimate interests in respect of the domain name.

Paragraph 4 (c) of the Policy provides circumstances that could demonstrate that respondent has no rights to and legitimate interests in the domain name. These circumstances are not exclusive. Circumstance that are providing rights or legitimate interests to the domain name are:

(i) before any notice to the Respondent of the dispute, the use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if though it has acquired no trademark or service mark rights; or

(iii) Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Further, according to the WIPO Case No. D2003-0455, Croatia Airlines d. d. v. Modern Empire Internet Ltd., Complainant is required to make out a prima facie case that Respondent lacks rights or legitimate interests. Once such prima facie case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If respondent fails to do so, complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

According to Complainant Respondent has no rights on the disputed domain name:

- 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 is redirected to a parking page with sponsored links and it is set up to send emails, therefore indicating that they have been registered to 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 Policy.

As Respondent did not defend itself by asserting the contrary, the Panel accepts the assertions of Complainant as true.

Complainant has, to the satisfaction of the Panel, shown 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

According to the Policy paragraph 4(a)(iii) it finally needs to be established that:

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

Paragraph 4 (b) of the Policy provides circumstances on that demonstrate that respondent has registered and used the domain name in bad faith. These circumstances are not exclusive. Those circumstance are for example:

(i) circumstances indicating that Respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) 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) Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site 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 your web site or location or of a product or service on your web site or location.

Complainant asserts that the disputed domain name has been registered and is being used in bad faith.

The Respondent registered the disputed domain name that is confusingly similar to the Complainant’s well-known prior trademarks. Given the distinctiveness and reputation of LyondellBasell’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 Complainant and its marks (paragraph 4(b)(iv) of the Policy).

A finding of Bad Faith is also supported by the use of the domain name, as described at the factual section:

- the domain name is currently redirected to a parking page with sponsored links related to complainant services and products;

- the domain name is set up to send e-mails: considering account e-mail @lyondellchemienederlandbv.com it is impossible to consider any legitimate use and it is highly probable that they have been created to send scam e-mail to Complainant’s clients.

Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith – as in the present case sending e-mail, phishing, identity theft.

Based on the above the Panel has the following findings.

Bad faith circumstances occur mainly when a Respondent sees financial gain on riding on the coat tails of Complainant’s success. This is mostly profitable when Complainant has a reputation. Therefore, first it needs to be established whether Complainant has such a reputation.

To substantiate its reputation Complainant submits its Corporate Brochure and Annual 202. From both documents it is clear that Complainant is a global company with many employees and a distinctive company name. The criterium of reputation is therefore

satisfied.

Further, the disputed domain name incorporates the trade name of one of Complainant´s subsidiaries in total and that cannot be a coincidence. It is a clear indication of bad faith.

On a side note, it is worth mentioning that the Panel is aware of many websites with a similar lay-out as that of Respondent's website, consisting of a black background and blue frames with (paid) links to other websites that may or may not comprise competitive information. This appears to be a trendy phenomenon used to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion.

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

According to the Complaint, "Complainant of this administrative proceeding is LyondellBasell Industries Holdings B.V., filer of this Complaint also on behalf of the subsidiaries (LyondellBasell Industries N.V. and Lyondell Chemical Company).

The transfer decision is to be directed to Complainant".

Complainant states that "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". In support of this statement, the Complainant refers to Paragraph 1.4.2. of the "WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition" (hereinafter, the "WIPO Jurisprudential Overview 3.0").

Complainant points out that "LyondellBasell Industries N.V., LyondellBasell Industries Holdings 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".

The Panel notes that the Complaint includes a certified certificate of registration from the Chambers of Commerce in the Netherlands which explains that Lyondell Chemie Nederland B.V is owned by LyondellBasell Industries Holdings B.V. as it is the sole shareholder.

Further the Complaint includes a certificate of good standing in which it is declared that Lyondell Chemical Company, incorporated under the laws of Delaware, have filed its annual report and paid the franchise taxes.

The Panel concludes although the relation between the Complainant and the Lyondell Chemie Nederland company has been demonstrated, the relationship between Complainant and the owner of the LYONDELL trademark, being Lyondell Chemical Company is not.

The Panel thus has to decide whether the rights in the LYONDELL trademark could be allocated to Complainant, for instance by deciding that these rights are used by Complainant via an oral license, and if the Complainant is therefore entitled to base its Complaint also on this trademark.

The wording of Paragraph 1.4.1 of the WIPO Jurisprudential Overview 3.0., states:

[a] trademark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint.

And the explanatory note states:

"While panels have been prepared to infer the existence of authorization to file a UDRP case based on the facts and circumstances described in the Complaint, they may expect parties to provide relevant evidence of authorization to file a UDRP complaint".

In this case evidence of the relation between Complainant and LyondellBasell Industries N.V. and Lyondell Chemical Company is not explicitly provided, whereas the relation between Complainant and Lyondell Chemie Nederland B.V. is explicitly demonstrated in the Certificate of Registration at the Dutch Chambers of Commerce where it appears that Complainant is the sole shareholder as the previous mentioned Dutch company.

From there is it hard to believe that Lyondell Chemical Company is not part of the Group of Complainant.

Further, as the Corporate brochure and Annual Report 2020 show the global structure if Complainant the Panel accepts that it is sufficiently demonstrated that Lyondell Chemical Company, owner of the LYONDELL trademarks, is belonging to the Group and therefore Complainant is entitled to those trademark rights.

FOR ALL THE REASONS STATED ABOVE. THE COMPLAINT IS

Accepted

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

1. **lyondellchemienederlandbv.com**: Transferred

PANELLISTS

Name	**Marieke Westgeest**

DATE OF PANEL DECISION 2024-11-29

Publish the Decision