

Decision for dispute CAC-UDRP-104848

Case number	CAC-UDRP-104848
Time of filing	2022-09-29 11:33:48
Domain names	lyondellbasell-nederland.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	LyondellBasell Industries Holdings B.V.
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Complainant representative

Organization	Mr Claudio Tamburrino (Barzanò & Zanardo Milano S.p.A.)
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Respondent

Name	Julien Richard
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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 owns numerous trademark registrations, such as:

- US trademark no. 3634012 - (word) "LYONDELLBASELL" since May 7, 2008 in classes 1, 4, 17, 35, 42;
- US trademark no. 5096173 - (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

(together referred to as "LYONDELLBASELL Trademark" or "Complainant's trademark").

The Complainant proved its ownership of listed trademark registrations by the submitted extracts from the Registers.

FACTUAL BACKGROUND

LyondellBasell Group (referred to as "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.
- According to the 2020 annual report LyondellBasell generated \$4.9 billion in income from continuing operations, EBITDA of \$7.1 billion and \$12.28 diluted earnings per share. 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.

LyondellBasell Industries N.V. owns multiple domain names consisting of, inter alia, the wordings “LYONDELLBASELL” and “LYONDELL”, such as <lyondellbasell.com> used as main website of LyondellBasell since October 23, 2007 and <lyondell.com> registered on February 21, 1997.

Part of the group is also Lyondell Chemie Nederland B.V.

The Complainant is also widely promoted on most popular social media with channels and pages specifically dedicated to it, i.a. on Twitter (<https://twitter.com/LyondellBasell>) and Facebook (<https://www.facebook.com/LyondellBasell>), used also for promotional and advertising purposes.

Due to its longstanding use and the huge promotional and advertising investments, the LYONDELL trademark is certainly well-known. Previous panelists in other UDRP procedures have recognized that “the word lyondell is highly distinctive as it is a fanciful term” (e.g., LyondellBasell Industries Holdings B.V. v. Williams Wales – lyondell terminal, Case n. 102018, but also LyondellBasell Industries Holdings B.V. v. Enock Kazige, Case No. 104037, LyondellBasell Industries Holdings B.V. v. James Gordon, Case No. 104271, LyondellBasell Industries Holdings B.V. v. Steven Smith Case No. 104498, LyondellBasell Industries Holdings B.V. v. Massimo Selle, Case No. 104719 and LyondellBasell Industries Holdings B.V. v. James Grant Case, No. 104721)

The disputed domain name <lyondellbasell-nederland.com> was registered on July 7, 2022 by the Respondent identified as Julien Richard.

The disputed domain name does not currently resolve to an active website, however the domain name holder has set up <lyondellbasell-nederland.com> to be associated with active email address accounts, as we have verified with the check of the MX records currently activated for the domain name: it is hard to imagine any possible use of an email address created with “@lyondellbasell-nederland.com” that will not impersonate Lyondell Basell or one of its affiliated companies and/or mislead the possible recipient of the email. There is therefore the very high possibility that the disputed domain name is involved in storage spoofing / phishing.

Storage spoofing (also known as terminal spoofing) is a specific form of phishing that 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> and complainant name has been used in different attempts of storage spoofing / phishing, as for example in LyondellBasell Industries Holdings B.V. v. Massimo Selle, Case No. 104719.

The authorized representative of complainant sent a Cease and Desist letter to Respondent on July 28, 2022 requesting him to transfer the disputed domain name.

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 The 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.

MERITS

IDENTITY OR CONFUSING SIMILARITY

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 LYONDELL Trademarks and (in particular) the LYONDELLBASELL Trademarks 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.

In particular with reference to the LYONDELLBASELL Trademark, the disputed domain name is confusingly similar to such mark, since it incorporates the entirety of the trademark. 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 to those trademarks and to the domain name <lyondellbasell.com> the only difference is the addition of the geographical indication “nederland” divided by an hyphen. 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.

Finally, as consistently found in several decisions, including Telecom Personal, S.A., v. NAMEZERO.COM, Inc, WIPO Case No.D2001-0015 and Société Générale and Fimat International Banque v. Lebanon Index/La France DN and Elie Khouri, WIPO Case No. D2002-0760, the top level “.com” is merely instrumental to the use of the Internet so the Domain Names remain confusingly similar despite their inclusion.

Hence, the Complainant asserts that the first requirement of the UDRP is satisfied.

RESPONDENT’S LACK OF RIGHTS AND LEGITIMATE INTERESTS

The Complainant contends that the Respondent, Julien Richard, 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.
- There are active MX records on the domain name: it is hard to imagine any possible use of an email address created with “@lyondellbasell-nederland.com” (implied by the creation of MX records) that will not impersonate Lyondell Basell or one of its affiliated companies and/or mislead the possible recipient of the emails sent from it.

REGISTRATION AND USE IN BAD FAITH

The disputed domain name <lyondellbasell-nederland.com> has been registered and is being used in bad faith.

The Respondent registered the disputed domain name 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 the Complainants and their marks (paragraph 4(b)(iv) of the UDRP).

With respect to the use in bad faith, despite the disputed domain name is not actively used, in a consolidated principle of UDRP that non-use of a domain name (including a parking page as in the present case) would not prevent a finding of bad faith under the doctrine of passive holding. Factors that have been considered relevant in applying the passive holding doctrine include:

(i) The degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

In the present case, the Complainant points to the high degree of distinctiveness of complainant’s mark which certainly prevent any good faith use of the domain name. See Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, Jupiter Limited v. Aaron Hall, WIPO Case No. D2000-0574; Virgin Enterprises Limited v. Ceasr Alvarez, WIPO Case No. D2016-2140. Despite the disputed domain name does not currently resolve to an active website it is set up to be used with active email address accounts, as the Complainant has verified with the check of the MX records currently activated for the domain name: it is hard to imagine any possible use of an email address created with “@lyondellbasell-nederland.com” that will not impersonate Lyondell Basell or one of its affiliated companies and/or mislead the possible recipient of the email. There is therefore the very high possibility that the disputed domain name is involved in storage spoofing / phishing.

As a final remark on the bad faith issue, it has also to be considered Respondent’s failure to reply to the Cease and Desist letter addressed to his attention. With this regard, it should be noted that prior panels held that a failure to respond to a Cease and Desist letter could be evidence of bad faith. See, amongst others, Telecommunications Corporation v. Registrant [20758] Nevis Domains and Registrant [117460] Moniker Privacy Services, WIPO Case No. D2006-1620.

In light of the above, Complainant contends that the disputed domain name was registered and is being used in bad faith in full satisfaction of paragraph 4(a)(iii) of the UDRP.

RESPONDENT:

No administratively compliant response has been filed.

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 UDRP).

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 UDRP).

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 UDRP).

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 the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. The Panel proceeds therefore to decide only on the basis of the Complainant's factual statements and the documentary evidence provided in support of them (Paragraph 5(f) of The Rules).

1. CONFUSING SIMILARITY

The Panel finds that the disputed domain is confusingly similar to the "LYONDELLBASELL Trademark".

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter referred to as "The WIPO Overview 3.0") in Paragraph 1.7 states: "[...] in 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 for purposes of UDRP standing."

The WIPO Overview 3.0 in Paragraph 1.8 states: "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."

In the WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin, the Panel stated that: "In numerous cases, it has been held that a domain name that wholly incorporates a Complainant's registered mark may be sufficient to establish confusing similarity for purposes of the UDRP."

In the WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., the Panel stated that: "It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar".

The Complainant has established that owns numerous trademark registrations consisting of the terms "lyondell" and "lyondellbasell" designated for the classes in connection with chemical industry (evidenced by the Annexes 3-6c).

The LYONDELLBASELL trademark is incorporated in its entirety and clearly recognizable in the disputed domain <lyondellbasell-nederland.com>. The addition of geographical term "nederland" and of the gTLD <.com> does not change the overall impression of the disputed domain.

As stated in the WIPO Overview 3.0 in Paragraphs 1.7 and 1.8 where a domain name incorporates the entirety of a trademark, the domain will normally be considered confusingly similar.

Therefore, the disputed domain <lyondellbasell-nederland.com> as it reproduces LYONDELLBASELL trademark in its entirety, with the addition of the geographical term "nederland" is considered to be confusingly similar to the relevant Complainant's trademarks.

As a result, the Panel finds that the Complainant has satisfied Paragraph 4(a)(i) of the UDRP.

1. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DOMAIN NAME

The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain.

The WIPO Overview 3.0 in Paragraph 2.1 states: "where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence

demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

According to Paragraph 4(a)(ii) of the UDRP, the Complainant shall make case that the Respondent lacks rights and legitimate interests in the disputed domain name. If the Complainant fulfils this demand the burden of proof shifts to the Respondent and so the Respondent shall demonstrate rights or legitimate interests in the disputed domain name. If the Respondent fails to prove its rights or legitimate interests, it is assumed that the Complainant satisfied the element of Paragraph 4(a)(ii) of the UDRP (see CAC Case No. 102430, Lesaffre et Compagnie v. Tims Dozman).

Moreover, past Panels were of the view that it is difficult or sometimes impossible to prove negative facts, i.e., absence of rights or legitimate interest on the part of the Respondent. In this respect, past Panels referred to the WIPO Case No. D2000-1769, Neusiedler Aktiengesellschaft v. Vinayak Kulkarni. Within the meaning of Paragraph 4(a)(ii) of the Policy, once the complainant has made something credible (*prima facie* evidence), the burden of proof shifts to the Respondent to show that he has rights or legitimate interests in the domain name at issue by providing concrete evidence.

In the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., the Panel stated: “Complainant must make at least a *prima facie* showing that Respondent has no rights or legitimate interests in the mark. After Complainant has met its initial burden of proof, if Respondent fails to submit a response Complainant will be deemed to have satisfied Paragraph 4 (a) ii of the Policy.”

In the present case the Complainant states that has no relationship with the Respondent. Moreover, the Respondent has never received any approval of the Complainant to use his trademarks, nor to register any domain name identical of confusingly similar to such trademarks. The Complainant contends that there is no evidence that the Respondent has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

Furthermore, the disputed domain does not resolve to an active website. However, as the Complainant pointed out, the disputed domain is associated with active email address accounts, which was declared by the check of MX records activated for the disputed domain name (as provided in the Annex to the Complaint). By that, the Complainant assumes that email addresses are impersonating the Complainant and Its affiliated companies and so they are misleading the email’s recipients.

To the satisfaction of this Panel, the Complainant has shown a *prima facie* case that the Respondent has no rights to the Complainant’s trademarks nor the disputed domain name.

The Respondent did not reply to the Complaint and so failed to demonstrate Its rights or legitimate interests in the disputed domain.

Therefore, the Panel finds that the Complainant has satisfied Paragraph 4(a)(ii) of the UDRP.

1. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Panel finds that the Respondent registered and used the disputed domain in bad faith.

The WIPO Overview 3.0 in Paragraph 3.1.4 states: “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.”

The WIPO Overview 3.0 in Paragraph 3.3 states: “From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding.

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

The WIPO Overview 3.0 in Paragraph 3.4 states: “the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution.”

In the WIPO Case No. D2015-1167, Valero Energy Corporation and Valero Marketing and Supply Company v. Sharad Bhat, the Panel stated that: “In accordance with previous UDRP decisions, inactive or passive holding of a domain name, under the circumstances does not prevent a finding of bad faith use.”

In the CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono, past Panel stated that: “There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.”

In the present case, the Complainant owns numerous trademark registrations consisting of the terms “lyondell” and “lyondellbasell” (evidenced by the Annexes 3-6c). Moreover, as the past Panels stated, the Complainant and Its affiliated companies has worldwide reputation in the chemical industry and Its trademarks are well-known globally, obtaining high degree of the distinctiveness (see the CAC case No. 104719, LyondellBasell Industries Holdings B.V. v. Massimo Selle; the CAC case No. 102018, LyondellBasell Industries Holdings B.V. v. Williams Wales - lyondell terminal; the CAC case No.104037, LyondellBasell Industries Holdings B.V. v. Enock Kazige). Furthermore, both the Complainant and the Respondent are seated in the Netherlands. Therefore, this Panel assumes that the Respondent must have been aware of the Complainant’s trademarks and their reputation before the registration of the disputed domain

name. By that, the factor (i) of the passive holding doctrine is fulfilled.

Since the Respondent failed to submit a response to the Complaint, the factor (ii) of the passive holding test is satisfied too.

By such attitude of the Respondent with the absence of reaction to the Complaint and Complainant's Cease and Desist letter, it cannot be stated the Respondent provided false contact details to the Registrar. Consequently, the factor (iii) of the passive holding doctrine test is not fulfilled.

However, following the factor (iv) of the passive holding test, this Panel states that no good faith may be found in the Respondent's activities with the disputed domain name. First, the disputed domain has active MX records and so the domain may be used for e-mail purposes (evidenced by the Annex). Moreover, sending email under the disputed domain is recognizable attempt to impersonate the Complainant and to confuse the recipients. In addition to that, the Respondent registered the disputed domain consisting whole widely-known Complainant's trademarks in combination with the geographical term. Last but not least, past Panel held that "failure to acknowledge or reply to a cease and desist letter may in certain circumstances be evidence of bad faith" (see WIPO Case No. D2006-1620, TDS Telecommunications Corporation v. Registrant [20758] Nevis Domains and Registrant [117460] Moniker Privacy Services; WIPO Case No. D2000-1632, Ebay Inc. v. Ebay4sex.com and Tony Caranci).

To conclude, to the satisfaction of this Panel, the passive holding doctrine requirements were met and the use of the disputed domain by the Respondent was in a bad faith.

Following the above mentioned, the Panel finds that the Complainant has satisfied Paragraph 4(a)(iii) of the UDRP.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lyondellbasell-nederland.com**: Transferred

PANELLISTS

Name	Radim Charvát
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DATE OF PANEL DECISION 2022-11-07

Publish the Decision
