

Decision for dispute CAC-UDRP-105496

Case number	CAC-UDRP-105496
Time of filing	2023-06-12 09:14:12
Domain names	lyondellbasellnederland.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	LyondellBasell Industries Holdings B.V.
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Complainant representative

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

Name	Dorny Wit
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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 is owner of European Union Registered Trademark Number 006943518 for the word mark LYONDELLBASELL, filed on May 16, 2008 and registered on January 21, 2009 in Classes 1, 4, 17, 42 and 45.

FACTUAL BACKGROUND

The Complainant is part of the LyondellBasell Group, which is a multinational chemical company with European and American roots going back to 1953-54 when its predecessor company scientists Professor Karl Ziegler and Giulio Natta (jointly awarded the Nobel Prize in Chemistry in 1963) made discoveries in the creation of polyethylene and polypropylene. The Complainant's corporate group is one of the largest plastics, chemicals and refining companies in the world. It has around 13,000 employees and its products and materials are found in nearly every sector of the economy. The Complainant's group has offices in London, United Kingdom and Rotterdam, Netherlands, among others. In the Complainant's 2020 Annual Report, it announced sales and other operating revenues of USD 27.8 billion and operating income of USD 1.6 billion.

In addition to the Complainant's LYONDELLBASELL registered trademark, the Complainant owns a domain name portfolio containing domain names such as <lyondellbasell.com>, used for the Complainant's group's website since October 23, 2007, and <lyondell.com>, registered on February 21, 1997.

The disputed domain name was registered on February 7, 2023 and does not resolve to any website. The disputed domain name is however configured with MX records that would allow it to receive email. On June 1, 2023, a third party sent an email to various of the Complainant's personnel asserting that, since early May 2023, the sender had had dealings with a person using the Complainant's group's corporate name as "a fake company" operating the disputed domain name in connection with a specific email address. The individual went on to state that the person had requested a deposit for a transaction relating to EN590 but had disappeared when a face to face meeting was requested (the Panel notes in passing that EN590 is a standard for diesel fuel).

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant's LYONDELLBASELL trademark is recognizable within the disputed domain name on a straightforward side-by-side comparison and therefore is confusingly similar to the mark in which the Complainant has rights. The only difference is the addition of the geographical indication "nederland". Such addition neither affects 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. The disputed domain name is also almost identical to the corporate name of Lyondell Chemie Nederland from which it differs only for the substitution of the generic term Chemie for BASELL, the other part of the Complainant's trademark.

The Complainant contends that the Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use its trademark or to register any domain name that is identical or confusingly similar to such mark. 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 not redirected to an active website but it is set up for email, with circumstances indicating that it is registered to be involved in phishing activities and/or spoofing. Such use of the disputed domain name is clearly not a bona fide, legitimate or fair use under the Policy.

The disputed domain name has been registered and is being used in bad faith. Given the distinctiveness of the Complainant's business and trademark worldwide, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant and its rights in such mark. The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant and its mark, in terms of paragraph 4(b) of the Policy. The high degree of distinctiveness of the Complainant's mark precludes any good faith use of the disputed domain name. A finding of bad faith is supported by the use of the disputed domain name to send deceptive emails to obtain sensitive or confidential information or to solicit payment of fraudulent invoices by the Complainant's actual or prospective customers. Use of a domain name for purposes other than to host a website, including for sending email, conducting phishing or identity theft, may constitute bad faith as indicated in previous cases under the Policy.

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 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

Notification of the Complaint / the Respondent's default / the Respondent's supplemental filing

The administrative proceeding commenced on June 12, 2023, whereupon the Respondent had 20 days to submit its response to the Complaint. On June 28, 2023, the CAC issued a response reminder to the Parties noting that the deadline for filing a response was July 2, 2023.

The Respondent sent an email to the CAC dated June 28, 2023 from which it is evident that it had successfully received notification of (1) the fact that the Complaint had been made against it and (2) the invitation to register on the CAC's online platform. The Respondent indicated in said email that it had had "some difficulties" registering on the CAC's system but did not specify what these difficulties were.

On June 29, 2023, the CAC responded asking for a screenshot showing the problem and offering to assist the Respondent in the registration process.

On July 3, 2023, the Respondent replied asking for an alternative route, stating "it is difficult coming up with a screenshot" although not otherwise explaining its difficulty.

On July 4, 2023, the CAC asked the Respondent for a detailed explanation of the problem, noting in brief how the registration process worked. The Respondent did not provide any such explanation.

On July 11, 2023, the Respondent requested the CAC's permission to send a response by email, which was duly granted, with the deadline for the sending of a response by email being communicated by the CAC as being July 12, 2023 (effectively, an extension of 10 days to the original due date for the filing of the response). The Respondent did not file a response by email within the time limit, nor has it attempted to file such a response out of time before this Decision was made.

On July 13, 2023, the CAC notified the Parties that the Respondent had not taken the opportunity to file a response and that the CAC would proceed to appoint the Panel.

On July 17, 2023, the Respondent sent an email which attached a business license for LyondellBasell Industries Holdings B.V., asserting that such license permitted the Respondent to hold the disputed domain name. No formal response accompanied this document, although the Respondent added "we need more information of what we need to send".

In light of the procedural background noted above, the Panel is satisfied that the CAC has notified the Complaint in accordance with paragraph 4 of the Rules and that it has provided a suitable facility for the Respondent to file a formal response by electronic means in accordance with paragraph 5 of the Rules. No such response has been filed. As far as the Respondent's submission of the business license is concerned, the Panel treats this as an unsolicited supplemental filing, as discussed further below.

As noted in section 4.16 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), paragraph 12 of the UDRP Rules expressly provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case, and unsolicited supplemental filings are generally discouraged, unless specifically requested by a panel. Section 4.16 goes on to note that, in all such cases, panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response.

In this case, it should be noted that the Respondent's supplemental filing was filed well after the expiration of the extended period for filing of a Response, and that the CAC attempted on multiple occasions to provide administrative assistance to the Respondent in order that the Respondent could meet its obligations under the Rules. The Respondent's actions, including its failure to explain the alleged difficulties that it was experiencing, coupled with its frequent delays in answering the CAC (as shown by the chronology above) strike the Panel as an attempt merely to delay the administrative proceeding without due cause. The Respondent's supplemental filing has arrived too late in the process. In any event, it appears to be merely an extract from a public record, and it is not accompanied by any context or explanation as to its relevance to the case.

In all of these circumstances, the Respondent's supplemental filing will not be accepted for consideration by the Panel. The Panel is satisfied in terms of paragraph 10(b) of the Rules that each of the Parties has already been given a fair opportunity to present its case, balancing this against the terms of paragraph 10(c) of the Rules, which provides that the Panel shall ensure that the administrative proceeding takes place with due expedition.

The Panel concludes that all procedural requirements under UDRP have been met and that there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has demonstrated that it has UDRP-relevant rights in its LYONDELLBASELL trademark by virtue of European Union Registered Trademark Number 006943518. The Second-Level Domain of the disputed domain name contains the said trademark in its entirety, suffixed with the geographic term "nederland", which additional term would not prevent a finding of confusing similarity (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0")). The said mark is fully recognizable in the disputed domain name based upon a straightforward side-by-side comparison. The generic Top-Level Domain in respect of the disputed domain name, namely ".com", is typically disregarded for the purposes of the comparison under the first element analysis of the Policy. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's LYONDELLBASELL trademark.

With regard to the second element of the Policy, the Complainant asserts that the Respondent lacks rights or legitimate interests in the disputed domain name, noting that the Complainant has no relationship with the Respondent whatsoever, and that the Respondent has never received any approval of the Complainant, expressed or implied, to use its trademark or to register any domain name that is identical or confusingly similar to such mark. The Complainant also submits that there is no evidence that the Respondent has acquired any rights in a trademark or trade name corresponding to the disputed domain name, and that the disputed domain name is not redirected to an active website but has been registered to be involved in email-based phishing activities and/or spoofing, which use is not a *bona fide*, legitimate or fair use under the Policy.

Taking the Complainant’s assertions cumulatively, the Panel finds that these are sufficient to constitute the requisite *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name (see, for example, section 2.1 of the WIPO Overview 3.0). In particular, based upon the Complainant’s uncontradicted evidence, the Panel accepts that the disputed domain name is more probably than not being used by the Respondent for the purposes of spoofing the identity of the Complainant in deceptive emails related to certain proposed business transactions. Such use cannot give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent.

The Respondent has not replied to the Complainant’s allegations and evidence in this case. There are no submissions or evidence on the record which might serve to rebut the Complainant’s *prima facie* case to any reasonable extent. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant’s business name and trademark registration long pre-date the registration of the disputed domain name. The Complainant’s mark itself is highly distinctive and in widespread use globally, suggesting both that the disputed domain name was registered by the Respondent with full awareness of the Complainant and its rights, and that there could be neither any accidental coincidence of name nor any other reasonable explanation as to why the disputed domain name was selected by the Respondent. The Complainant’s uncontradicted evidence as to the manner in which the disputed domain name has been used to spoof the Complainant’s identity, with a view to engaging in business relations with a third party, suggests in the absence of any reasonable contrary explanation that the Respondent had an intent to target the Complainant’s rights unfairly both at the point of registration of the disputed domain name and via the manner of its subsequent use. Although the disputed domain name is not in active use for a website at present, the Panel agrees with the thrust of the Complainant’s contentions that the use of a domain name for impersonating the Complainant by way of deceptive emails falsely associating the Respondent with the Complainant’s business can constitute use in bad faith within the meaning of the Policy.

In all of these circumstances, the Panel considers that the Complainant has made out a sufficient case of registration and use in bad faith. The Respondent has chosen not file a Response in this case despite having received both the original time period allocated under the Rules and an extension to permit such filing by email. Accordingly, the Respondent has failed to address the Complainant’s allegations of bad faith registration and use in any substantive manner. It has not sought to provide any explanation that might have suggested that its actions regarding the disputed domain name were in good faith, and in particular has not addressed the Complainant’s evidence that the disputed domain name appears to have been used to send deceptive emails impersonating the Complainant in connection with prospective business transactions. In light of the Complainant’s submissions and evidence on that topic, the Panel can conceive of no explanation which the Respondent might have tendered in this particular case which would have suggested that the disputed domain name was registered and has been used in good faith.

In all of these circumstances, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **lyondellbasellnederland.com**: Transferred

PANELLISTS

Name	Andrew Lothian
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DATE OF PANEL DECISION 2023-07-24

Publish the Decision