Decision for dispute CAC-UDRP-100636

Case number	**CAC-UDRP-100636**
Time of filing	**2013-07-24 15:39:03**
Domain names	**express-hapaglloyd.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Hapag-Lloyd UK Limited**

Complainant representative

Organization	**TLT LLP**

Respondent

Organization	**Hapag-Lloyd AG**

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

"Hapag-Lloyd" is a registered Community Trademark (CTM) with registration number EU002590479 (the 479 Mark). It was registered on 8 November 2005 and is registered in, amongst others, classes 35 (which covers transshipment matters and goods distribution) and class 39 (which covers freight forwarding and storage of goods of all kinds). The registered owner of the 479 Mark is the TUI AG.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

express-hapaglloyd.com

1 This Complaint is submitted by TLT LLP, a firm of solicitors regulated in the United Kingdom by the Solicitors' Regulation Authority, on behalf of Hapag-Lloyd UK Limited.

2 The Complainant, Hapag-Lloyd UK Limited (Hapag-Lloyd) is a subsidiary of Hapag-Lloyd AG. Hapag-Lloyd AG is based in

Hamburg and has origins dating back to 1847.

3 The ultimate owners of Hapag-Lloyd AG and its subsidiaries are the Albert Ballin consortium (77.96%, consisting of the City of Hamburg, Kühne Maritime, Signal Iduna, HSH Nordbank, M.M.Warburg Bank and HanseMerkur) and the TUI AG (22.04%).

4 Hapag-Lloyd AG and its subsidiaries are a leading global liner shipping company which operates from 300 locations in 114 different countries, worldwide.

5 Hapag-Lloyd was incorporated in England and Wales on 15 January 1936 with company number 00309325.
Reputation

6 Given the size and the history surrounding Hapag-Lloyd, it is a thoroughly established company and extremely well known throughout the world as a trusted and reputable business.

7 Over the years, Hapag-Lloyd AG and its subsidiaries have received numerous awards, including:

7.1 2013 Quest for Quality Award, awarded by Logistics Management Magazine;

7.2 2012 Ocean Carrier of the Year, awarded by Alcoa;

7.3 2012 Global Carrier of the Year, awarded by Hellmann Worldwide Logistics; and

7.4 Excellence Award 2011, awarded by Eastman Chemical Company.

Trademarks

8 "Hapag-Lloyd" is an EU registered trademark with registration number EU002590479 (the 479 Mark). It was registered on 08 November 2005 and is registered in, amongst others, classes 35 (which covers transhipment matters and goods distribution) and class 39 (which covers freight forwarding and storage of goods of all kinds).

9 As mentioned above in paragraph 3, TUI AG is part owner of Hapag-Lloyd. TUI AG is the registered owner of the 479 Mark. However, Hapag-Lloyd is a licensee of the 479 Mark and is duly authorised to rely upon it for the purposes of this Complaint.

Abusive Registration

10 "Hapag-Lloyd.Com" was registered by the owners of Hapag-Lloyd on 08 August 1996. "Express-HapagLloyd.Com" (the Infringing Domain) was registered on 08 April 2013 by the Respondent.

11 It is inconceivable that at the time of registration, the Respondent did not know of the similarity between the Infringing Domain and Hapag-Lloyd's domain as the Infringing Domain uses the 479 Mark.

12 In fact, it is evident that the Respondent purposefully used Hapag-Lloyd's 479 Mark to create the impression that the Infringing Domain and the website at the Infringing Domain was owned by or at least associated with Hapag-Lloyd.

13 The Respondent seeks to trick users into thinking that Hapag-Lloyd is associated with their site (the Site) at the Infringing Domain. This encourages users to purchase products from the Site as they believe that a well known, reputable business, will execute the delivery of their products.

14 The Respondent has gone to great lengths to convince users that this is the case by stating, for example:
"Hapag Lloyd is the safest way to buy and sell online. The Buyer checks the quality of the merchandise before autorizing [sic] the payment and allows the Seller to use a safe way of accepting payment".

15 To reiterate, Hapag-Lloyd has nothing to do with the Site, the Infringing Domain, or the Respondent. The Respondent has no legitimate interest in the Site or the Infringing Domain as they are being used to defraud users into purchasing products that are never delivered.

16 Hapag-Lloyd has received numerous calls from users chasing delivery of their products. They have therefore had to inform the users that the delivery of the products / the Site the user ordered the products from is not in any way associated with Hapag-Lloyd.

17 The Infringing Domain was registered in bad faith as the sole purpose for its registration was and is to trick users into believing that they have arrived at a site which is owned by or associated with a reputable company i.e. Hapag-Lloyd.

18 The Site at the Infringing Domain has been suspended, however in order to protect Hapag-Lloyd, the use of the 479 Mark and users, we request that the Infringing Domain be transferred to Hapag-Lloyd.

19 Please also be aware that the registrant has given its name as "Hapag Lloyd AG". This is further evidence of the fraud as this is not actually Hapag-Lloyd UK Limited or any subsidiary of Hapag Lloyd AG.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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

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 panel is of the opinion that

(1) the evidence provided by the Complainant supports a finding that the TUI AG has registered the EU trademark "Hapag-Lloyd" with registration number EU 002590479 (the 479 Mark);

(2) the Complainant provided prima facie evidence that the parent company of the Complainant is a licensee of the 479 Mark as the parent company of the Complainant is the Hapag-Lloyd AG owned by the Albert Ballin Consortium and the TUI AG;

(3) the Complainant provided prima facie evidence that the Complainant as a subsidiary company of the Hapag-Lloyd AG also is a licensee or a sublicensee of the 479 Mark;

(4) the disputed domain name is confusingly similar to the 479 Mark because the combination of an obviously confusing domain name “hapag-lloyd” with the generic prefix “express” provides grounds for a finding of confusion sufficient for the purposes of paragraph 4(a)(i) of the ICANN Policy;

(5) the Respondent was aware of the well known company name and “strong” trademark "Hapag-Lloyd" at the time of registration of the disputed domain name because the Respondent registered the domain name under the name "Hapag Lloyd" and the Hamburg address of the parent company of the Complainant;

(6) the Respondent purposefully used the 479 Mark to create the impression that its site was owned by or at least associated with Hapag-Lloyd particularly because the Respondent used symbols for transportation of goods on his site to attract internet users for commercial gain.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **EXPRESS-HAPAGLLOYD.COM**: Transferred

PANELLISTS

Name	**Prof. Dr. Lambert Grosskopf, LL.M.Eur.**

DATE OF PANEL DECISION 2013-09-10

Publish the Decision