Decision for dispute CAC-UDRP-100634

Case number	CAC-UDRP-100634
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Domain names	escrow-hapaglloyd.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Hapag-Lloyd UK Limited

Complainant representative

Organization	TLT LLP

Respondent

Name	Gary Cottrill

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the licensee of the registered trade mark Hapag-Lloyd with registration number EU002590479 registered on 08 November 2005, including classes 35 and 39.

FACTUAL BACKGROUND

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

The Complainant, Hapag-Lloyd UK Limited was incorporated in England and Wales on 15 January 1936 with company number 00309325. The Complaianant is a subsidiary of Hapag-Lloyd AG which is based in Hamburg and has origins dating back to 1847.

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

Hapag-Lloyd is an EU registered trademark with registration number EU002590479 (the 479 Mark). It was registered on 08 November 2005 including classes 35 (for transhipment matters and goods distribution) and class 39 (for freight forwarding and storage of goods of all kinds).

TUI AG is the registered owner of the 479 Mark. The Complainant is part owned by TUI AG and is licensed to use the 479 Mark .

The disputed domain name, escrow-hapaglloyd.com, was registered on 3 June 2013.

The Complanant, Hapag-Lloyd, asserts that:

(i) "Hapag-lloyd.com" was registered by the owners of Hapag-Lloyd on 08 August 1996. "Escrow-hapaglloyd.com" (the Infringing Domain) was registered on 03 June 2013 by the Respondent;

(ii) 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;

(iii) 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;

(iv) 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;

(v) 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";

"Hapag Lloyd ships international packages. So whether it's around the world or around the corner – more customers trust us with their packages".

(vi) 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;

(vii) 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; and

(viii) 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.

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.

The language of the Registration Agreement between the Registrar and the Respondent is Russian. The Complainant has asked for the language of the proceeding be changed from Russian to English.

The Respondent has not objected to the Complainant's request to change the language to English. The Respondent's address is in the U.K. and it is likely that he understands English. The language of the website corresponding to the disputed domain name (currently suspended) is English. The disputed domain name incorporates the English word 'escrow'. Given these circumstances the Panel determines, in accordance with paragraph 11(a) of the UDRP Rules, that the language of the proceeding be English.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 (a) of the Rules states that the Panel shall decide a complaint on the basis of the statements and documents submitted, in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

If a Party does not comply with the provision of, or requirement under the Rules, and in the absence of exceptional circumstances, the Panel shall draw such inferences therefore as it considers appropriate (Paragraph 14 of the Rules).

The Respondent has failed to submit a response and consequently has not contested any of the submissions made by the Complainant. The Panel will therefore make its decision on the basis of the factual statement submitted and the documents made available by the Complainant to support its contentions.

Paragraph 4 a. of the Policy requires the Complainant to prove each of the following three elements:

(i) the domain name is identical or confusingly similar to a trade mark or a service mark in which the Complainant has rights; and
(ii) the Respondent has no rights or legitimate interest in respect of the domain name; and
(iii) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant is the licensee of the EU trade mark registration Hapag-Lloyd. This mark predates the registration of the disputed domain name "escrow-hapaglloyd.com" on 3 June 2013.

The disputed domain name " escrow-hapaglloyd.com " is comprised of the trade mark Hapag-Lloyd and the generic word "escrow'. As has been held in the case of Sony Kabashiki Kaisha v Inja, Kil (WIPO /D2000-149) "[n]either the addition of the ordinary descriptive word…nor the suffix ".com" detract from the overall impression of the dominant part of the name in each case, namely the trade mark SONY".

The distinctive word in the disputed domain name is the mark Hapag-Lloyd. Adding generic word 'escrow' to it is unlikely to avoid confusion. This is especially so where the added word 'escrow' is closely associated with the Complainant's business.

The Complainant asserts that it has received numerous calls from users of the website using the disputed domain name.

The Panel finds that the disputed domain name " escrow-hapaglloyd.com" is confusingly similar to the Complaint's licensed trade mark 'Hapag-Lloyd'.

B. Rights or legitimate interests

The second element the Complainant must prove is that the Respondent has no rights or legitimate interests in respect of the domain name (Paragraph 4 a.(ii) of the Policy).

In the absence of a Response, none of the grounds set out in Paragraph 4 c. of the Policy, by which a Respondent may demonstrate rights or legitimate interests in the domain name have been asserted.

The Complainant has not licenced or authorised the Respondent to use the Hapag-Llyod mark or incorporate it in the disputed domain name. There appears no reason for the Respondent to use of the Hapag-Lloyd mark in the disputed domain name other that to seek to create the impression of an association with the Complainant.

On the basis of the evidence submitted and in the absence of a Response, the Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name.

C. Registered and used in bad faith

The third element that the Complainant must prove is that the disputed domain name has been registered and is being used in bad faith (Policy, paragraph 4 a.(iii)).

The registration of the trade mark Hapag-Lloyd predates the registration of the disputed domain name. Given the evidence submitted the Respondent must have known of the Hapag-Lloyd trade mark when it registered the disputed domain name.

Evidence of the registration and use of domain name in bad faith may be shown where "by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, internet users to [its] website or other online 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..." (Policy paragraph 4 b.).

It appears from the evidence submitted that the disputed domain name has been used to trick users into believing that the domain name 'escrow-hapaglloyd.com' and the website using it are owned by or associated Hapag-Lloyd Limited, the Complainant.

On the basis of the uncontested evidence submitted by the Complainant the Panel finds that the 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. **ESCROW-HAPAGLLOYD.COM**: Transferred

PANELLISTS

Name	**Mrs Veronica Marion Bailey**

DATE OF PANEL DECISION 2013-09-13

Publish the Decision