Decision for dispute CAC-UDRP-100817

Case number	CAC-UDRP-100817
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Domain names	protect-hapaglloyd.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Hapag-Lloyd UK Limited

Complainant representative

Organization	TLT LLP

Respondent

Organization	Hapag Protect

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other pending or decided proceedings between the same parties and related to the disputed domain name.

IDENTIFICATION OF RIGHTS

"Hapag-Lloyd" is a Community Trademark, registration number 2590479 granted on 8 November 2005 for, amongst others, transhipment matters and goods distribution services in class 35 and freight forwarding and storage of goods of all kinds services in class 39. The registered owner is the TUI AG. The Complainant is an authorised licensee of the "Hapag-Lloyd" trademark.

FACTUAL BACKGROUND

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

The Complainant

1 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.

2 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%).

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

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

Reputation

5 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.

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

6.1 2013 Quest for Quality Award, awarded by Logistics Management Magazine;

6.2 2012 Ocean Carrier of the Year, awarded by Alcoa;

6.3 2012 Global Carrier of the Year, awarded by Hellmann Worldwide Logistics; and

6.4 Excellence Award 2011, awarded by Eastman Chemical Company.

Trademarks

7 "Hapag-Lloyd" is an EU registered trademark with registration number EU002590479. 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).

8 As mentioned above, TUI AG is part owner of Hapag-Lloyd. TUI AG is the registered owner of the "Hapag-Lloyd" trademark. The Complainant is a licensee of the "Hapag-Lloyd" trademark and is duly authorised to rely upon it for the purposes of this Complaint.

Abusive Registration

9 "Hapag-Lloyd.Com" was registered by the owner of the "Hapag-Lloyd" trademark on 08 August 1996. "Protect-HapagLloyd.Com" (the Infringing Domain) was registered on 06 May 2014 by the Respondent.

10 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 "Hapag-Lloyd" trademark.

11 In fact, it is evident that the Respondent purposefully used the "Hapag-Lloyd" trademark to create the impression that the infringing domain and the website at the infringing domain is owned by Hapag-Lloyd.

12 The Respondent seeks to trick users into thinking that Hapag-Lloyd owns its 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.

13 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 the payment and allows the Seller to use a safe way of accepting payment".

14 The Respondent has even listed the names of actual Hapag Lloyd employees and provided details of actual Hapag Lloyd office locations to make its site look even more legitimate. The Respondent has however provided incorrect email addresses and so internet users correspond with the Respondent and not the actual Hapag Lloyd employees (i.e. the "@protect-hapaglloyd" email address is not the real email address for Hapag Lloyd or its employees).

15 The details submitted by the Respondent in relation to the registration of the infringing domain are false. The relevant WhoIs shows that the infringing domain is registered to "Hapag Protect". This is nothing to do with Hapag Lloyd. The address of the Registrant for the infringing domain is 48A Cambridge Road, Barking, IG11 8HH. This is the actual address of one of Hapag-Lloyd's offices. However, the infringing domain has nothing to do with Hapag Lloyd. In addition the telephone number listed in the WhoIs (02085074047) is the number of an actual Hapag Lloyd employee. All of this information has probably been obtained via a Google search and then inserted into the registration of the infringing domain, to try and make it look as though it is legitimately connected with Hapag Lloyd. This is therefore further evidence of the intended deception created by the Respondent.

16 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.

17 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.

18 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 a reputable company i.e. Hapag-Lloyd.

19 The same (or virtually similar) site was also located at, amongst others, the following domains:

19.1 escrow-hapaglloyd.com
19.2 express-hapaglloyd.com
19.3 safedeal-hapaglloyd.com
19.4 safe-heapaglloyd.com
19.5 safetrading-hapaglloyd.com.

20 The Complainant has previously issued a domain dispute against the above domains and subsequently had the domains transferred to Hapag Lloyd. The Complainant believes that the domains are run by the same individuals and once one domain has been transferred, the individuals set up another similar domain (in this case <protect-hapaglloyd.com>), hosting the same fraudulent site.

21 In accordance with Paragraph 4 (b) of the Rules, the Complainant understands that the complaint must be filed in the language of the Respondent’s registration agreement for the disputed domain name (Rules for UDRP, Par. 11. (a)). In this case, that language is Russian. However, the Complainant would like to request a change of the language to English. The reasons as to why the Complainant believes the complaint should continue in English are:

21.1 - The Respondent's address registered to the infringing domain, as shown on the attached WhoIs, is an address in Essex, England. Although, as the Complainant has mentioned above, this address is actually the address of the Complainant and has been used by the Respondent to trick internet users into believing the infringing domain is somehow connected to the Complainant, the Respondent is clearly wishing to represent that it has a strong tie with England.

21.2 - The Respondent's telephone number, as given on the attached WhoIs, is an English phone number. Again, as the Complainant has mentioned above, this telephone number actually belongs to the Complainant and has been used by the Respondent to trick internet users into believing the infringing domain is somehow connected to the Complainant. By doing

this, the Respondent is clearly wishing to represent that they do have an association / a base in England.

21.3 - The entire website at the infringing domain is written in English. The Respondent therefore clearly wishes to interact with internet users in English and has the ability to read, write and communicate in English.

22 The Complainant therefore believes that the language of the complaint should be changed to English as other than the registration agreement, the Respondent has no association with Russia and not only has the ability to communicate in English, but wants users to have the impression that the entire site at the infringing domain is run from England.

23 No injustice will be caused to the Respondent by the dispute continuing in English, because the Respondent is clearly able to conduct itself in English. On the other hand, a major injustice will be caused to the Complainant if the language of the dispute is not changed to English, because further fees will be incurred by having to commence the dispute elsewhere against what is so clearly a fraudulent Respondent. The Respondent should not be protected against the consequences of its fraudulent activities merely by its having registered the Infringing Domain with a Russian registrar.

24 In order to protect Hapag-Lloyd, the use of the "Hapag-Lloyd" trademark and internet users, the Complainant request that the infringing domain be transferred to the Complainant.

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 only procedural issue that the Panel has been faced with is the language of the proceedings. The Complaint was filed in English but the language of the registration agreement is Russian.

Pursuant to Paragraph 11(a) of the Rules, "[u]nless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding".

The Complainant requests the Panel to authorise the change of the language of this administrative proceeding to English. In this respect, the Complainant asserts that "no injustice will be caused to the Respondent by the dispute continuing in English, because the Respondent is clearly able to conduct itself in English. On the other hand, a major injustice will be caused to the Complainant if the language of the dispute is not changed to English, because further fees will be incurred by having to commence the dispute elsewhere against what is so clearly a fraudulent Respondent. The Respondent should not be protected against the consequences of its fraudulent activities merely by its having registered the Infringing Domain with

a Russian registrar (...). [T]he Respondent has no association with Russia and not only has the ability to communicate in English, but wants users to have the impression that the entire site at the infringing domain is run from England.

More specifically, the Complainant notes that:

The Respondent's address as it appears on the relevant Whois, is an address in Essex, England. Although this address is actually the address of the Complainant and has been used by the Respondent to trick internet users into believing the disputed domain name is somehow connected to the Complainant, the Respondent is clearly wishing to represent that it has a strong tie with England.

Moreover, the Respondent's telephone number, as given on the relevant Whois, is an English phone number. This telephone number actually belongs to the Complainant and has been used by the Respondent to trick internet users into believing that the disputed domain name is somehow connected to the Complainant. By doing this, the Respondent is clearly wishing to represent that it does have an association / a base in England.

Finally, the Complainant notes that the entire website at the infringing domain is written in English. The Respondent therefore clearly wishes to interact with internet users in English and has the ability to read, write and communicate in English.

Due to all the aforesaid circumstances, the Panel agrees with the Complainant's view that it is not foreseeable that the Respondent will be prejudiced, should English be adopted as the language of the proceedings.

The Panel therefore determines, under paragraph 11(a) of the Rules, that English shall be the language of the proceedings (for a similar decision see WIPO Cases Nos. D2009-1572-1573-1584-1586-1620-1623-1624 -1635-1639-1640-1658 -Farouk Systems, Inc. vs. several respondents).

PRINCIPAL REASONS FOR THE DECISION

Under paragraph 15(a) of the Rules, 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.

Under paragraph 14(b) of the Rules, if a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

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.

Under paragraph 4(a) of the Policy, to succeed in a UDRP the Complainant must prove the existence of 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 Community trademark "Hapag-Lloyd". This mark was registered in 2005, and therefore predates the registration of the disputed domain name.

The "Hapag-Lloyd" trademark is entirely comprised in the disputed domain name. The addition of the word "protect" does not

prevent the similarity between the disputed domain name and the earlier mark because this term corresponds to a verb that does not detract the Internet user from the dominant part of the disputed domain name, i.e., the trademark "Hapag-Lloyd".

The distinctive word in the disputed domain name lies in the trademark "Hapag-Lloyd". Adding the verb 'protect' to it is unlikely to avoid confusion, even more so because the added word 'protect' is closely associated with the Complainant's business.

The Panel therefore concludes that the disputed domain name is confusingly similar to the Complaint's licensed trademark '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).

The Respondent's name, as it appears on the relevant Whois, includes the term "Hapag" followed by the name "Protect". Nevertheless, the Complainant maintains that the Respondent has no relationship at all with the Complainant. The details submitted by the Respondent in relation to the registration of the disputed domain name are false. The Respondent's address, as it appears in the relevant WhoIs, is the actual address of one of the Complainant's offices. In addition the telephone number listed in the WhoIs is the number of an actual Hapag Lloyd's employee. All of this information has been inserted into the registration of the disputed domain name, to try and make it look as though the Respondent is legitimately connected with the Complainant.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 the payment and allows the Seller to use a safe way of accepting payment".The Respondent has even listed the names of actual Hapag Lloyd employees and provided details of actual Hapag Lloyd office locations to make its site look even more legitimate. The Respondent has however provided email addresses to correspond with the Respondent and not with the actual Hapag Lloyd's employees (i.e. the "@protect-hapaglloyd" email address is not the real email address for Hapag Lloyd or its employees).

The Respondent had the opportunity to object to the Complainant's statements by submitting arguments and evidence to overturn the Complainant's assertion that the Respondent lacks rights or legitimate interests in the domain name at stake. However, 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.

Accordingly, the Panel takes the view that the actual use by the Respondent of the disputed domain name does not amount to a bona fide or legitimate use. Therefore, 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 (paragraph 4(a)(iii) of the Policy).

The registration of the trade mark Hapag-Lloyd predates the registration of the disputed domain name. Given the evidence submitted, it is undisputable that the Respondent was aware of the Hapag-Lloyd trademark and of the Complainant's activities when it registered the disputed domain name.

Moreover, the Respondent provided false contact details at the time of the registration of the disputed domain name. In particular, the address and telephone number listed in the relevant WhoIs are those of the Complainant. Only the e-mail adrress corresponds to that of the Respondent.

The registration of the disputed domain name incorporating the Complainant's trademark of which the Respondent was very

well aware of, and the provision of false contact details at the time of the registration of the domain name are clear indication that the domain name at stake was registered in bad faith.

As far as use in bad faith is concerned, 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..." (paragraph 4(b) of the Policy).

It appears from the evidence submitted that the disputed domain name has been used to trick users into believing that the domain name <protect-hapaglloyd.com> and the website using it are owned by or associated to the Complainant.

On the basis of the uncontested evidence submitted by the Complainant the Panel finds that the domain name at stake is also 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. **PROTECT-HAPAGLLOYD.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2014-07-28

Publish the Decision