Decision for dispute CAC-UDRP-101106

Case number	**CAC-UDRP-101106**
Time of filing	**2015-10-29 11:39:04**
Domain names	**bluewater-shipping.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Blue Water Shipping A/S**

Complainant representative

Organization	**Plougmann & Vingtoft a/s**

Respondent

Name	**James Hooper**

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings the Panel is aware of which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant claims and provides evidence it owns several trademarks containing word group “BLUE WATER SHIPPING” in various countries, inter alia CTM No. 000350462 registered on 7 October 1999. Furthermore, the Complainant claims it has been using BLUE WATER SHIPPING as a trademark in the normal course of commerce since 1972 and, therefore, holds exclusive rights to the trademark through use.

FACTUAL BACKGROUND

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

The Complainant Blue Water Shipping was established in 1972 in Esbjerg, Denmark. Blue Water Shipping is an international transport, shipping and freight forwarding company that offers worldwide complete transport solutions and project management for any type of cargo. Blue Water Shipping has 60 offices and is represented in North America, in Western and Eastern Europe, in Central Asia, the Middle East, in the Far East and in North and South America.

In 2012 Blue Water Shipping had 1033 employees spread over 55 offices in 26 countries and the company has expanded

ever since. The Complainant allegedly found out about the registration and use of this domain name from a customer who called and inquired about a delivery from China by air, which the customer has not received.

The Complainant claims that on the Respondent's homepage at the contested domain name, the contact information and addresses more or less match the Complainant's offices in Denmark, other than the phone number. In addition, the contact addresses used on bluewater-shipping.com also are very similar and almost identical to the addresses shown on the Complainant's homepage for their offices in Aalborg and Aarhus in Denmark and Shanghai in China.

As far as the Complainant's contentions are concerned, the Complainant claims the disputed domain name is identical or confusingly similar to the Complainant's registered trademark, the Respondent has no rights or legitimate interests in respect of the disputed domain name which has been registered, and the domain name is being used by the Respondent in bad faith.

Specifically, the Complainant contends the Respondent has not received any license or consent, expressed or implied, to use the Complainant's trademark "BLUE WATER SHIPPING" in a domain name or in any other manner from the Complainant, nor has the Complainant agreed to such use by the Respondent.

In addition, the Complainant has not in any way given authorization to the Respondent to register the disputed domain name.

Moreover, the Complainant claims there is no evidence that the Respondent is known by, or commonly associated with, the disputed domain name. Nor is the Respondent, to the best of knowledge of the Complainant, engaged in a personal or business activity that demonstrates that the Respondent has any legal right to or legitimate interest in the disputed domain name.

Finally, the Complainant assumes the registration and use of the domain name could give customers the impression that the Respondent represents the Complainant or is part of the Complainant's company.

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).

The Complainant has registered the word mark "BLUE WATER SHIPPING" and the device mark containing the words "BLUE WATER SHIPPING" both of which predate the disputed domain name registered on 29 November 2014. The registered device mark consist of the words "BLUE WATER SHIPPING" with waves between the words 'BLUE' and 'WATER' and as the words "BLUE WATER SHIPPING" are the only word elements in the mark, the words are therefore the dominant part of the mark.

As for the device marks, since figurative, stylized or design elements in a trademark cannot be represented in a domain name, such elements shall be disregarded for the purpose of assessing identity or confusing similarity under the UDRP.

The relevant assessment shall therefore be between the alphanumeric components of the domain name and the dominant textual component of the trademarks – in this case being "BLUE WATER SHIPPING".

In addition, it is an established and recognized principle under the UDRP, that the presence of the .com top-level domain designation is irrelevant in the comparison between a domain name and a trademark.

The disputed domain name fully incorporates the Complainant's trademark only adding dash between "BLUEWATER" and "SHIPPING". Therefore, the Panel finds the disputed domain name to be confusingly similar to the Complainant's trademark

“BLUE WATER SHIPPING”, based on a visual and aural comparison of the disputed domain name and the trademark.

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).

The Respondent has not received any license or consent, expressed or implied, to use the Complainant’s trademark BLUE WATER SHIPPING in a domain name or in any other manner from the Complainant, nor has the Complainant agreed to such use by the Respondent.

There is no evidence that the Respondent is known by, or commonly associated with, the disputed domain name. Nor is the Respondent, to the best of knowledge of the Complainant, engaged in a personal or business activity that demonstrates that the Respondent has any legal right to or legitimate interest in the disputed domain name. To the contrary, there is ample evidence of bad faith registration, discussed below.

Consequently, the Complainant has made out a prima facie case that Respondent has no legitimate interest in the contested domain name bluewater-shipping.com.

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).

It appears that Respondent knew or must have known about the Complainant’s trademarks when registering the disputed domain name, especially because:

1. the content of the relevant website are offering the same services as the Complainant,
2. the contact addresses on the Respondent’s homepage are very similar to the Complainant’s addresses in Aalborg and Aarhus in Denmark and Shanghai in China,
3. the Respondent’s homepage contains the Complainant’s official YouTube video on the front page,
4. the company name Blue Water Shipping and Logistics A/S, that is referred to on the Respondent’s website bluewater-shipping.com, is confusingly similar with the Complainant’s trademark and own company name but is non-existing. The company Blue Water Shipping and Logistics A/S cannot be found in the Danish official Company registry, and appears to be shown on the homepage to confuse customers with regard to the association with the Complainant.

The use of the disputed domain name can therefore only be to attract internet users normally searching for the Complainant, and thereby to mislead the Complainant’s customers.

In addition and with a reference to the above-mentioned content on the website, not least the use of the Complainant’s official YouTube video, the office addresses and the information, it is inconceivable that the Respondent registered the domain name in good faith and without knowledge of the existence of the Complainant and the Complainant’s trademark. The Respondent’s registration and use of the disputed domain name must therefore have been in bad faith.

Indeed, the Respondent’s intention in registering and using the disputed domain name appears to be to attract, for commercial gain, Internet users to the Respondent’s website, by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name. Moreover, the registration of the domain name bluewater-shipping.com by the Respondent clearly prevents the Complainant from registering the disputed domain name.

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 domain name was registered in bad faith, with knowledge of Complainant's rights, and subsequently has been used to mislead Complainant's customers. Such registration and use is not tolerated by the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BLUEWATER-SHIPPING.COM**: Transferred

PANELLISTS

Name	**Mike Rodenbaugh**

DATE OF PANEL DECISION 2015-12-08

Publish the Decision