Decision for dispute CAC-UDRP-100645

Case number	**CAC-UDRP-100645**
Time of filing	**2013-08-05 16:35:31**
Domain names	**safetrading-hapaglloyd.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Hapag-Lloyd**

Complainant representative

Organization	**TLT LLP**

Respondent

Name	**Luke King**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any pending or decided proceeding related to the disputed domain name.

IDENTIFICATION OF RIGHTS

Complainant, Hapag-Lloyd UK Limited (herein after the Complainant and/or Hapag-Lloyd) has shown that TUI AG is the registered owner of the"Hapag-Lloyd" EU002590479 Mark, registered on 08 November 2005 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).

Complainant asserted to be a licensee of the "Hapag-Lloyd" EU002590479 Mark and therefore to be duly authorized to rely upon it for the purposes of this Complaint.

Complainant also asserted that Hapag-Lloyd was incorporated in England and Wales on 15 January 1936 with company number 00309325.

Complainant has not documented these last two facts, which are essential to establish Complainant's legitimization in this proceeding.

However, in response to the Procedural Order issued by the Panel on September 10, 2013 the Complainant has documented

that:
Hapag-Lloyd AG is the owner of trademark EU005913918 for the word "Hapag-Lloyd" and that the Complainant is a subsidiary of Hapag-Lloyd AG.

The Complainant has then pointed out that the Panels in disputes 100634, 100635 and 100636 accepted that this same Complainant had sufficient rights in the name “Hapag-Lloyd” for the purposes of practically identical complaints.

FACTUAL BACKGROUND

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

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.

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 was incorporated in England and Wales on 15 January 1936 with company number 00309325.

Trademarks

"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).

TUI AG is part owner of Hapag-Lloyd. TUI AG is the registered owner of the EU002590479 Mark.

"Hapag-Lloyd.Com" was registered by the owners of Hapag-Lloyd on 08 August 1996.

"Safetrading-HapagLloyd.Com" (the disputed domain name) was registered on 24 July 2013 by the Respondent.

At present when typing in the disputed domain name the Internet user is returned with the following message of error:

"Unable to determine IP address from host name "www.safetrading-hapaglloyd.com"

However, from the documents produced by the Complainant it results that, at least at the date of August 2, 2013, the Respondent used the website www.safetrading-hapaglloyd.com to present the users with a site which resembled and/or could have been confused or associated with Complainant's company i.e. Hapag-Lloyd.

On September 10, 2013 this Panel in order to ensure that the Parties were treated with equality, issued a Procedural Order, requesting the Complainant to provide the Center of the Czech Arbitration Court with documents attesting that Hapag-Lloyd is a licensee of the Hapag-Lloyd EU002590479 trademark and that it is properly authorized by the trademark owner, TUI AG for the purposes of this proceeding.

In response to the Procedural Order the Complainant has documented that:

Hapag-Lloyd AG is the owner of trademark EU005913918 for the word "Hapag-Lloyd" and that the Complainant is a subsidiary of Hapag-Lloyd AG.

The Complainant has then pointed out that the Panels in disputes 100634, 100635 and 100636 accepted that the Complainant had sufficient rights in the name "Hapag Lloyd" for the purposes of practically identical complaints.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

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.

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

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

2012 Ocean Carrier of the Year, awarded by Alcoa;

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

Excellence Award 2011, awarded by Eastman Chemical Company.

Trademarks

"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).

TUI AG is part owner of Hapag-Lloyd. TUI AG is the registered owner of the EU002590479 Mark.

However, Hapag-Lloyd is a licensee of the EU002590479 Mark and is duly authorized to rely upon it for the purposes of this Complaint.

Abusive Registration

"Hapag-Lloyd.Com" was registered by the owners of Hapag-Lloyd on 08 August 1996.

"Safetrading-HapagLloyd.Com" (the disputed domain name) was registered on 24 July 2013 by the Respondent.

This was registered on the same day that the Complainant issued a domain complaint in relation to the domain "safe-hapaglloyd.com". Complainant believes that the disputed domain name was registered as soon as the Registrant of "safe-hapaglloyd.com" was notified of the Complainant's complaint i.e. the Registrant of the disputed domain name and the Registrant of "safe-hapaglloyd.com" are the same person, or at least connected.

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 disputed domain name uses the EU002590479 Mark.

In fact, it is evident that the Respondent purposefully used Hapag-Lloyd's EU002590479 Mark to create the impression that the disputed domain name and the website at the Infringing Domain were owned by or at least associated with Hapag-Lloyd.

The Respondent seeks to mislead users into thinking that Hapag-Lloyd is associated with his site (the Site) at the disputed domain name. 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.

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 authorizing [sic] the payment and allows the Seller to use a safe way of accepting payment"

"When Buyers and Sellers don't know each other, they need a third-party they can trust to turn to. That's where Hapag-Lloyd comes in"

"Hapag Lloyd Delivery is open around-the-clock, ready to pick up and deliver your shipments…"

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

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 they ordered from Respondent's website as well as the Respondent himself are not in any way associated with Hapag-Lloyd.

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

The Site at the disputed domain name has been suspended, however in order to protect Hapag-Lloyd, the use of the EU002590479 Mark and users, the Complainant requests that the Infringing Domain be transferred to Hapag-Lloyd.

Finally, the Complainant requests that the language of the proceeding should be changed from Russian to English for the following reasons:

The disputed domain name is "safetrading-hapaglloyd.com". The latter part of the Domain, "hapaglloyd" is Complainant's name. The first part of the Domain "safe" and "trading", are both English words;

The contents published on the website www.safetrading-hapaglloyd.com (when it was available) was written in English.

The Respondent to this matter is Luke King. He lives in the UK, an English speaking country and no doubt he speaks English; and

The Complainant and its representatives (i.e. TLT) also speak English

RESPONDENT:

The Respondent did not file an administratively compliant response.

Indeed, the Respondent's sole response was the following:

"To whom this may concern. My name is Luke King I have received a letter from ADR.eu
Czech Arbitration Court. The complaint was filed by SAFETRADING-HAPAGLLOYD.COM. I have never used the company and I am confused to why I have received the letter. In the letter it tells me to log on to a website and email my plea. I cannot do this as I have no idea what this is about. Before I can send you anything I need to be sent more details about the proceeding."

It is here important to note that after this email the Czech Arbitration Court sent the Respondent a new email informing the same that a previous email containing the requested information was sent to him on August 9, 2013.

No further response followed.

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 that 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

There are a number of procedural complications in this case. They are as follows:

(i) The Complainant's request that this proceeding be conducted in English;
(ii) The Complainant's legitimization to rely on the Hapag-Lloyd's EU002590479 Mark for the purposes of this proceeding;
(iii) The Panel decision that an additional fee was due from the Complainant.

A) Language of Proceedings

Paragraph 11(a) of the Rules provides that the language of the administrative proceeding shall be the language of the registration agreement unless otherwise agreed by the parties, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Here, the Registrar confirmed to the Center that the language of the Registration Agreement is Russian. Whereas the Complainant requested that English be the language of the proceeding.

Since the language regime provided by Paragraph 11(a) of the Rules serves to protect the interests of the Respondent, the Panel considers it necessary to undertake his own inquiries rather than to rely solely on the assertions made by the Complainant.

The Panel has therefore exercised his power to make inquiries, particularly to visit the website under the domain name in question and take into consideration the content (previously) provided there as well as any correspondence exchanged between the parties and/or with the Center.

From the above inquiries it resulted that the Respondent is able to understand and communicate in English. This opinion is due to the following issues: the contents published on the website www.safetrading-hapaglloyd.com (when it was available) were entirely written in English, the Respondent's address indicated on the disputed domain name WhoIS is an English one, thus the Respondent is presumably living in England, and finally the fact that Respondent wrote to the Center for clarification about the proceeding in good English.

In addition, the Panel notes that there is nothing to suggest that the Respondent is fluent in Russian and that proceeding in this language would better protect his interests.

The reason why this Panel, in the end, decided to exercise its discretion and to conduct the proceedings in English stems

from the fact that the Respondent in the present case does not appear in the need of protection by the language regime of the UDRP.

To proceed in Russian would therefore solely delay the proceeding and increase the expenses for the Complainant that is not familiar with this language.

B) Complainant's legitimization to rely on the Hapag-Lloyd's EU002590479 Mark for the purposes of this proceeding

Complainant (i.e. Hapag-Lloyd UK) has shown that TUI AG is the registered owner of the"Hapag-Lloyd" EU002590479 Mark, registered on 08 November 2005.

Complainant asserted to be a licensee of the "Hapag-Lloyd" EU002590479 Mark and therefore to be duly authorized to rely upon it for the purposes of this Complaint.

Complainant also asserted that Hapag-Lloyd was incorporated in England and Wales on 15 January 1936 with company number 00309325.

However, Complainant has not documented these last two facts, that are essential to establish Complainant's legitimization in this proceeding.

It should be remembered that the UDRP rules require the Panel to treat the parties with equality. In the present case the Complainant (in the complaint) has given sufficient indications and made credible assertions about its legitimization for the purposes of this proceeding, however it has not documented it.

Consequently, this Panel, in order to ensure that both parties are treated with equality and fairness, issued a Procedural Order to ascertain whether or not the Complainant was legitimized to rely on the Hapag-Lloyd's Mark for the purposes of this proceeding

In its Response to the Procedural Order Complainant, although it did not produce the exact documents requested by the Panel, has however documented sufficient rights to prove a legitimization for the purposes of this proceeding.

The Complainant has then underlined that the Panels in disputes 100634, 100635 and 100636 accepted that this same Complainant had sufficient rights in the name "Hapag Lloyd" for the purposes of practically identical complaints.

This Panel wishes to note that the decisions of the appointed Panels in disputes 100634, 100635 and 100636 to accept that the Complainant had sufficient rights in the name "Hapag Lloyd" for the purposes of practically identical complaints, although this may represent a relevant inference of the Complainant's rights, it cannot be considered sufficient evidence of the same.

In the above decisions, the respective Panels did not explain and/or clearly affirm what were the documents filed by the Complainant to show its rights.

In this regard it is important to note that Panels have no access to the documents related to cases ruled by other experts. Therefore this Panel does not consider it appropriate to rely solely on others' decisions for the purposes of ascertaining such an essential issue as the Complainant's legitimization in this proceeding.

In addition it should be remembered that it is the parties' responsibility to prove and document their own cases.

C) The Panel’s decision that an additional fee was due from the Complainant

Since the language regime provided by Paragraph 11(a) of the Rules serves to protect the interests of the Respondent, the

Panel considers it necessary to undertake his own inquiries rather than to rely solely on the assertions of the complainant. It is this Panel's opinion that a complaint with a request of a change of the language of the proceedings (for this reason alone) should not be decided in the form of a "simplified decision".

In the present case another reason (that would be per se sufficient) to avoid a “simplified decision” is due to the extra care that was requested to this Panel to ascertain whether or not the Complainant was legitimized to rely on the Hapag-Lloyd's Mark for the purposes of this proceeding.

PRINCIPAL REASONS FOR THE DECISION

Discussion and findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4(a) of the Policy lists three elements that Complainant must prove to merit a finding that the domain name registered by the Respondent be transferred to the Complainant:

1) the domain name is identical or confusingly similar to a trademark or service mark (“mark”) in which the Complainant has rights; and
2) the Respondent has no rights or legitimate interests in respect of the domain name; and
3) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name entirely contains the Hapag Lloyd trademark which is combined with the two generic terms "safe trading". It is well established that to combine a third party's trademark with generic terms is not sufficient to avoid confusion.
In addition, in the present case the generic terms "safe trading" are descriptive of services rendered by the Complainant, this is a further element of confusion.

Therefore this Panel, having verified Complainant's legitimization and rights to the EU trademark EU005913918 for the word "Hapag-Lloyd”, finds that Complainant has established rights to a trademark that is confusingly similar to the disputed domain name.

B. Rights or Legitimate Interests

Complainant must show that Respondent has no rights or legitimate interests in respect of the disputed domain name.

Respondent in a UDRP proceeding does not assume the burden of proof, but may establish a right or legitimate interest in a disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy:

a) that before any notice to the respondent of the dispute, he or she used or made preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;
b) that the respondent is commonly known by the domain name, even if he or she has not acquired any trademark rights; or
c) that the respondent is making a legitimate, non-commercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Respondent has no connection or affiliation with Complainant, which has not licensed or otherwise authorised Respondent to use or apply for any domain name incorporating Complainant's trademark.
Respondent does not appear to make any legitimate use of the domain name for non-commercial activities. On the contrary, it appears that Respondent used the disputed domain name to misdirect consumers into believing that they have arrived at a site which is owned by or associated with Hapag-Lloyd.
Respondent does not appear to have been commonly known by the domain name.

Respondent has not shown any facts or elements to justify prior rights and/or legitimate interests in the disputed domain name.

Indeed, the Respondent has not filed any administratively compliant response, however the Respondent in his only mail sent to the Center asserted that he has never used the Hapag Lloyd safe trading company. This assertion combined together with the assertions made by the Complainant and the documents available, convince the Panel that the Respondent for the purposes of this proceeding has no legitimate rights to the disputed domain name.

C. Registered and Used in Bad Faith

For the purpose of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

i) circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or
ii) the holder has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or
iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's web site 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 holder's web site or location or of a product or service on the holder's web site or location.

Accordingly, for a Complainant to succeed, the Panel must be satisfied that the domain name has been registered and is being used in bad faith.

The Complainant has to the satisfaction of the Panel shown that Respondent registered and used the disputed domain name in bad faith.

Indeed it appears that the Respondent intentionally attempted to attract Internet users to his own website misleading them into believing the website www.safetrading-hapaglloyd.com was operated, authorized and/or connected to the Complainant. By so deflecting Internet users, Respondent has shown bad faith registration and use of the disputed domain name that clearly falls within the example given in paragraph 4(b)(iv) of the Policy

The contents of the above website are moreover clear evidence that Respondent was aware of Complainant's rights and activity when he registered the disputed domain name and corresponding website.

In view of the above, the Panel finds that there are good reasons to believe that Respondent had actual knowledge of Complainant's trademark when he registered the disputed domain name. The Panel, in accordance with previous decisions issued under the UDRP, is of the opinion that actual knowledge of Complainant's trademark and activities at the time of the registration of the disputed domain name may be considered an inference of bad faith (See Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226 and Sony Kabushiki Kaisha (also trading as Sony

Corporation) v. Inja, Kil WIPO Case No. D2000-1409. “It is inconceivable that the Respondent could make any active use of the disputed domain name without creating a false impression of association with the Complainant. The Respondent was not authorized by the Complainant to use neither its mark nor the disputed domain name”.

Considering the foregoing, the Panel concludes that Respondent registered and is using the disputed domain name in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy are satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2013-09-30

Publish the Decision