# Decision for dispute CAC-UDRP-100734

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| Case number | **CAC-UDRP-100734** |
| Time of filing | **2014-01-06 17:30:48** |
| Domain names | **safedeal-hapaglloyd.com** |

## Case administrator

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| Name | **Lada Válková (Case admin)** |

## Complainant

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| Organization | **Hapag-Lloyd (U.K.) Limited** |

## Complainant representative

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| Organization | **TLT LLP** |

## Respondent

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| Name | **Paul Aulton** |

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending proceedings.

IDENTIFICATION OF RIGHTS

"Hapag-Lloyd" is a Community trademark registration, CTM 005913918. It is in force and was filed on 25 February 2002 and registered on November 8, 2005 in, amongst others, class 38 for the supply and delivery of messages by means of computer, telecommunications and electronic communications devices, and supply of data in a computer database.

FACTUAL BACKGROUND

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.

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.

"Hapag-Lloyd" is a Community trademark registration CTM 005913918. It was registered on 25 February 2002 and is registered in, amongst others, class 38 for the supply and delivery of messages by means of computer, telecommunications and electronic communications devices, and supply of data in a computer database.

Hapag-Lloyd AG is the registered owner of this mark. The Complainant, Hapag-Lloyd (U.K.) Ltd, is a wholly-owned subsidiary of Hapag-Lloyd AG and is duly authorised to rely upon this mark for the purposes of this Complaint.

"Hapag-Lloyd.Com" was registered by the owners of Hapag-Lloyd on 08 August 1996. "Safedeal-HapagLloyd.Com" (the Infringing Domain) was registered on 24 July 2013 by the Respondent.

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 Complainant´s trademark.

In fact, it is evident that the Respondent purposefully used Hapag-Lloyd's trademark 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.

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.

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"

"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 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.

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. It is clear that the domain is being used in support of fraud, by associated sites such as www.alltoolsgarage.com and www.buyourbike.com.

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.

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 is Russian. However, the Complainant asked to proceed in English, as the disputed Domain Name comprises the English words “safe” and “deal”, the content of the website was written in English and the Respondent lives in England and with no doubts speaks English. In accordance with paragraph 11 of the RUDRP, the Panel can determine the language of the proceeding otherwise having regard to the circumstances of the case. Since the website under the disputed domain name is in English, the Respondent lives in the UK, the Panel, having considered the circumstances of this case, determines that Respondent must be knowledgeable of the English language and English shall be accordingly the language of the proceeding.

It is acknowledged by panels in UDRP decisions that an authorized licensee or a company related to the trademark proprietor is entitled to conduct UDRP proceedings (see Telcel, C.A. v. jerm and Jhonattan RamÃrez, WIPO Case No. D2002-0309, <telcelbellsouth.com>).

PRINCIPAL REASONS FOR THE DECISION

A. The Complainant has established the fact that it has valid trademark rights for Hapag-Lloyd..

The Domain Name is confusingly similar to the Hapag-Lloyd mark, since the element “safedeal” is a descriptive term without any distinctiveness, and accordingly not being relevant to influence the overall impression of the designation in the Domain Name.

The Panel therefore considers the Domain Name in question to be confusingly similar to the trademark Hapag-Lloyd in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent has no rights in the Domain Name since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks. Furthermore, the Respondent has no legitimate interest in the Domain Name since there is no indication that the Respondent is commonly known by the name “Hapag-Lloyd” or „Safedeal-hapaglloyd“ nor that the Respondent is using the Domain Name in connection with a bona fide offering of related goods or services. The imitation of Complainant´s website is not a bona fide offering of goods or services. Also a non commercial or fair use is not noticeable.

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

The Respondent must have been well aware of the Complainant and its well known trademarks not only due to the fact that the website under the disputed domain name is an imitation of Complainant´s website. The Complainant had not authorized the Respondent to make use of its mark. This Panel does not see any conceivable legitimate use that could be made by the Respondent of this particular domain name without the Complainant's authorization.

In sum, the circumstances of this case clearly indicate that the Respondent registered the Domain Name primarily with the intention of attempting to attract, for commercial gain, Internet users to a potential website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such potential website or location, or of a product or service on such website or location.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

## PANELLISTS

| Name | **Dietrich Beier** |
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DATE OF PANEL DECISION 2014-02-25

Publish the Decision