Decision for dispute CAC-UDRP-100637

Case number	**CAC-UDRP-100637**
Time of filing	**2013-07-24 17:32:16**
Domain names	**safe-hapaglloyd.com**

Case administrator

Name	**Kateřina Navrátilová**

Complainant

Organization	**Hapag Lloyd UK Limited**

Complainant representative

Organization	**TLT LLP**

Respondent

Name	**Ronnie Ray Kent**

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant, Hapag Lloyd UK Limited, has based its complaint on the EU registered trademark No. EU002590479 for "Hapag-Lloyd" which is owned by TUI AG.

TUI AG is part owner of Hapag-Lloyd AG.

The Complainant has asserted being a licensee of this trademark. Further to the Panel's order, the Complainant has provided an authorization stating Hapag Lloyd UK Limited is a wholly owned subsidiary of Hapag-Lloyd AG and is duly authorised to use and rely upon this trademark including for the purpose of domain name disputes.

FACTUAL BACKGROUND

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

The Complainant

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.

Reputation

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 (hereafter the 479 Mark). It was registered on 08 November 2005 and is registered in, amongst others, class 35 (which cover transshipment matters and goods distribution) and class 39 (which covers freight forwarding and storage of goods of all kinds).

As mentioned above in paragraph 4, TUI AG is part owner of Hapag-Lloyd. TUI AG is the registered owner of the 479 Mark. However, Hapag-Lloyd is a licensee of the 479 Mark and is duly authorised to rely upon it for the purposes of this Complaint.

Abusive Registration

"Hapag-Lloyd.Com" was registered by the owner of Hapag-Lloyd on 08 August 1996. "Safe-HapagLloyd.Com" (the Infringing Domain) was registered on 28 February 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 the 479 Mark.

In fact, 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.

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".

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.

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.

The Site at the Infringing Domain has been suspended, however in order to protect Hapag-Lloyd, the use of the 479 Mark and users, the Complainant requested that the Infringing Domain be transferred to Hapag-Lloyd.

Before rendering its decision, the Panel issued a procedural order to request the Complainant to provide the Center of the Czech Arbitration Court with documents attesting that the Complainant is a licensee of trademark No. EU002590479.

The Complainant has in reply provided information and document to substantiate its rights in the trademark No. EU002590479

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has to the satisfaction of the Panel, shown that the Infringing 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 that the Respondent has 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

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.

1/The Panel also addresses the issue of the language of the proceedings since the language of the Registration Agreement is Russian.

Under Paragraph11(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (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".

Accordingly, the Panel has the authority to determine a different language of the administrative proceeding with respect to that of the Registration Agreement, when the circumstances of the case so require.

The Complainant has requested that English be the language of the proceedings. The Respondent did not reply to the Complaint.

The Panel finds that both the Complainant and the Respondent are domiciled in English-speaking countries. The facts that the Infringing Domain includes an English term and resolves to a website in English are also relevant factors.

For the aforementioned reasons, in accordance with Paragraph 11(a) of the Rules, the Panel determines that English shall be the language of this administrative proceeding.

2/ The Panel also finds that the Complainant has provided sufficient evidence that he is legitimized to rely on trademark No. EU002590479 in its replies to the Panel's orders.

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 contains entirely the Hapag Lloyd trademark which is combined with the generic term "safe". It is well established that to combine a third party's trademark with generic terms is not sufficient to avoid confusion.

Therefore this Panel, having verified Complainant's legitimization and rights to the EU trademark No. EU002590479 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 authorized 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.

The Panel has particularly noticed that the Domain Name and the related site are used to defraud users into purchasing products that are never delivered. Such a use cannot be regarded as a legitimate use pursuant to the Policy.

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.

The circumstances of the case, 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 it is 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 the Respondent was aware of Complainant's rights and activity when he registered the disputed domain name and corresponding website. The Panel particularly notices the

Respondent has used statement such as “Hapag Llloyd is the safest way to buy and sell online”
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”.

In similar circumstances a finding of bad faith was held by the Panel in ADR No.100645 Hapag-Lloyd v.Luke King

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. **SAFE-HAPAGLLOYD.COM**: Transferred

PANELLISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2013-10-14

Publish the Decision