Panel Decision for dispute CAC-ADREU-006452

Case number	CAC-ADREU-006452
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Domain names	lufthansa.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Name	Ronald Peeters

FACTUAL BACKGROUND

The Complainant operates the Lufthansa airline servicing 350 destinations in more than 90 countries. It is a member of the Star Alliance Network flying to almost all countries in the world. Each year it carries over 50 million passengers. In addition to its passenger and cargo services, it provides aviation related services such as catering, maintenance, overhaul, travel related services and tourism services.
The Complainant operates the web site www.lufthansa.com and has also registered several other domain names including the word LUFTHANSA, like but not limited to “lufthansa.de”, “lufthansa.us” and “lufthansa.com”.
The Complainant is moreover the owner of several German, International, European Community and US trademark registrations consisting of the word LUFHANSA, the earliest one dating back to 1979. These trademarks cover passenger and freight transportation services as well as other related goods and services.
The contested domain name “lufthansa.eu” was registered by an individual person, Ronald Peeters, on July 8, 2006, thus well after the first trademark registration filing by the Complainant and the establishment of its business.
As no Response was filed, there is no information available about the Respondent except that set out in the Complaint.
Complainant attached webpage printouts showing that the Respondent’s domain is name directed to www.lufthansa.eu web site containing information and sponsored links related to travel, hotel reservation and flights, even mentioning the name Lufthansa.
Complainant has also forwarded evidences of an e-mail correspondence of its lawyers with the Respondent in February 2013, thus before the present ADR proceeding, in which the former asked for the immediate transfer of the domain name while the latter proposed to settle the matter and transfer it for an amount of Eur 3850.
The Czech Arbitration Court, failing to receive a confirmation receipt of the ADR proceeding e-mail notice from the Respondent, sent him the same by post on March 18, 2013. This last notice, however, was returned undelivered to the Provider. In the same way, no Response to the Complaint whatsover was submitted within the terms set according to the ADR Rules.

A. COMPLAINANT

The Complainant asserts that it has an extensive goodwill and reputation in the aviation industry since the beginning of the twentieth century. The Complainant asserts having rights in the LUFTHANSA trademark deriving from the following German,

International, European Community and US registrations:

German Trademark LUFTHANSA (Reg.-No: 990835)
Classes: 36; 37; 39; 41; 42
Filing date: 02.04.1979 - Registration date: 25.09.1979

German Trademark LUFTHANSA (Reg.-No: 990834)
Classes: 36; 39; 41; 42
Filing date: 02.04.1979 - Registration date: 25.09.1979

German Trademark LUFTHANSA (Reg.-No: 39871924.1)
Classes: 06; 08; 09; 14; 16; 18; 20; 21; 24; 25; 26; 28
Filing date: 10.12.1998 - Registration date: 12.04.1999

German Trademark LUFTHANSA (Reg.-No: 39871923.3)
Classes: 06; 08; 09; 14; 16; 18; 20; 21; 24; 25; 26; 28
Filing date: 10.12.1998 - Registration date: 12.04.1999

International Trademark LUFTHANSA (Reg.-No: 450006)
Classes: 36; 37; 39; 41; 42
Registration date: 06.12.1979

International Trademark LUFTHANSA (Reg.-No: 722971)
Classes: 06; 08; 09; 14; 16; 18; 20; 21; 24; 25; 26; 28
Registration date: 05.08.1999

European Community Trademark LUFTHANSA (Reg.-No: 001212539)
Classes: 06; 08; 09; 14; 16; 18; 20; 21; 24; 25; 26; 28; 36; 37; 39; 41; 42
Filing date: 11.06.1999 – Registration date: 26.02.2001

European Community Trademark LUFTHANSA (Reg.-No: 001210665)
Classes: 06; 08; 09; 14; 16; 18; 20; 21; 24; 25; 26; 28; 36; 37; 39; 41; 42
Filing date: 11.06.1999 – Registration date: 29.11.2000

US-Trademark LUFTHANSA (Reg.-No: 74383260)
Classes: IC 039. US 100 105
Filing Date: 27.04.1993 – Registration date: 20.08.1996

US-Trademark LUFTHANSA (Reg.-No: 1871600)
Classes: IC 039. US 100 105
Filing Date: 27.04.1993 – Registration date: 03.01.1995

Apart from the above mentioned trademark registrations, LUFTHANSA trademark is known world-wide and is easily recognized. WIPO Panels have already confirmed the Complainant's rights in the LUFTHANSA trademark as well as its reputation and fame world-wide in previous UDRP proceedings: inter alia, in Deutsche Lufthansa AG v. Acme Mail, WIPO Case No. D2008-1580, Deutsche Lufthansa AG v. Nadeem Qadir, WIPO Case No. D2009-0003, Deutsche Lufthansa AG v. Miguel Casajuana, WIPO Case No. D2009-0018, Deutsche Lufthansa AG v. George Aby, WIPO Case No. D2009-0071, Deutsche Lufthansa AG v. Hank, WIPO Case No. D2010-0647, Deutsche Lufthansa AG v. Nadeem Qadir / Bladimir Boyiko, WIPO Case No. D2010-2147, Deutsche Lufthansa AG v. John L., WIPO Case No. D2011-0818 and Deutsche Lufthansa AG v. Admin of the Day, No Brains Media, WIPO Case No. D2011-1783.

The domain name "lufthansa.eu" includes the LUFTHANSA trademark and is identical to the trademark. The ccTLD ".eu" has

no capability of relevantly distinguishing the disputed domain name from the Complainant's mark.

The Complainant moreover asserts the Respondent's lack of rights or legitimate interest in respect of the domain name.

It is the Complainant's view that the Respondent does not use the contested domain name for a bona fide offering of goods or services. The disputed domain name is used indeed to show a page displaying several sponsored links. The Respondent simply takes advantage of the fact that Internet users looking for a web site connected to the Complainant are erroneously directed to a commercial page that might give the impression to be the European version of Lufthansa.com web site. Since this page includes sponsored links concerning travel, hotel reservation and flights, it can be presumed that the Respondent receives click-through fees in exchange for diverting Internet users to such web sites. Such behaviour cannot be considered as a bona fide offering of goods or services, as already stated in previous UDRP decisions like MAACO Enterprises, Inc. v. IP Admin / DNAV ASSOCS, WIPO Case No. D2008-0009, Deutsche Lufthansa AG v. Miguel Casajuana, WIPO Case No. D2009-0018 and Deutsche Lufthansa AG v. John L., WIPO Case No. D2011-0818.

Furthermore, the Respondent is neither commonly known under the Lufthansa name nor has it any trademark rights in it. No license, permission, authorization or other consent to the registration and use of the disputed domain name was given by the Complainant to the Respondent and no connection exists between the parties.

Apart from that, a legitimate non-commercial or fair use of the disputed domain name is not evident.
The domain name "lufthansa.eu" has been registered and is being used by the Respondent in bad faith. LUFTHANSA trademark is a very distinctive mark insofar it has no meaning in any language other than as a trademark identifying the Complainant. It is moreover a very famous trademark. It is therefore highly unlikely for another person to choose exactly that name without having the Complainant in mind. It is likely that the Respondent registered the disputed domain name to attract Internet users who are looking for the Complainant's web site, thus causing confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site. The domain name "lufthansa.eu" is conceived to divert consumers away from the Complainant's web site by redirecting them through sponsored links to third parties' web sites for commercial gain.
Last but not least, the Complainant asserts that the Respondent's bad faith is proved by two further circumstances: the fact that the Respondent uses a privacy service to conceal his identity and, above all, the fact that he offered the transfer of the disputed domain name to the Complainant for a consideration which is clearly in excess of out-of-pocket expenses.
For all the foregoing reasons, the Complainant asks for the transfer of "lufthansa.eu" domain name in its name.

B. RESPONDENT

The Respondent failed to submit a response within the terms set by the Provider according to ADR Rules.

DISCUSSION AND FINDINGS

Under article 21(1) of Regulation EC No. 874/2004 (the Regulation) the disputed domain name is subject to revocation if it is identical or confusingly similar to a name in respect of which a right is recognized or established by a national and/or Community law, such as the rights mentioned in Article 10(1), and when the domain name a) has been registered by its holder without rights or legitimate interest in the name or b) has been registered or is being used in bad faith.
Rights
The Complainant must first establish a right in the domain name. Article 10(1) of the Regulation refers to the ownership of registered national and Community trademarks, geographic indications or designation of origin, and, in as far as they are protected under national law in the Member-State where they are held, unregistered trademarks, trade names, business identifiers, etc.
In consideration of the Complainant's German, International, European Community and US trademark registrations mentioned above and after having reviewed the additional documents referring to Lufthansa AG's business attached to the Complaint, this Panel maintains that the Complainant has shown having rights in the LUFTHANSA trademark and having acquired a substantial reputation and fame in the use of the aforesaid trademark in many jurisdictions throughout the world. Several WIPO UDRP decisions have acknowledged and confirmed the aforesaid circumstances before and this Panel does not see valid reasons to express a different opinion.

This Panel accepts the Complainant's submission that the disputed domain name "lufthansa.eu" is identical and confusingly similar to the Complainant's trademark LUFTHANSA.
It is well established that the specific ccTLD ".eu" does not affect the domain name for the purpose of determining whether it is identical with or confusingly similar to the name in which the Complainant has rights pursuant to art. 21(1) of the Regulation (see CAC case No. 00227 – kinst.eu; CAC case No. 00387 – gnc.eu; CAC case No. 00596 – restaurants.eu; CAC case No. 06303 – americaneagleoutfitters.eu).
Lack of rights or legitimate interest
Panels have generally held that a Complainant is only required to establish a prima facie case of lack of rights or legitimate interest and the burden to show the contrary then shifts to the Respondent. If the Respondent fails to show evidence of rights or legitimate interest, then it is deemed to have none (CAC case No. 06400 – BAC.eu; CAC Case No. 06303 – americaneagleoutfitters.eu).
Article 21(2)(a) provides that the legitimate interest can be demonstrated by use of the domain name or name corresponding to the domain name in connection with an offering of goods or services or demonstrable preparations to do so.
The disputed domain name was registered in 2006 and since that date the Respondent does not appear to have developed any business related to this domain name other than the aforesaid web site containing sponsored links to third party web sites. The Respondent does not offer goods or services himself; the sole activity he carries out is the redirection of Internet users to other web sites through sponsored links, presumably in receipt of click-through fees.
Nor is there any evidence that Articles 21(2)(b) or (c) apply. The Respondent has never been known by the name "Lufthansa", nor is there any evidence that the Respondent has ever registered or applied to register this word as a trademark or service mark or acquired any different right in this name.
The Respondent has not been authorized by the Complainant to register and use the disputed domain name, nor is there any commercial or social relationship between the parties.
There is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, while on the contrary his purpose to get a commercial gain from the disputed domain name registration and use is evident for the reasons reported above and in the below paragraph concerning bad faith.
In the Panel's view, the Complainant has established a prima facie case of lack of rights or legitimate interest, while there is no rebuttal by the Respondent, nor can any evidence of rights or legitimate interest be inferred from the correspondence between the parties attached to the Complaint.
Accordingly, the Panel concludes that the Respondent lacks rights or legitimate interest in the domain name.
Bad faith
As lack of rights or legitimate interest is an alternative requirement to registration or use of the domain name in bad faith, there would be no need for the Panel to address the latter issue.
This Panel however wishes to remark that the bad faith of the Respondent is hereby blatant for two reasons.
First, due to LUFTHANSA trademark fame, there can hardly be any doubt that the Respondent was aware of the Complainant's trademark and associated reputation. This Panel maintains that, on the balance of probabilities, it is likely that the Respondent chose and registered the disputed domain name because of its identity with the Complainant's mark with the intention of taking advantage of the Complainant's goodwill and trademark reputation in order to divert Internet traffic intended for the Complainant away to the Respondent's site.
The web site at the disputed domain name address contains a number of sponsored links which redirect Internet users to web sites offering travels, holidays and flights, thus services in competition with the Complainant's official web site. The Respondent therefore trades on the goodwill of the Complainant and its trademark reputation to attract more traffic to his web site and, on the balance of probabilities, to generate revenue through pay-per-click links.
Second, the correspondence between the parties attached to the Complaint shows that the Respondent offered the Complainant the disputed domain name for sale at a price which is much higher than the standard fees generally requested for a domain name registration and maintenance. These circumstances show that the disputed domain name was also registered for the purpose of selling or otherwise transferring it to the legitimate holder of LUFTHANSA trademark.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name LUFTHANSA.EU be transferred to the Complainant

PANELISTS

Name	Roberta Calò

DATE OF PANEL DECISION 2013-05-28

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: lufthansa.eu

II. Country of the Complainant: Germany, country of the Respondent: The Netherlands

III. Date of registration of the domain name: 08 July 2006

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:

German Trademark LUFTHANSA (Reg.-No: 990835)
Classes: 36; 37; 39; 41; 42
Filing date: 02.04.1979 - Registration date: 25.09.1979

German Trademark LUFTHANSA (Reg.-No: 990834)
Classes: 36; 39; 41; 42
Filing date: 02.04.1979 - Registration date: 25.09.1979

German Trademark LUFTHANSA (Reg.-No: 39871924.1)
Classes: 06; 08; 09; 14; 16; 18; 20; 21; 24; 25; 26; 28
Filing date: 10.12.1998 - Registration date: 12.04.1999

German Trademark LUFTHANSA (Reg.-No: 39871923.3)
Classes: 06; 08; 09; 14; 16; 18; 20; 21; 24; 25; 26; 28
Filing date: 10.12.1998 - Registration date: 12.04.1999

International Trademark LUFTHANSA (Reg.-No: 450006)
Classes: 36; 37; 39; 41; 42
Registration date: 06.12.1979

International Trademark LUFTHANSA (Reg.-No: 722971)
Classes: 06; 08; 09; 14; 16; 18; 20; 21; 24; 25; 26; 28
Registration date: 05.08.1999

European Community Trademark LUFTHANSA (Reg.-No: 001212539)
Classes: 06; 08; 09; 14; 16; 18; 20; 21; 24; 25; 26; 28; 36; 37; 39; 41; 42
Filing date: 11.06.1999 – Registration date: 26.02.2001

European Community Trademark LUFTHANSA (Reg.-No: 001210665)
Classes: 06; 08; 09; 14; 16; 18; 20; 21; 24; 25; 26; 28; 36; 37; 39; 41; 42
Filing date: 11.06.1999 – Registration date: 29.11.2000

US-Trademark LUFTHANSA (Reg.-No: 74383260)
Classes: IC 039. US 100 105
Filing Date: 27.04.1993 – Registration date: 20.08.1996

US-Trademark LUFTHANSA (Reg.-No: 1871600)
Classes: IC 039. US 100 105
Filing Date: 27.04.1993 – Registration date: 03.01.1995

V. Response submitted: No

VI. Domain name is identical to the protected rights of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: The Respondent does not appear to have developed any business related to this domain name other than the aforesaid web site containing sponsored links to third party web sites. The Respondent does not offer goods or services himself; the sole activity he carries out is the redirection of Internet users to other web sites through sponsored links, presumably in receipt of click-through fees.
The Respondent has never been known by the name “Lufthansa”, nor is there any evidence that the Respondent has ever registered or applied to register this word as a trademark or service mark or acquired any different right in this name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: Due to LUFTHANSA trademark fame, there can hardly be any doubt that the Respondent was aware of the Complainant’s trademark and associated reputation. On the balance of probabilities, it is likely that the Respondent chose and registered the disputed domain name because of its identity with the Complainant’s mark with the intention of taking advantage of the Complainant’s goodwill and trademark reputation in order to divert Internet traffic intended for the Complainant away to the Respondent’s site.

IX. Other substantial facts the Panel considers relevant:
The correspondence between the parties attached to the Complaint shows that the Respondent offered the Complainant the disputed domain name for sale at a price which is much higher than the standard fees generally requested for a domain name registration and maintenance. This circumstance shows that the disputed domain name was also registered for the purpose of selling or otherwise transferring it to the legitimate holder of LUFTHANSA trademark.

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: No response was filed by the Respondent.

XII. [If transfer to Complainant] Is Complainant eligible? Yes
The Complainant is an undertaking having its registered office in Germany, thus within the European Community. It therefore satisfies the eligibility criteria set out in Article 4(2)(b) of the Regulation.