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Our Ref. 1682/09 KJ-GE (please always quote)

28 January 2010

**Clarification**  
**Case No. D2010-0016**  
**mydhl.com**

Rechtsanwälte:

**DHL Operations B.V.**  
Gebouw Office Center  
Jozef Israelskade 48 G  
1072 SB Amsterdam  
The Netherlands

**(Complainant 1)**

**DHL International GmbH**  
Charles-de-Gaulle-Straße 20  
53113 Bonn  
Germany

**(Complainant 2)**

Kay Uwe Jonas \* \*\*  
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Disputed Domain Name:

-v-

**mydhl.com**

**Eric White**  
108 N 2<sup>nd</sup> St.  
Wrightsville  
Pennsylvania 17368  
USA

**(Respondent)**

Amtsgericht Köln  
HRB 59300

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### Motion for leave to file the Complainants' Supplemental Filing, dated 26 January 2010

Complainants respectfully request that the Panel exercises its discretion and consider the supplemental filing, dated 26 January 2010 in response to Respondent's Response to the Complaint, dated 05 January 2010. The Response, dated 22 January 2010 raises numerous legal and factual inaccuracies that could result in a misleading record for the Panel if such inaccuracies are not addressed.

The Complainant's supplemental is proper and should be considered by the Panel as there are exceptional circumstances, so that the panel cannot decide this case on the record submitted on 06 January 2010. The printouts and screenshots from 08 June 2008, 25 November and December 2009 that are attached to the Complainant's Supplemental Filing as **Annex 14, 15** clearly proof that the Respondent deliberately submitted untrue statements in his Response, especially when claiming that "the use that the panel will find at **mydhl.com** today is the same use that the domain has had historically since it was launched" (Response, p. 7 with reference to Respondent's Declaration). As mentioned in Complainants' Supplemental Filing of 26 January 2010, the printouts and screenshots were made by the undersigned representative Gabriele Engels on the respective, shown dates. Their correctness is legally affirmed by the undersigned.

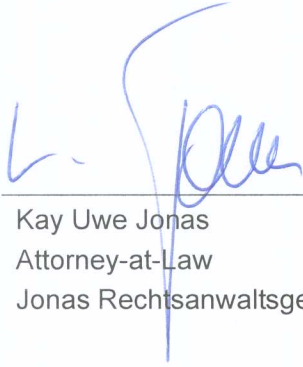
When the Complaint was submitted on 05 January 2010 there was no reason for the undersigned to attach the printouts und screenshots from the website connected to the disputed domain name showing "DHL" sponsored links to the Complaint, as there was firstly (1.) no reason to believe the printouts and screenshots would be of relevance in the proceeding. There was no sign whatsoever that the Respondent would deliberately change the content of the webpage connected to the disputed domain name **mydhl.com** and submit untrue statements to the Panel. The Respondent did not at all respond for two weeks to the Complainants' letter, dated 23 December 2009, asking for his entitlement to the use/registration of **mydhl.com**. According to UDPR case No. D2001-1447 (*Delikommat Betriebsverpflegung Gesellschaft mbH v. Alexander Lehner*) and No. D2002-0058 (*AutoNation Holding Corp. v. Rabea Alawneh*), Rule 12 should not be interpreted as precluding acceptance of additional uninvited submissions. In fact admission of an uninvited reply may be warranted in the interests of fairness, if a Respondent raises a matter which the Complainant could not have been expected to have addressed in his Complaint. It would be an odd result if the panel may request a reply in such circumstances under Rule 12 but must refuse an uninvited reply on the same topic, simply because there is not express provision for such a reply in the Rules.

Secondly (2.), it is certain that the DHL trademarks are **notorious** all over the world (*DHL Operations B.V.v. Ali Kazempour*, Case No. D2004-1094 - dhlmail.com (attached as **Annex 8**)). Thus, as the domain name **mydhl.com** incorporates a famous mark, the assumption of bad faith does not depend on the webpage's content (see: p. 13 f. of the Complaint); also in case the Panel's opinion should differ on the subject matter describe above under 1.

Finally, it has to be mentioned that the Respondent's allegation made in his Proposed Surreply, dated 27 January 2010 the domain name registrar "GoDaddy" placed the "DHL" sponsored listings to commercial websites of competitors of the Complainant on the Respondent's website for 2 years without Respondent's knowledge is again an implausible blunt defensive manoeuvre. In his Response and his declaration, dated 19 January 2010 (Annex B) he declared otherwise.

For and on behalf of  
DHL Operations B.V. and DHL International GmbH

Respectfully submitted,



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Kay Uwe Jonas  
Attorney-at-Law  
Jonas Rechtsanwaltsgesellschaft mbH



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Gabriele Engels  
Attorney-at-Law  
Jonas Rechtsanwaltsgesellschaft mbH

Cologne, 28 January 2010