

# Alternative Dispute Resolution (ADR)

**DECISION**

2010-02-01

**TICKETNUMBER**

341

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**APPLICANTS**

Norsk Kontantservice A/S

N-0102 Oslo

Norway

Nokas AB

422 46 Hisings Backa

**Counsel:**

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N-0117 Oslo

Norway

**OPPONENT**

Spin Invest A/S

N-3132 Husöysund

Norway

**Counsel:**

Advokatfirmaet Steenstrup Stordrange DA/ Advokat Karl-Anders G

N-0123 Oslo

Norway

**MATTER**

Alternative Dispute Resolution for the domain name **nokas.se**

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**DECISION**

The request for transfer of the domain name **nokas.se** is dismissed.

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## **BACKGROUND TO THE DISPUTE**

The Applicant is a Norwegian company and the owner of the word mark “Nokas”, which was registered in Norway February 13, 2009. The Applicant has through a wholly owned subsidiary registered NOKAS AB as a company name in Sweden October 27, 2008.

The Opponent registered the disputed domain name on December 17, 2007.

The Applicant filed an application for Alternative Dispute Resolution regarding the domain name on September 24, 2009.

The Opponent has responded within the given deadline. The Applicant was authorized to respond to the Opponent’s opinion. Following this response, NOKAS AB, joined the claim as co-applicant. In the following, the both Applicants are jointly named “the Applicant”. Consequently, as a response, the Opponent has submitted final comments in the matter.

Advokat Monique Wadsted was appointed the sole Adjudicator in this matter.

## **CLAIM**

The Applicant has claimed that the domain name Nokas.se shall be transferred to the Applicant.

The Opponent has contested the allegations of the Applicant.

## **FACTS OF THE CASE**

### The Applicant

The Applicant is a Norwegian limited company in the business of cash management and other business connected to cash management and was incorporated in June 21, 2001. From the very beginning of 2001 the Applicant has referred to itself as “Nokas” as it is a distinctive short name for Norsk Kontantservice.

The reference to “Nokas” has been made both internally and externally in official documents from the company. As an example, the Applicant has submitted the first pages of the annual reports from 2001-2005, demonstrating the use of the name as a word mark and as a logo. The name has also been in use on letterheads and business cards etc.

In 2004, the name “Nokas” became indissoluble attached to the Applicant due to massive media coverage of the so called “Nokas-robbery” in Norway.

The Applicant has rights valid in Sweden for the name “Nokas” due to its wholly owned subsidiary which has registered NOKAS AB as a company name in Sweden. The Applicant has legitimate use for the domain name due to the Applicant has set up the Swedish company in order to accommodate expansion into the Swedish market.

The Opponent has no legitimate interest in the domain name since the Opponent only has constructed a legitimate interest which is highly unsubstantiated and poorly specified.

The Opponent has acted in bad faith when registering the domain name or, under any circumstances, when the Opponent has subsequently used the domain name. The Opponent's use of the domain name is restricted to offering it to the Applicant for a large sum of money and is thus clearly in bad faith. Furthermore, the Opponent must have been aware of the Applicant's business when registering the domain name as it was registered at a time when the Applicant had acquired rights by way of use of "Nokas" in Norway. The Opponent saw the opportunity that the Applicant would want to expand its business to other Scandinavian countries, and then seized the domain names before the Applicant.

### The Opponent

The Opponent is a Norwegian limited company incorporated in October 18, 2005 which is wholly owned by a Norwegian citizen.

The Opponent registered the disputed domain name a short time after starting negotiation of the first agreement concerning a Nordic cash point machine service. This project was called "Nordisk KortAutomatService" ("Nordic Automatic Card Service"). The Opponent has submitted a draft agreement from 2007, a brochure with a description of the project, correspondence associated with the project and a print of the site Nokas.se to show it has legitimate use for the domain name.

The Opponent has never been in contact with the Applicant in the sole purpose to sell the domain name, but the Opponent has of course responded to the Applicant with regards to on what terms the Opponent could possibly change the domain name and its company name. The amount claimed is fair due to it corresponds to the costs attributable to such a change of domain name and company name.

The Opponent's business addresses towards the consumer market where short domain names are advantageous. The Applicant addresses towards professional enterprises which is a completely different group of customers. Therefore, any risk of mix-up does not exist.

The Applicant has failed to show that the name "Nokas" has been known in other ways than by the coverage of the "Nokas-robbery". Moreover, it is not documented that at the time of the registering of the domain name, there existed common known information that involved knowledge about the Applicant's plans for establishment in Sweden.

### **FINDINGS OF THE ADJUDICATOR**

A domain name may, in accordance with .SE's Terms and Conditions of Registration paragraph 6.4(c), in connection to an ADR proceeding be cancelled or transferred to the Applicant requesting such proceeding if

- a) the disputed domain name is identical or confusingly similar to a trademark, trade name or similar name right, to which the Applicant have rights and such rights are in legal force in Sweden, and
- b) the domain name holder has no rights or legitimate interest in the domain name, and

- c) the disputed domain name has been registered or used in bad faith.

#### Identical or Confusingly Similar

The Applicant has established rights to the company name NOKAS AB in Sweden. Therefore, the Applicant has a right which is in legal force in Sweden. The company name and the domain name are in principle identical. Therefore, the requirement that the domain name must be identical or confusingly similar to a right to which the Applicant is entitled to is fulfilled.

#### Rights or Legitimate Interest

The evidence provided by the Applicant does not support its assertion that the Opponent does not have a legitimate interest in the domain name. The Opponent has shown that it had some preparation of use for its alleged project. Although this interest may seem small, it is not non-existing.

Further, the Applicant has not shown that the domain name has been used for commercial purposes in order to mislead consumers or to damage the reputation of the Applicant's rights. Nor are there any other circumstances that suggest that a legitimate interest is not at hand. The second criterion is thus not fulfilled.

#### Registered or Used in Bad Faith

The Applicant claims that the Opponent has been in contact with the Applicant in order to sell the domain name. However, it is only shown that the Opponent, when it was contacted by the Applicant more than one year after the registration, expressed that it was willing to sell the domain name and stated a price. This is not enough in order to establish that the registration and use of the domain name was made with the purpose to sell the domain name.

In addition, it is not shown that there existed publicly known information regarding the Applicant's plans for establishment in Sweden when the domain name was registered. The domain name was registered in 2007 and the Applicant did not have legal rights in Sweden to the name Nokas until 2008. In this context it must also be stressed that for registration of domain names, a "first come, first served" principle applies.

Therefore, nor the registering nor the use of the domain name has been made in bad faith.

For these reasons the request for transfer of the domain name shall be dismissed.

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On behalf of .SE

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Monique Wadsted