



Alternative dispute resolution proceeding (ADR) Accelerated proceeding

Decision
28-08-2015

Case number
849 PF

Applicant

MailTrading GmbH (org nr HRB 195601)
Rupert-Mayer-strasse
D-81379 Munchen
Germany

Counsel:

Sandel, Loje & Partnere Law firm
Öster Allé 42, 6th
DK-2100 Copenhagen Ö
Denmark

Domain holder

HyperActive ApS (org nr 10161967)
Bredgade 15
8740 Brædstrup
Denmark

Counsel:

SIRIUS advokater
att: Gitte L
Frederiksberggade 11
DK-1459 København K
DK

Matter

Alternative dispute resolution proceeding concerning the domain name <xsmoke.se>.

Decision

The disputed domain name <xsmoke.se> shall be transferred to the Applicant.

Background to the dispute

Lars H is the owner of community trademark registrations no. 010398279 XSMOKE (word mark) and 011909892 XSMOKE (figurative mark). The Applicant, Mailtrading GmbH, is using the aforementioned trademarks with Lars H express consent. Lars H is the CEO of the Applicant and has

exclusive powers to bind the company acting on its behalf. Lars H supports the Applicant's claim and agrees to a transfer of the disputed domain name to the Applicant.

The disputed domain name was registered on August 23, 2011. The Applicant alleges that the Domain Holder and its owner and contact person Jakob N registered/acquired the disputed domain name for/on behalf of the Applicant during preparations for the company's future commercial activities and not for the benefit of himself or his own IT-consultancy company HyperActive ApS. The Applicant further alleges that Jakob N is at the present time minority shareholder in the Applicant and has used the disputed domain name in order to put pressure on the Applicant in connection with a claim against the Applicant.

The similar domain name <xsmoke.com> has been subject to UDRP proceedings before WIPO between the same parties and was ordered transferred to the Applicant and Lars H on February 16, 2015.

The Domain Holder has been given the opportunity to respond to the application, but have not provided any response.

Claims

The Applicant requests that the domain name <xsmoke.se> shall be transferred to the Applicant.

Brief findings of the arbitrator

The Applicant has proven that it holds such entitlement as defined in point 7.2.1 of the Terms and Conditions of Registration which is identical or similar to the domain name.

The Applicant has proven that the domain name was registered or used by the Domain Holder in bad faith.

Circumstances in support of a right or justified interest to the domain name for the Domain Holder, has not been demonstrated.

On behalf of IIS

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Jonas Gulliksson