

Alternative Dispute Resolution (ADR)

DECISION

2015-05-13

CASE NUMBER

817

APPLICANT

Anyoption Holdings (No. HE232421)
36 Agias Elenis st. Galaxias Commercial Centre 4th floor, Suite 401,
Nicosia 1641
Cyprus

Counsel:

Eitan K

DOMAIN HOLDER

Marcus E

MATTER

Alternative dispute resolution regarding the domain name <**anyoption.se**>

DECISION

The request for transfer of the domain name is refused.

BACKGROUND TO THE DISPUTE

Anyoption Holdings (The Applicant) is the holder of three community trademarks consisting of or containing the word ANYOPTION (No. 008333767, 008298457 and 008298697) registered on 17 February 2010, 17 February 2010 and 3 December 2009 respectively (applications filed on 1 June 2009, 5 May 2009 and 13 May 2009 respectively).

Marcus E (the Domain Holder) is the holder of the domain name <anyoption.se> registered on 17 May 2012.

CLAIMS

The Applicant has requested that the domain name <anyoption.se> be transferred to the Applicant.

The Domain Holder has contested the request.

FACTS OF THE CASE / PARTIES' CONTENTIONS

Grounds

In support of its claim, the Applicant has relied on the grounds that the domain name <anyoption.se> is identical to or confusingly similar to the Domain Holders community trade marks consisting of or containing the word ANYOPTION, that the domain name has been registered or used in bad faith, and that the Domain Holder has no rights or justified interest in the Domain Name.

The Domain Holder has not disputed that the domain name <anyoption.se> is identical to the word ANYOPTION in the aforementioned trade marks, but has denied that the Domain Name has been registered or used in bad faith as well as that the Domain Holder has any rights to or a justified interest in the domain name.

Presentation of allegations

The Applicant

The Applicant is a well-known and licensed provider of an on-line over the counter binary option trading platform and service via the Internet under the name "anyoption" and operates the website www.anyoption.com, which is a regulated European website under Cyprus Securities and Exchange Commission with license number 187/12. The Applicant enjoys a pre-eminent reputation in its field of operation and it has built up worldwide goodwill and reputation in its trademarks and business.

It has recently come to the notice of the Applicant that an unauthorised third party, the Domain Holder, registered under its own name the domain name www.anyoption.se, via Binero AB, the official registrar of the domain name. By doing so, the Domain Holder is infringing, hijacking,

cybersquatting and offending the Applicant's trademarks and continually harming the Applicant's name, reputation and revenues.

It is hereby clarified that the Domain Holder did not only register the domain name under his own name in bad faith and with ulterior motives, he is also hiding under a protective service granted by the registrar, where his contact details are hidden and block from the public. This is evident from a print screen of the contact information for the domain name, adduced by the Applicant.

Following the facts mentioned above, the Applicant has sent a cease and desist letter dated 12 February 2015 to the registrar, via registered mail and e-mail, requiring it to immediately cease and desist the Domain Holders infringing uses of the domain name and transfer the domain name to the Applicant's ownership and possession.

As no response was received from the registrar, the Applicant has sent another letter dated 15 February 2015, requiring it disclose the Domain Holder's information details including addresses, e-mails, telephones and contact person. In respond to the last letter, the Applicant received an e-mail dated 20 February 2015, from the registrar support team, instructing it to follow the link to .SE Dispute resolution, in case the Applicant has any disputes regarding .SE domain.

By granting the opportunity to the Domain Holder to register the domain name under its own name, the registrar allowing and directly contributing and assisting to the ongoing infringement uses of the Applicant's trademarks and the continuance damage that the Applicant is suffering due to the infringement. As the registrar did not send the Applicant the information details of the Domain Holder, the Applicant was prevented from sending the Domain Holder a cease and desist notice and/or from taking legal actions against the Domain Holder.

Furthermore, the Domain Holder is redirecting traffic from the website www.anyoption.se to a competing website, www.stockpair.net, through the website www.binaryaffiliates.com, without any prior consent nor authorization of the Applicant.

By entering the domain name in the address bar of any search engine, each Internet user will be automatically redirected to the competing website, which clearly indicates the infringement uses of the trademarks. By this infringement the Domain Holder is making the wrong impression among the Internet users that they are trading in the Applicant's website.

It is hereby clarified, that no person or entity is entitled to make use of the trademarks without first obtaining the written consent of the Applicant, let alone by confuse and misdirect customers seeking the Applicant's website to the competing website.

It is clear that the domain name <**anyoption.se**> is identical or confusingly similar to the trademarks in which the Applicant has rights, that the domain holder has no rights or legitimate interests in the domain name and that the domain name has been registered and is being used in bad faith.

The Domain Holder

The domain name was registered for the Domain Holder according to the principle “first come, first served” (“först till kvarn får först mala”) with the aim of developing a site.

The Applicant has not contacted the Domain Holder, neither directly by e-mail nor indirectly through the registrar. The Domain Holder does not contest that the Applicant sent a so-called cease and desist letter to the registrar. But no such letter has been forwarded to the Domain Holder by the registrar.

The Domain Holder contests that the Applicant is well-known, neither internationally nor nationally in Sweden. There are many companies in the same line of business as the Applicant, and each and every company having a domain name in e.g. the top-level domain .com cannot count on having the right to a corresponding domain name under the top-level domain .se.

The Domain Holder was informed about the Applicant’s view on the registration of the domain name <**anyoption.se**> in connection with the present application for dispute resolution. Accordingly, the Domain Holder has not registered the domain name in bad faith.

The Domain Holder has not actively redirected traffic from the website www.anyoption.se to competing websites, as alleged by the Applicant. Accordingly, the Domain Holder has not redirected traffic to e.g. www.stockpair.net. Neither has the Applicant proved that the Domain Holder should have acted in this way. Accordingly, the Domain Holder has not used the domain name in bad faith.

The Domain Holder registered the domain name <**anyoption.se**> before the Applicant registered the domain name anyoption.com.

The Applicant’s allegations are groundless and the Application is a clear attempt to a so-called reverse hi-jacking.

The word anyoption is composed of the two common words ”any” and “option”, with the meaning “whatever” respectively “alternative”. The words are frequently used by companies as well as private persons. It is obvious that the Applicant does not have a sole right to these words.

The Applicant claims to be the holder of a regulated European website under Cyprus Securities and Exchange Commission with license number 187/12, but this licence number “belongs” to another company, “Ouroboros Derivates Trading Ltd”, registered on 31 December 2012. The domain name was registered for the Domain Holder on 17 May 2012.

The Applicant claims that the Domain Holder has hidden his contact details under a protective service granted by the Registrar, but this is a standard procedure for the top-level domain .se. It is obvious that the Applicant is trying to make up evidence of bad faith in order to carry out a reverse domain hi-jacking.

FINDINGS OF THE ARBITRATOR

In accordance with the .SE's Terms and Conditions of registration, a domain name may be transferred to the party requesting dispute resolution proceedings, if the following three conditions are fulfilled:

1. the domain name is identical or similar to a distinguishing product feature, *inter alia* a trade mark, which is legally binding in Sweden and to which the party requesting dispute resolution can prove its rights,
2. the domain name has been registered or used in bad faith, and
3. the Domain Holder has no rights or justified interest in the domain name.

Identical or similar to Applicant's trademark

The Applicant is the holder of three community trade marks consisting of or containing the word ANYOPTION. The domain name <anyoption.se> is identical with the word ANYOPTION.

Registered or used in bad faith

The domain name <anyoption.se> was registered on 17 May 2012 and consequently after the filing and registration of the trade marks consisting of or containing the word ANYOPTION, registered in the course of 2009 and 2010. Consequently, the Domain Holder could have been aware of the trade marks when he made his application for registration of the domain name.

But, it must be taken into account, that each of the words in the compound "anyoption" may form part of expressions used in everyday speech. Thus, their syntactical juxtaposition – apart from being written as one word – cannot be considered to be unusual in the English language. And the domain name may well have been composed without having the Applicant's trade marks as a model.

Furthermore, the Applicant has not presented any substantial evidence concerning the trade marks position on the market, let alone any evidence on the recognition of the mark on the market.

Neither has the Applicant proved that the Domain Holder has redirected traffic from the website www.anyoption.se to the website www.stockpair.net through the website www.binaryaffiliates.com – in this case the Applicant has referred to the website, but the website cannot be opened since the server anyoption.se cannot be found on the Internet.

In these circumstances the Applicant has not proved that the domain name <anyoption.se> has been registered or used in bad faith.

With regard to this assessment there is no need to consider whether the Domain Holder has rights or justified interest in the domain name.

On behalf of .SE

Per Carlson