

# Alternative Dispute Resolution (ADR)

**DECISION**

12-05-2013

**CASE NUMBER**

709

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**APPLICANT**

Beachbody, LLC (org. nr 95-4717599)

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**Counsel:**

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**DOMAIN HOLDER**

Joakim A.

**MATTER**

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

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**DECISION**

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

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## **BACKGROUND TO THE DISPUTE**

The Applicant is the holder of International Registration No 897949 for the trademark BEACHBODY that has been approved by the Swedish Patent and Registration Office in 2008 and the Community Trademark Registration No. 2384774 for BEACH BODY, registered in 2002.

The Domain Holder is since 2009 the holder of the domain name <beachbody.se> .

The Applicant filed its application on October 7, 2013 and the Domain Holder has filed a response to the application. None of the parties demanded that the dispute should be tried by three adjudicators. .SE therefore appointed one adjudicator.

## **CLAIMS**

The Applicant claims that the domain name <beachbody.se> shall be transferred to the Applicant.

## **FINDINGS OF THE ADJUDICATOR**

According to Section 7.2 of the Terms and Conditions and Rules for registering .se-domain names with .SE a domain name may transferred to the Applicant under condition that the following three requirements are met.

- a) The disputed domain name is identical or similar to eg. a trademark which is legally binding in Sweden and to which the applicant can prove its rights
- b) The disputed domain name has been registered or used in bad faith.
- c) The domain name holder has no rights or legitimate interest in the domain name.

The Adjudicator makes the following assessment.

### **Does the Applicant hold a right to eg. a trademark that is legally binding in Sweden?**

The Applicant has presented evidence that it is the holder of a WIPO registration of the trademark BEACHBODY that has been approved by the Patent and Registration Office and a CTM registration to the trademark BEACH BODY. The Applicant has therefore proven that it holds trademark rights that are valid and legally binding in Sweden.

### **Is the disputed domain name identical or similar to the Applicants trademarks?**

The Adjudicator finds that the domain name <beachbody.se> including or excluding the TLD .se is in principle identical to the Applicant's trademarks. The first requirement for a transfer of the domain names is thus fulfilled.

### **Has the Domain Holder registered or used the disputed domain name in bad faith?**

The Domain Holder claims that he registered the domain name in order to recommend fitness programs including the Applicants products. The Domain Holder thus must have been aware of the Applicants trademarks and business at the time he filed his application for registration of the domain name.

The Domain Holders also claims that he only directed his website with the URL [www.beachbody.se](http://www.beachbody.se) to Swedish speaking individuals and that the Applicant has never conducted any business in Sweden. His intent has therefore never been to act in bad faith.

However, the Domain Holder's website reachable via [www.beachbody.se](http://www.beachbody.se) was made available both in Swedish and in English. The design the Domain Holder's website was similar to the Applicants sites and promoted the same kind of products i.e. fitness programs. The fitness programs promoted by the Domain Holder were not only the Applicant's fitness programs but also fitness programs of other parties.

The Domain Holder has therefore used the domain name in order to benefit from the good reputation, market position of the Applicant to attract traffic to his own website. Further, the Domain Holder has prevented the Applicant to register its trademarks as domain name.

The Adjudicator therefore finds that the Domain Holder has registered and used the domain name in bad faith.

### **Has the Domain Holder any right or legitimate interest in the domain names?**

A holder may be considered to have a right or legitimate interest in a domain name e.g. if it can provide evidence that

- a. it uses the domain name in its linguistic meaning, or
- b. the Domain Holder's use of the domain name does not infringe in the Applicant's trademark rights, or

The Domain Holder claims that he used "beachbody" in its linguistic meaning. However, WIPO has found that "beachbody" is sufficiently distinctive as trademark for educational services and instructions in the fields of e.g. fitness exercise. The Adjudicator therefore finds that the Domain Holder has not used "beachbody" in its linguistic meaning.

The Domain Holder claims that he never intended to illegitimately benefit from the trademark BEACHBODY, that he has not communicated the impression that he was affiliated with the Applicant, that his website was not confusingly similar to the Applicant's websites and that he has not in any way disturbed the Applicant's business.

However, the Domain Holder has used the domain name to promote e.g. promote fitness programs on a website including a Swedish as well as an English version. The Domain Holder has not claimed that his activity was non-commercial The Applicant's trademark protection for BEACHBODY includes educational services and instructions in the fields of e.g. fitness exercise. The Adjudicator therefore finds that the Domain Holder has used the domain name for an activity that infringes the Applicant's trademark rights.

Based on these findings the Adjudicator concludes that the Domain Holder does not have any right or legitimate interest in the domain name.

### **Finding**

The Applicant has provided evidence that it holds trademark rights that are valid and legally binding in Sweden. The Adjudicator has found that <beachbody.se> is in principle identical to Applicant's trademarks BEACHBODY and BEACH BODY. The Domain Holder was aware of the Applicant's trademarks when he filed for registration of <beachbody.se> and has used the domain name. Further, the Domain Holder has used the domain name in order to benefit from the good reputation, market position of the Applicant and prevented the Applicant to register its trademarks as domain name. The Domain Holder has not used "beachbody" in its linguistic meaning and has used the domain name in a manner that infringes the Applicant's trademark rights to BEACHBODY. Based on these findings the Adjudicator decides that the domain name <beachbody.se> shall be transferred to the Applicant.

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On behalf of .SE

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Monique Wadsted