

Alternative Dispute Resolution (ADR)

DECISION

2010-10-20

TICKETNUMBER

425

APPLICANT

I-Content Ltd.

10117 Berlin

Germany

Counsel:

Harnisch Priess & Partner

10117 Berlin

Germany

OPPONENT

Andreas P

200 41 Malmö

MATTER

Alternative Dispute resolution (ATF) for the domain name <betwin.se>

.SE decides as follows

DECISION

The domain name <betwin.se> is transferred to the Applicant I-Content Ltd.

DECISION CONCERNING THE LANGUAGE OF THE PROCEEDING

According to Section 22 of the Procedural rules (“the Rules”) for alternative dispute resolution for the top level domain .se, an application for an alternative dispute resolution procedure may be made in the language in which the application for registration of the domain name was made. Where the application language for registration is English, the language of the dispute resolution procedure shall also be English. If the application for a dispute resolution is made in Swedish, the language of the procedure shall be Swedish.

In the present case, the application for registration of the domain name <betwin.se> was made in Swedish but the application as such for the dispute resolution is made in English.

The Adjudicator notes that i) the Opponent has replied to the English Application – however the reply was made in Swedish, and ii) the present wording of Section 22 may well be read as accepting English as the language of the proceeding also when the application for the proceeding is made in English.

In the absence of any contradicting arguments or claims from the Opponent, the Adjudicator therefore concludes that the language of the proceeding shall be English.

BACKGROUND TO THE DISPUTE

The disputed domain name was registered on March 30, 2010.

The Applicant, having trademark rights to the word BETWIN, filed an Application for alternative dispute resolution regarding the domain name <betwin.se> on August 9, 2010.

The Opponent filed a response on September 18, 2010, within the given deadline.

On September 23, 2010, Petter Rindforth was appointed as the sole Adjudicator in this matter. The Projected Decision Date was October 25, 2010.

On September 24, 2010, considering the fact that the Opponent in his response had not stated clearly whether he agreed or rejected to the Applicant’s request for a transfer of the disputed domain name, the Adjudicator gave the Respondent a one week deadline, until Friday October 1, 2010, to reply to that specific question. The Respondent did not reply.

CLAIMS

The Applicant claims that the disputed domain name <betwin.se> shall be transferred to the Applicant, I-Content Ltd.

FACTS OF THE CASE / PARTIES' CONTENTIONS

Applicant

The Applicant is the registered owner of the following cited trademark registrations / applications:

German National Registration No 30018507 "Betwin" in classes 35, 37, 39, 41 and 42
Community Trademark Application No 006849641 "BETWIN", filed on April 20, 2008 in respect of services in Classes 35, 38 and 41.

Community Trademark Application No 007281652 "BETWIN", filed on October 1, 2008 in respect of goods and services in Classes 16, 25, 26 and 28.

Community Trademark Registration No 008536492 "BETWIN", filed on September 9, 2009, and registered on February 10, 2010, in respect of goods in Classes 3, 11, 14 and 22.

The Applicant refers to the fact that it registered the trademark BETWIN in Germany in March 2000, followed by the Community Trademarks in 2008 and 2009, and that the disputed domain name was registered in September 2009.

The Applicant argues that the disputed domain name infringes the rights of the Applicant, due to the priority rights of the Applicant's trademarks.

The Applicant concludes that the registration of <betwin.se> was done in bad faith, as the Applicant has registered the trademark BETWIN as a domain name in nearly every European country. The Opponent could therefore assume to benefit from the brand awareness. According to the Applicant, it holds the domain name registration of <bet-win.se> since May 28, 2010, and concludes that the Opponent therefore could foresee that the Applicant would have a strong interest in the disputed domain name.

Opponent

The Opponent states in his reply that he does not understand for what reason the Applicant should have rights to the disputed domain name. As it was available for registration, the Opponent registered it, and also claims to have plans to use it.

The Opponent argues that the Applicant could have used the possibility to register <betwin.se> when it was available.

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 trade mark, 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 in the BETWIN trademark in Sweden through the abovementioned Community Trademark Registration and Applications, as Sweden is a Member State of the European Union and the said type of trademark protection therefore also covers Sweden.

The relevant part of the domain name is <betwin>. The addition of a top-level domain such as .se is irrelevant when establishing whether or not a mark is identical or confusingly similar, because top-level domains are required elements of every domain name.

Accordingly, the Adjudicator finds that the disputed domain name is identical to the Applicant's trademark.

Rights or Legitimate Interest

The Opponent is obviously not an authorized agent or licensee of the Applicant's products or services and has no other permission to apply for any domain name incorporating the trademark BETWIN.

In his response, the Opponent only states that as <betwin.se> was available, he registered it, and cannot understand why the Applicant should have any rights to the disputed domain name. The Opponent claims to have plans to use the disputed domain name, but gives no specification on what kind of use that would be.

However, the Adjudicator concludes from the screenshot of the web site connected to <betwin.se> (provided by the Applicant), that the Opponent is already using <betwin.se> to promote own services in the same kind of business as the Applicant. Such use, obviously for the reason of misusing the confusing similarity with a competitor, is not a bona fide offering of goods and services and can therefore not establish any rights or legitimate interest.

Finally, there are no indications that the Opponent is known by <betwin.se>, as the WHOIS shows the name of the Registrant/Opponent as Andreas P.

The Adjudicator therefore concludes that the Opponent has no rights or legitimate interests in the domain name.

Registered or Used in Bad Faith

The Applicant is the owner of Community Trademark (CTM) rights, whereof at least one application has gone through the process and turned into registration. All three CTMs are filed before the registration of the disputed domain name.

The Adjudicator cannot clearly conclude that any of the three CTMs covers goods or services related to the goods and services offered by the Opponent. The Applicant does not either clearly explain the art of services provided by the Applicant, but only refers to the fact that the disputed domain name is identical to the trademark and to a number of Applicant's registered domain names. The Applicant has provided a great number of BETWIN-related web sites from a number

of European countries, including Sweden. Although no evidence are filed that the Applicant is the holder of any of these domain names, except for the Swedish domain name registration <bet-win.se>, the Adjudicator see no reason to question these arguments as they are not either contested by the Opponent.

As to the citation of <bet-win.se>, the Applicant states that it is registered at May 28, 2010 (after the registration of the disputed domain name). However, the provided copy of the .se WHOIS site shows that the <bet-win.se> is created at March 17, 2009. Whatever the true fact is, the existence of the <bet-win.se> registration in Sweden, together with the existence of all European BETWIN domain names and sites, compared to the Opponent's registration and use of <betwin.se>, clearly indicates that the Opponent both registered and obviously have used the disputed domain name to take unfair credit from the risk of confusion with the Applicant's trademark.

It is obvious that the Opponent had at least constructive knowledge of the Applicant's trademarks already when he registered <betwin.se>, and that the use of the disputed domain name was done with full knowledge of the Applicant's business and prior rights.

The Adjudicator concludes that the Opponent registered and has used the disputed domain name in bad faith.

On behalf of .SE

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Petter Rindforth