



Alternative Dispute Resolution (ADR)

Decision
2016-08-31

Case number
929

Applicant

Browning International SA (Corp. Reg. No. 0430037226)

Parc industriel des Hauts-Sarts

3ème Avenue, 25

Herstal 4040

Belgium

Counsel:

Domgate

132, avenue de la libération

06130 Grasse

France

Opponent

Sako Oy Finland Filial (Corp. Reg. No. 516403-2632)

Box 42159

Västberga Allé 4a

126 16 Stockholm

Matter

Alternative dispute resolution regarding the domain name <browning.se>.

Decision

The domain name <browning.se> shall be transferred to the Applicant, Browning International SA.

Background to the dispute

The Applicant has applied for dispute resolution for the domain name <browning.se>. The Applicant desires that the matter shall be determined by one arbitrator.

The Opponent has submitted a reply. The Opponent has not requested that the matter shall be determined by three arbitrators.

Jon Dal has been appointed as arbitrator.

Claims

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

The Opponent rejects the claims of the Applicant.

Facts of the case / Parties' contentions

Applicant

1. Identical or confusingly similar

Applicant is a branch of Herstal Group, which designs, manufactures and distributes a full range of firearms and associated products for hunting and shooting. Applicant is owner of European Trademark BROWNING (word mark) N 137638 covering inter alia "firearms" filed on April 1st, 1996.

Applicant argues that the domain name <browning.se> is identical to, or at least confusingly similar with, the prior mark of Applicant, insofar as it reproduces integrally the prior mark BROWNING. The only difference between the signs consist of the top level domain ".se". However, while it is well accepted that the top level domain is irrelevant in assessing identity or similarity, it is even more true in cases dealing with country codes, insofar as they are purely descriptive of the market to which the products are aimed at.

2. No rights or legitimate interests

To the best of Applicant's knowledge, the Opponent does not have any rights in the name "browning" nor is the Opponent commonly known by either name. The contested domain name is redirected to <sako.se> and resolves to the homepage of the Opponent's website, SAKO Oy Finland Filial, the Swedish branch of SAKO Limited, a finish rifle manufacturer and seller, which is a direct competitor of Applicant. The Applicant has not authorized Opponent's use of its mark and has no affiliation with Opponent. Therefore, the Opponent does not establish that he has any rights or legitimate interest in the domain name.

3. Bad faith and use

The domain name <browning.se> was registered on March 15, 2011, while the reputation of prior rights of Applicant was already well established. In the light of the well-known trademark BROWNING at the date of registration of <browning.se>, Opponent clearly acted in full knowledge of the existence of Applicant's prior rights. Bad faith registration is further underlined by the fact that Opponent is a direct competitor of Applicant and that it now uses the contested domain name in order to redirect on-line customers who wish to purchase goods of BROWNING on their own website.

Therefore, all three elements foreseen by point 7.2 of the Registration Terms and Conditions are demonstrated by a standard of clear and convincing evidence and it is requested that domain name of Opponent shall be transferred to Applicant.

The Applicant cites as evidence, i.a. printout of European Trademark registration for BROWNING, screenshot from <sako.fi> and screenshot from <browning.eu>.

Opponent

We have, during the spring of 2016, been contacted by, for us, an unknown person, who wanted to purchase the domain address <browning.se>. Since we did not get any other information than the name Ralph Friedrichsberg, we were not interested in selling the domain. This person claimed that he had a personal project which is all information we have received. Our purpose for the domain has been to drive traffic to our web page <sako.se>. If we had known that the Applicant had interest in buying the domain name, we would, without a doubt, had sold it. In order to avoid a disagreement with a colleague in our industry we are willing to transfer the domain to the Applicant for the price of 25 000 SEK plus VAT, and as soon as we have settled the payment we can transfer the ownership of the domain. We do, however, oppose to part with a domain which is legally ours without any financial compensation. Applicant, which does not have any registered company in Sweden, had all opportunity to register the address but did opt to work from the domain <browning.eu>. We have plenty of brands where we do not own the .se address and have instead chosen to work from our top domain <sako.se>.

The Applicant cites as evidence mail correspondence with Ralph Friedrichsberg.

Findings of the Arbitrator

A domain name may, in accordance with paragraph 7.2 of Term and Conditions of Registration applicable for the top-level domain .se, be deregistered or 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. a distinguishing product feature,
 - b. a distinguishing business feature,
 - c. a family name,
 - d. an artist's name (if the name is not associated with someone who deceased a long time ago),
 - e. a title of another party's copyrighted literary or artistic work,
 - f. a name that is protected by the Regulation concerning Certain Official Designations (1976:100),
 - g. a geographic designation or a designation of origin that is protected by the European Council's Regulation (EU) 510/2006,
 - h. a geographic designation that is protected by the European Council's Regulation (EU) 110/2008,
 - i. a geographic designation that is protected by the European Council's Regulation (EU) 1234/2007, or
 - j. the name of a government authority that is listed in the registry that Statistics Sweden must maintain under the Swedish Code of Statutes SFS 2007:755 (Government Agencies Register Ordinance), or its generally accepted abbreviation,

which is legally binding in Sweden and to which the party requesting dispute resolution can prove its rights, and

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.

All three conditions must be met in order for the Applicant to succeed with a claim for transfer of the domain name.

1. The domain name is identical or confusingly similar

The Applicant is the holder of European trademark registration for "BROWNING", reg. no. 137 638. The trademark was applied for on April 1, 1996 and registered on August 20, 1998. The trademark registration is legally binding in Sweden.

The disputed domain name is, in all material aspects, identical to the Applicant's registered trademark. The first condition is hereby met.

2. Registered or used in bad faith

The Applicant's trademark BROWNING is registered for, inter alia, firearms. The Opponent manufactures and sells, i.a., firearms. The Opponent is, thus, a direct competitor of the Applicant.

The Opponent uses the domain name <browning.se> to drive traffic to its web page <sako.se>.

The Opponent must have been aware of the Applicant's trademark BROWNING when registering and using the domain name.

The Opponent's registration and use of the domain name to drive traffic to its own web site constitutes, according to the arbitrator, registration and use in bad faith.

The second condition is, thus, met.

3. Rights or legitimate interest

The Opponent is using the domain name in bad faith. Such use will not typically create a right or legitimate interest in the domain name. Nothing has been revealed in the matter that would change these findings. Due to that, the Opponent shall be regarded as lacking right and legitimate interest to the domain name.

All three conditions have been met and the domain name shall therefore be transferred to the Applicant.

On behalf of IIS

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Jon Dal