

## **Alternative Dispute Resolution (ADR)**

**DECISION**

2009-09-10

**TICKETNUMBER**

326

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**APPLICANT**

Bwin Interactive Entertainment AG  
1010 Vienna  
Austria

**Counsel:**

Brandl & Talos Rechtsanwälte GmbH  
1070 Vienna  
Austria

**OPPONENT**

Kasper W  
416 72 Göteborg

**MATTER**

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

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.SE decides as follows

**DECISION**

The domain name <bwinpoker.se> is transferred to the Applicant Bwin Interactive Entertainment AG.

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## **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 <bwinpoker.se> was made in Swedish but the application as such for the dispute resolution is made in English.

The Adjudicator notes that i) correspondence - however not replied to - from the Applicant to the Opponent has been made in English, 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.

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## **BACKGROUND TO THE DISPUTE**

The disputed domain name was first registered on October 4, 2006.

The Applicant, having trademark rights to the word BWIN, filed an Application for alternative dispute resolution regarding the domain name <bwinpoker.se> on June 8, 2009.

The Opponent has not respondent within the given deadline.

On July 23, 2009, Petter Rindforth was appointed as the sole Adjudicator in this matter. The Projected Decision Date was September 10, 2009.

## **CLAIMS**

The Applicant claims that the disputed domain name <bwinpoker.se> shall be transferred to the Applicant, Bwin Interactive Entertainment AG.

## **FACTS OF THE CASE / PARTIES' CONTENTIONS**

### Applicant

The Applicant is the parent company of the bwin-Group ("the Group") and claims that the said Group is the world's leading provider of online gaming entertainment. The Applicant's subsidiaries and affiliated companies offer sports betting, *poker*, casino games, soft games and skill games, as well as audio and video streams on top sports events such as the German Soccer League. These are all provided via the Internet and many of them are also available via other digital distribution channels, such as mobile phone.

The Group derives its revenues primarily from sports betting and poker. Applicant's main web site under <bwin.com> is operated by bwin International Limited, a wholly owned affiliate of the Applicant. The site is available in 22 different languages, amongst them also Swedish.

The Applicant informs that at the end of 2008, the Group had about 2.1 million active customers all over the world and a total turnover of approximately EUR 403,5 million (Annex A of the Application showing excerpts from business reports).

The Applicant is sponsoring a number of European sports clubs, and therefore claims to be "very famous in Europe and all over the world." The Applicant spent EUR 98,5 million in 2007 and EUR 123,5 million in 2008 on marketing activities (Annex D of the Application, excerpt from Applicant's Financial Statements 2008).

The Applicant is the owner of the following International Trademark Registrations:

IR No. 886 220 "BWIN" (word), registered on February 2, 2006 for (amongst others) entertainment, and designating Sweden and other countries.

IR No. 896 530 "BWIN" (figurative), registered on March 16, 2006 for (amongst others) entertainment, and designating Sweden and other countries.

Annex B – C of the Application shows excerpts from the official WIPO register.

The Applicant refers to the UDRP Case No. D2009-0167 as evidence that the BWIN mark is well known in Europe.

The Applicant argues that the disputed domain name is similar to Applicant's registered trademark, in particular as the domain name consists of the trademark with the addition of the generic term "poker" – the latter being descriptive for the Applicant's business.

Further, the Applicant argues that the Opponent has no rights for or legitimate interest in the domain name or the term "BWIN". The Opponent has no trademark rights, is not known by the said term and the Applicant has not licensed the Opponent to use BWIN. According to the Applicant, the Opponent is using <bwinpoker.se> to exploit Applicant's business by using unfair business practices.

Finally, the Applicant claims that the Opponent has both registered and is using the disputed domain name in bad faith. Again, Applicant states that the mark BWIN is very famous in Europe and all over the world, Applicant having spent millions of Euros on marketing since the launch of

the BWIN mark in 2006. Accordingly, the Opponent was aware of the mark BWIN when he registered the domain name.

The Opponent is using <bwinpoker.se> for a web site showing both poker activities of Applicant's competitors as well as poker events organised by the Applicant (Annex E of the Application).

The Applicant sent a warning letter to the Opponent on February 27, 2009, but received no reply. This is a further evidence of bad faith.

BWIN has no meaning and is a fantasy term. It is therefore unlikely that the Opponent has chosen this term by chance. The Opponent is acting in the field of online-poker like the Applicant, which means the Opponent is in some way competing with the Applicant.

#### Opponent

The Opponent has not contested the allegations of the Applicant.

### **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 BWIN trademark in Sweden through the abovementioned two International Registrations designating Sweden.

The relevant part of the domain name is <bwinpoker>, consisting of the Applicant's trademark BWIN and the generic term "poker". The term "poker" is commonly used in connection with the Applicant's goods and services and therefore, although being generic, adds to the confusion and association with the Applicant.

Accordingly, the Adjudicator finds that the domain name is confusingly similar to the Applicants trademark BWIN.

#### 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 BWIN.

By not submitting a Response, the Opponent has failed to invoke any circumstance which could demonstrate any rights or legitimate interests in the domain name.

In addition, the fact that the domain name resolves to a web page (partly) displaying information and services in competition with the Applicant, is not a bona fide offering of goods and services and such use can therefore not establish any rights or legitimate interest.

Finally, there are no indications that the Opponent is known by <bwinpoker.se>, as the Whois shows the name of the Registrant/Opponent as Kasper Wagner.

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 has repeatedly stated that the mark BWIN is “very famous” in Europe and the rest of the world. The Adjudicator is however not convinced. Most information related to number of customers, advertising campaigns, sponsoring, etc is just stated in the Application, without any corresponding evidence filed. In addition, the Adjudicator notes that the BWIN mark was launched in 2006, which is only three years ago.

The Adjudicator notes, however, that in this case it is not necessary for the BWIN mark to be famous. Legal presumption of bad faith arises when an opponent had constructive knowledge of an applicant’s trademarks. In the present case, constructive knowledge of Applicant’s rights in BWIN may be imputed to the Opponent referring to the following circumstances:

- the BWIN mark was registered and valid in Sweden before Opponent registered the domain name
- the disputed domain name was created very soon after the launch of the BWIN mark and services
- as pointed out by the Applicant, BWIN has no meaning and is a fantasy term. It is not very likely that the Opponent came up with almost the same name for his domain name without any prior knowledge of the Applicant’s trademark, especially as the Opponent – judging from his web site – has good knowledge of the gaming / poker business.

Although it is not necessary to deal also with the question of bad faith use, the Adjudicator notes that the Opponent has in fact used <bwinpoker.se> for a site with information and links – presumably commercial – to various poker-related sites and services, therewith using the fact that Swedish customers looking for the Applicant may well be confused by Opponent’s web address.

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

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On behalf of .SE

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Petter Rindforth