

Alternative Dispute Resolution (ADR)

DECISION

2011-05-24

TICKETNUMBER

476

APPLICANT

Comedy Partners

NY 10036

USA

Counsel:

Partner BRANN AB, Jur.kand. Astrid J

102 26 Stockholm

OPPONENT

Urban D

116 33 Stockholm

MATTER

Alternative dispute resolution regarding the domain name comedycentral.se

DECISION

The domain name comedycentral.se shall be transferred.

BACKGROUND TO THE DISPUTE

The domain name <comedycentral.se> was registered by the Opponent on February 7th, 2008.

In application dated February 14th, 2011, the Applicant has applied for alternative dispute resolution and that the dispute should be decided by a sole Adjudicator.

The Adjudicator notes that Section 26 of the Rules for Procedure for alternative dispute resolution (ADR) allows for an application to be filed in either Swedish or English. The decision shall be worded in the language of the Application.

The Opponent has not responded within the given deadline.

The Adjudicator has not found it necessary to request further correspondence according to Section 18 of the Rules of procedures for ADR.

CLAIMS

The Applicant has requested that the disputed domain name be transferred to the Applicant.

FACTS OF THE CASE / PARTIES' CONTENTIONS

The Applicant is a partnership between Viacom International Inc. and Viacom Hearty HA! HA! LLC. The Applicant owns and operates *inter alia* the channel Comedy Central. It has produced and broadcasted successful shows such as South Park and Futurama, Comedy Central Roast, the Colbert Report etc. It was initially launched in the USA on April 1, 1990. In 2007, it was ranked 6th largest channel amongst people between 18-49 and the largest for men between the ages 18-24.

The Comedy Central brand was launched in Europe in 2006 and has been successful.

The website comedycentral.com has also been a success. In 2007, it had 80,000 unique visitors from Sweden every month. In Sweden, the channel is operated by MTV Networks AB, acting as agent for the licensee, MTV Networks BV.

The Applicant holds 19 different trademark registrations worldwide for the mark COMEDY CENTRAL of which one is the Community trademark registration No. 004968418, COMEDY CENTRAL. The disputed domain name is identical to the Applicant's registered Community trademark.

The Opponent has not been granted any license to use the disputed domain name. The Opponent is not commonly known by the disputed domain name. Moreover, the domain name has not been and is not used by the Opponent and there have been no demonstrable preparations to use the disputed domain name. The Applicant cannot see any legitimate, fair and non-commercial use of the disputed domain name by the Opponent.

The disputed domain name was registered in bad faith in accordance with the following. The Opponent is a friend of Peter v S, Head of PR in 2008, which were the time of the channel's launch in Sweden and the time of the registration. The Opponent was made aware of the launch through a newspaper article in Dagens Media and then promptly went ahead and registered the

disputed domain name and the corresponding domain name in Denmark, .dk. The Opponent then contacted Peter v S and informed him of the Opponent's registration. In light of the awareness in Sweden of the Comedy Central channel, the Opponent must have been aware of the Comedy Central channel even before the article published 7 February, 2008.

Because of the Opponent's registration, the Applicant was unable to register the channel name under the top-level domain .se. It has become increasingly important for a commercial business with a well known trademark such as COMEDY CENTRAL to be able to register a .se domain name since it would be the first place where Swedish visitors would search to find the official website of the Swedish Comedy Central channel. Moreover, the programme schedule is available only on the website, which means that the channel will lose viewers when it is not able to be available under the .se domain.

In spring 2010, when contacted by Peter v S regarding the transfer of the disputed domain name, the Opponent offered to sell for the sum of SEK 800,000. When this amount was rejected by the Applicant the offer was reduced to SEK 500,000 and then again to SEK 100,000. The Applicant refused to pay that amount.

FINDINGS OF THE ADJUDICATOR

A domain name may, according to the General Conditions, paragraph 7.2, in connection to an ADR proceeding be cancelled or transferred to the Applicant for such proceeding if

- the domain name is identical or confusingly similar to e.g. trade marks or trade names who enjoy legal protection in Sweden, in which the Applicant can show a right,
- the holder has no right or legitimate interest to the domain name; and
- the domain name is registered or used in bad faith.

The Adjudicator makes the following assessment.

Rights in a mark which is confusingly similar/identical

The Applicant is the holder of the Community Trademark No. 004968418, COMEDY CENTRAL. The trademark enjoys legal protection in Sweden.

The Adjudicator finds that the disputed domain name is identical to the registered Community Trademark of the Applicant.

Legitimate interest

The Applicant has asserted that the Opponent has no right or legitimate interest to the domain name in dispute. The Opponent has not responded to the Application and has consequently not shown that any legitimate interest in using the disputed domain name exists. There has not been anything else to suggest that a legitimate interest is at hand.

Under these circumstances, the Adjudicator finds that the Applicant has sufficiently shown the Opponent's lack of legitimate interest to the domain name in dispute. The second criterion is thus fulfilled.

Bad faith

The Opponent has not responded to the contentions of the Applicant and the Adjudicator is free to draw any conclusions from that fact. The Adjudicator considers it highly unlikely that the Opponent was unaware of the Applicant's trademark at the time of the registration, both considering the publicity of the launch of the channel in Sweden but also from the general well-known character of the channel's name.

Although the Applicant has not presented any real evidence in support of its assertion that the Opponent has requested an unreasonable amount for the transfer of the disputed domain name, the Opponent has not contradicted anything. Moreover, it is clear that the registration prevents the Applicant from exercising its right to register its trademark as a domain name which is disruptive to its business.

The Adjudicator thus finds the registration to be registered in bad faith.

The Applicant having fulfilled all three criteria, the disputed domain name shall be transferred.

On behalf of .SE

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Jonas Gulliksson