

# Alternative Dispute Resolution (ADR)

**DECISION**

2011-11-07

**TICKETNUMBER**

518

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**APPLICANT**

Carlsberg Sverige AB

311 22 Falkenberg

**Counsel:**

Albihns Zacco AB, Anders F

114 85 Stockholm

**OPPONENT**

HELO HOLDINGS Ltd.

South Woodford

E182AN London

Great Britain

**MATTER**

Alternative dispute resolution regarding the domain name **festis.se**

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**DECISION**

The domain name **festis.se** shall be transferred to the Applicant

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## **BACKGROUND TO THE DISPUTE**

The domain name festis.se was registered by the Opponent on 14<sup>th</sup> November 2009.

In application dated 13<sup>th</sup> September 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 responded via e-mail within the given deadline.

The Applicant has further added comments to the Opponents answer in a letter dated 11 October 2011, which has been communicated with the Opponent. The Opponent, offered a specific period of time for a response, has not responded to the Applicant's letter of 11 October 2011.

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 claimed that the domain name festis.se shall be transferred to the Applicant

The Opponent has contested the claim.

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

### **The Applicant**

The Applicant is the owner of the registered trademark FESTIS in Sweden, under the reg.number 160910. This application was filed on 4 April 1977 and registered on 30 September 1977. The trademark FESTIS has been used in Sweden by the Applicant for the past 35 years for fruit drinks and due to extensive exposure for decades the trademark FESTIS is notoriously known to the Swedish consumers for such and like products.

A recent frequent awareness study carried out by the independent company MilwardBrown, testing awareness among consumers for the years 2007, 2008, 2009 and 2010, offers a result that is very convincing. In total the awareness rate was as high as 97 percent, what leads to the conclusion that the brand FESTIS is a well known mark.

The Applicant has spent several million KSEK yearly on marketing efforts for the brand FESTIS, by presence in cinemas, special press, morning press, tabloids, TV, outdoor advertising and on the Internet.

The word FESTIS is unique; it doesn't exist in any known language, it is an invented word by the Applicant. The word does not exist as a trademark registration other than the Applicant's own registration, as can be tested by an extract from the commercial database SAEGIS, containing all European official trademark databases and several other global official data bases. By the search key FESTIS, 4 hits are revealed, all owned by the Applicant.

All this shows that the brand is very strong and reputed.

The Opponent, owner of the domain name festis.se, Helo Holdings Ltd, has a rumour on the Internet of registering domain names connecting to trademarks of others. The Opponent has been involved in domain disputes in the past, e.g. regarding the trademark TV4, whereby it was decided that the domain registration TV4sport.se should be transferred to the rightful owner, TV4. The domain owner has no rights to the trademark FESTIS, and the has no registered company name, secondary name or trademark registration of the trademark FESTIS. The website under the festis.se domain does not contain any information or other material indicating that the domain owner has any interests in or connections to the trademark. The sole purpose of the website seems to be to benefit from the fame of the trademark FESTIS. The content of the website is merely a number of links to other sites and assumably each click on a link generates profit to the owner. There is no information available showing that the domain owner offers any product or service whatsoever under the trademark FESTIS in Sweden or elsewhere, other than providing links on the website.

Considering the well-known status of the trademark FESTIS, together with the fact that the word doesn't exist in any known language nor as a registered trademark than the Applicant's, it must be evident that the domain name owner was aware of the trademark and its reputation prior to the filling of the domain registration. This is further evidenced by the fact that the domain name owner has adopted a strategy of finding and register as domain name Swedish names and trademarks of others. It is further obvious that the domain name owner has chosen the reputed Swedish trademark under the .se domain in order to attract traffic to the website from Swedish consumers seeking information about the reputed trademark FESTIS, in order to profit from such visits on the website.

## The Opponent

Helo Holdings Ltd is a professional online marketing company that specializes in domain names. The domains name festis.se was automatically registered when its previous owner released it in November 2009. At the time of registration and for the past two years the defendant had no knowledge of the term "festis" and had not been contacted by the Applicant. The term seems to be used in Sweden, both by the general public and by the applicant itself, as a generic term describing someone who likes to party. The term is frequently used on the Internet, for instance the phrase "Jag är en festis". Internet searches show plenty of generic uses of the term.

The content of the domain name is non-infringing – not within the Applicants trademark classes – and relates to a well-known party term. The party related content on display on the domain name is auto generated and chosen by Google because of its relevance to the term. A "festis" is someone who likes to party.

## 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 proceedings if

- the domain name is identical or confusingly similar to e.g. trade marks or trade names that 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 or identical.

The Applicant is the holder of the registered trademark FESTIS in Sweden. The disputed domain name is identical to the registered trademark.

### Legitimate interest

The Applicant has assessed that the Opponent has no right or legitimate interest to the domain name in dispute. The Opponent has in the response not shown any legitimate interest in using the disputed domain name or added any form of suggestion that could be understood as legitimate interest of the Opponent.

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 Adjudicator finds it highly unlikely that the Opponent was unaware of the Applicant's trademark at the time of the Opponent's registration of the domain name in dispute, in considering the publicity of the launch of the trademark FESTIS in Sweden in multiple media, the Internet included, and the well-known character of the trademark. Moreover, the Opponent seems to have used the domain name merely as an instrument to draw upon the repute of the trademark FESTIS, not offering anything but links to other phenomena from the website under the top domain festis.se. Further still, it is clear that the registration prevents the Applicant from exercising its rights to register its trademark as a domain, which is disruptive to the Applicant's business.

The Adjudicator thus finds the registration to have occurred upon bad faith of the Opponent. Accordingly, the Applicant has fulfilled all three criteria, whereby the disputed domain name shall be transferred as claimed by the Applicant.

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On behalf of .SE

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Jan Rosén