

Alternative Dispute Resolution (ADR)

DECISION
30-04-2014

CASE NUMBER
732

APPLICANT

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DOMAIN HOLDER

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MATTER

Alternative dispute resolution regarding the domain name < **stubhub.se**>.

DECISION

The domain name <**stubhub.se**> shall be transferred to the Applicant.

BACKGROUND TO THE DISPUTE

eBay Inc. and its subsidiary company StubHub Inc. (hereinafter the Applicant) operate StubHub, an online ticket marketplace. StubHub Inc. is the holder of the community trade marks STUBHUB, No. 004998324, and StubHub!, No. 004998316, registered on July 25, 2007 for *inter alia* ticket agency services (applications filed on April 4, 2006).

OHM Group Scandinavia AB (hereinafter the Domain Holder) operates a business comprising Internet communication, event and public relations and is the holder of the Domain <stubhub.se> registered on February 15, 2011.

The Applicant has applied to .SE for dispute resolution on December 18, 2013. The Applicant has desired that the matter be handled by three arbitrators and appointed Petter Rindforth as arbitrator. The Domain Holder has responded to the application and appointed Jan Rosén as arbitrator. The .SE has elected Per Carlson as arbitrator and chairman of the panel.

The Domain name has already been subject of an alternative dispute resolution proceeding, filed on 27 October 2011 (see .SE ADR Decision No. 530 <stubhub.se>).

Claims

The Applicant has requested that the domain name <stubhub.se> be transferred to the Applicant.

The Domain Holder has contested the request.

FACTS OF THE CASE / PARTIES' CONTENTIONS

Grounds

In support of its claim, the Applicant has relied on the grounds that the domain name <stubhub.se> is identical to StubHub Inc. community trade marks STUBHUB (Reg. No. 004998324) and StubHub! (Reg. No. 004998316) respectively, that the Domain Name has been registered or used in bad faith, and that the Domain Holder has no rights or justified interest in the Domain Name.

The Domain Holder has not disputed that the domain name <stubhub.se> is identical to the aforementioned trade marks, but has denied that the Domain Name has been registered or used in bad faith as well as that the Domain Holder has any rights to or a justified interest in the Domain Name.

Presentation of allegations

The Applicant

StubHub was founded in the year 2000 and it was acquired by eBay Inc. on 13 February 2007, as widely reported by the press all over the world, Sweden included. Since its inception, the Applicant has provided its online ticket marketplace services via its official website at www.stubhub.com. In 2009, StubHub had over 11 million registered users. Currently, StubHub has more than 22 million registered users. In 2012, the StubHub's official website had more than 13 million unique visitors per month, for a total of more than 150 million unique visitors during the year. Indeed, the Applicant's official website at www.stubhub.com is the second most visited website in the world in the Tickets category and the sixth most visited website in the world in the Shopping/Entertainment category according to Alexa, the web information company.

StubHub has reinvented the ticket resale market and continues to grow exponentially. Between 2004 and 2008 more than 20 million tickets were sold on StubHub's official website at www.stubhub.com, for a total volume of more than 2 billion USD. In 2011 alone, nearly 7 million tickets were sold on the StubHub's official website, for a total volume of more than 1.5 billion USD. StubHub has been consistently ranked as the top secondary ticket seller and second overall, including in 2009, according to TicketNews Seller Rankings.

The STUBHUB brand is highly respected and valued for providing a "safe, convenient and highly reliable" platform where fans can buy and sell their tickets online. The Applicant's strong reputation has helped it build partnerships with over 60 sports teams in the National Football League (NFL), Major League Baseball (MLB), National Basketball Association (NBA), National Hockey League (NHL), Major League Soccer (MLS) and National Collegiate Athletic Association (NCAA), in addition to companies such as ESPN, AEG, Tickets.com, and Paciolan.

Given the exclusive nature of the Applicant's online ticket business, the Applicant's domain names consisting of the term STUBHUB are not only the heart of its entire business but also the only way for its millions of users to avail themselves of its services. Reflecting its global reach, the Applicant owns numerous domain names consisting of the term STUBHUB, including the domain name <stubhub.com> which it registered in the year 2000.

The term STUBHUB is exclusively associated with the Applicant. The search results obtained by typing the term STUBHUB in the Google search engine available at www.google.com and its Swedish version available at www.google.se refer exclusively to the Applicant. In fact, the first 100 search results obtained by searching the term STUBHUB in the Google search engine available at www.google.se all relate to the Applicant.

In addition to its strong online presence, the Applicant has secured ownership of numerous trade mark registrations consisting of or containing the term STUBHUB in many jurisdictions throughout the world, including in Sweden. The Applicant's valuable online reputation is not only crucial to maintain the value and distinctiveness of its brand, but also vital to the success, integrity and protection of the Applicant's business and consumers. Accordingly, the Applicant devotes significant resources to protect its trade mark rights and goodwill in forums such as this administrative proceeding.

The domain name is identical with the trade marks

The Applicant's Community Trade Marks in the term STUBHUB significantly predate the registration of the Domain Name. Accordingly, the Applicant has established that it has prior rights in the term STUBHUB that are protected in Sweden. The Applicant's Community Trade Marks cover, inter alia, goods and services in Class 41, including "Sporting and cultural activities (...); providing on-line electronic publications; providing on-line electronic publications relating to tickets for sporting events, concerts, theatre, art exhibitions, television shows, lectures and other entertainment events".

The term STUBHUB is a highly distinctive and well-known trade mark that is exclusively associated with the Applicant and its services. Indeed, STUBHUB is a completely "made-up" term consisting of the unique juxtaposition of the term "stub" (traditionally, the remaining part of a ticket once entry has been validated) and "hub" (a central repository), thus together meaning a central place to buy tickets. The Applicant submits that the Domain Name registered by the Opponent identically reproduces the Applicant's distinctive and well-known STUBHUB trade mark in which the Applicant has rights.

The domain name was registered in bad faith

In view of (i) the Applicant's longstanding use of its STUBHUB mark and its long-established visibility and renown on the Internet in relation to sporting and entertainment events and (ii) the Opponent's affinity with sporting events, ticketing, digital marketing and the Internet, it is inconceivable that the Opponent was unaware of the Applicant's rights at the time of registration of the Domain Name.

Given the Opponent's awareness of the Applicant and its rights in the term STUBHUB, it is clear that the Opponent registered the Domain Name in bad faith as a blocking registration to prevent the Applicant from reflecting its trade mark in the corresponding .SE domain name, with the result of disrupting the Applicant's business.

In light of the distinctiveness of the term STUBHUB and its exclusive association with the Applicant, it is simply not plausible to conceive of any circumstance under which the Opponent could have registered the Domain Name in good faith. The term STUBHUB is not a dictionary term and not a term one would expect someone interested in "stubbracing" to use when searching for related resources online. It is highly unlikely that the Opponent's choice of domain name was a mere coincidence or the result of independent creation.

Finally and importantly, four days after receiving notice of the Initial Application, the Opponent, in an effort to avoid liability, created a very minimal website at www.stubhub.se, purportedly to provide a space dedicated to the sport of "stubbracing". The Applicant submits that if the Opponent had indeed the intention of creating a legitimate website for this sport, he would clearly not have waited nearly two years after registration of the Domain Name for the Initial Application to be filed and he would likely have responded to the cease and desist letters and the Initial Application.

In addition, if the Opponent had indeed intended to register a domain name to use it in relation to "stubbracing", it would have chosen a name clearly designating this sport such as "stubbracing.se" or "stubbrace.se", both of which were available for registration at the time the Domain Name was registered. Thus, the fact that the Opponent rather elected to register a

domain name identically reproducing the Applicant's distinctive STUBHUB trade mark, which only bears a very vague association with "stubbracing", is a strong indication of bad faith on the part of the Opponent.

The domain name is being used in bad faith

The Opponent's past and current use of the Domain Name is further evidence of the Opponent's bad faith. Until 31 October 2011, the Opponent had made no active use of the Domain Name. Given the distinctiveness and renown of the term STUBHUB and its exclusive association with the Applicant, it is inconceivable that the Opponent could have made a good faith use of the Domain Name. Thus, the fact that the Opponent did not actively use the Domain Name prior to the filing of the Initial Application is, in the present circumstances, a strong indication of the Opponent's bad faith use of the Domain Name.

In addition, it is abundantly clear that the use made of the Domain Name four days after the filing of the Initial Application – and unchanged since – constitutes further evidence of bad faith use on the Opponent's part. Indeed, the website content was hastily put together and sparsely populated on 31 October 2011 in order to mislead the Panel and could thus not conceivably be seen as a use in good faith of the Domain Name, given the factual circumstances.

Given the Opponent's profile and the fact that Domain Holder's is a digital marketing specialist who has organised many web events with corresponding websites of a very high quality, it makes it inconceivable that the very minimal content uploaded at www.stubhub.se would have been created for any reason other than to mislead the initial panel and give the illusion of a legitimate interest.

In view of the foregoing, the Applicant submits that the Domain Name has been registered and is being used in bad faith by the Domain Holder.

The Domain holder has no legitimate interest in the Domain Name

Prior to notification of the Initial Application filed on 27 October 2011, there was no indication that the Opponent had ever used or made demonstrable preparations to use the Domain Name in connection with commercial or private operations that do not infringe on the Applicant's rights: The Domain Name was pointing to an inactive website merely containing the following text: "*Apache is functioning normally*". Such passive holding of the Domain Name for almost two years is, in the present circumstances, a strong indication that the Opponent has no rights or legitimate interest in the Domain Name.

The very minimal content of the website put together on the 31 October 2011 was not changed until the Opponent in the present proceedings yet again proceeded to modify the content of the website associated with the disputed domain name <**stubhub.se**> after the filing of the Application. The Domain Name now points to another simple, one-page website prominently displaying a photograph of logs and the text "STUBHUBRACING" superimposed onto said image together with a background photograph of a racing event. There are no links or subpages.

Indeed, it seems clear that since the Domain Name was registered by the Opponent on 28 December 2009, the only two changes the Opponent has made on the website have been triggered by, and in response to, the two Applications filed by the Applicant: (i) the Initial Application of 27 October 2011 and (ii) the present Application of 18 December 2013. Therefore, the content of the website associated with the Domain Name cannot support a finding of a legitimate interest. On the contrary, the fact that the Opponent has never updated the website until after the filing of this Application shows that the Opponent never had a genuine legitimate interest in the Domain Name.

In addition, the previous website prominently displayed STUBHUB, whereas the website currently associated with the Domain Name prominently displays the term STUBHUBRACING. The term STUBHUBRACING is completely nonsensical. Indeed, STUBHUBRACING would imply the racing of "stubhubs", which makes no sense and confirms that this is another bad faith attempt by the Opponent to create the appearance of a legitimate interest and deceive the Panel.

In this regard, it is worth noting that the news displayed on the screen captures submitted by the Opponent are not news produced by the Opponent but rather RSS feeds and that this is an easy, quick way to add content to a website (not just current but also past news). Such RSS feed has been taken from the Swedish Motorcycle and Snowmobile Association ("Svenska Motorcykel- och Snöskoterförbundet"), available at <http://www.svemo.se/sv/Nyheter/> and the actual RSS feed can be found here: <http://www.svemo.se/sv/Lastasidor/IONF/>. It is worth noting that upon a search of the SWEMO website, there is no mention of the terms "stubhub" or "stubhubracing", not even "stub" or "stubb".

It could not be reasonably believed that the Domain Name is being used or has been registered to be used in its "linguistic meaning" as the use of the Domain Name for the type of content currently available would be a linguistic nonsense. The term STUBHUB has no meaning in Swedish (or indeed any other language) other than in relation to the Applicant. Thus the use of the term STUBHUB does not make sense in any other context other than in relation to the Applicant's services.

The website currently associated with the Domain Name is purportedly a "hub" (in the English sense) for people to talk about a sport allegedly known as "stubbracing". Whilst in Sweden there seems to be a sport known as "stubbrrace", there is no evidence that this sport is commonly known as "stub" or that it is spelled with one "b". In addition, there is no evidence that the word "hub" is commonly used in Swedish by itself or in combination with other words, quite the opposite in fact.

If the Opponent had the real intention of creating a legitimate website for this sport, he would have registered a corresponding domain name, such as "stubbracing.se" or "stubbrrace.se", both of which were available for registration at the time of registration of the Domain Name, instead of the Applicant's distinctive STUBHUB trade mark. Thus, it is abundantly clear that the use of the term STUBHUB in relation to a relatively unknown sport known as "stubbrrace" is simply too far-fetched and not remotely credible taking into account the overall circumstances of this case.

In view of the foregoing, and the overall circumstances of the present case, the Applicant submits that the Opponent has no rights or legitimate interest in the Domain Name.

The Domain holder

On behalf of the Domain Holder, the sole member of the board of the company, Martin O has stated, in the main, the following:

I have an interest in motorsport and I practise, in my spare time, among other things, stub or stubracing. I have been working on a new website for nearly a year and put in a lot of time into this work, including drafting guidelines, programming computer software and designing logos.

Stubracing is a Stub, Stubracing, Stubhubracing or stubbracing etc are different names of the same sport. Stubracing is a small sport in Sweden, which we would like to lift because it is great fun.

I am a member of different motor-teams, for instance in the Porsche-team, where we have several ATV vehicles (All Terrain Vehicles). The Porsche-team started to ride the ATV:s at different stadiums with clear-felled areas, which was fun. When we searched for a similar activity, we found stubhub racing.

When I registered the domain name, I was not aware of any company in Sweden with the company name of Stubhub. And to my knowledge there is still no company in Sweden of the name Stubhub. Personally, I did not hear about the name until the Applicant wanted the domain name transferred.

The trade mark Stubhub is hardly observable on the Swedish market. If you search for “Stubhub Sverige” you get the information that Stubhub Inc. does not offer or send tickets to Sweden.

I have never tried to sell the domain name to the Applicant or to operate any business competing with the Applicant. Nor have I, at all, tried to make a profit on the website. And there is no banner advertising space on the website.

I have cooperated with companies and registered campaign-sites with the companies trade marks. I am also assisting a MMA gala (Mixed Martial Arts) with marketing, but the arenas/producers decide where the tickets are to be sold.

I have already won one case concerning the domain name <stubhub.se> (ADR case No. 530) and I cannot see that there is any difference between the present case and the earlier case. I cannot afford to appoint a lawyer and I am not used to dispute with companies like eBay Inc.

FINDINGS OF THE ARBITRATORS

In accordance with the .SE's Terms and Conditions of registration, a Domain Name may be 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 distinguishing product feature, *inter alia* a trade mark, which is legally binding in Sweden and to which the party requesting dispute resolution can prove its rights,
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.

Identical or similar to Applicant's trademark

The Applicant is the holder of the community trade marks STUBHUB, No. 004998324, and StubHub! (No. 004998316) registered on July 25, 2007 (applications filed on April 4, 2006), which enjoy protection in Sweden. The domain name <stubhub.se> is, in any case, identical with the community trade mark STUBHUB.

Registered or used in bad faith

The domain name <stubhub.se> was registered on 15 February 2011, consequently after the filing of the application for registration of the just mentioned trade mark STUBHUB.

The word STUBHUB must be considered to represent a high level of originality as such, and a high level of distinctive character as trade mark for *inter alia* ticket agency services for which it is registered and used. Moreover, it is clear from the evidence presented by the Applicant, that eBay Inc's acquisition of the StubHub business in February 2007, was widely reported by the press in several countries including in Sweden.

Under these circumstances, it is highly unlikely that the Domain holder – operating a business comprising Internet communication, event and public relations – at the point of time of the registration of the domain name, would have been unaware of the StubHub business. In fact, the Domain holder must have known that a third party was using the trade mark STUBHUB (cf. the European Court of Justice's judgement in Case No. C-529/07, Chokoladefabriken Lindt & Sprüngli, 53). Therefore, the Domain name must be considered being registered in bad faith.

Rights or justified interest

To meet the criterion of [rights or] justified interest in the domain name, the holder of the domain must put the domain name in genuine use. The holder of the domain must, however, be given reasonable time for consideration to put the domain name in such use (see ADR Case No. 129, 121.se). But the holder of the domain must not put off the use for a period of time as long as two years (see ADR Case No. 287, kistamassan.se). Further, after the expiry of the time for consideration, genuine use must commence before the filing of an application for dispute resolution (see ADR Case No. 321, stockmann.se).

According to the evidence presented by the Applicant, the domain name <stubhub.se> pointed to a blank web page from the time of the registration on 15 February 2011 until 31 October 2011, when a sparsely populated one-page website was set up with reference to “stubracing”. Accordingly, the webpage was set up after the filing of the earlier application for alternative dispute resolution on 27 October 2011. However, the just mentioned web page must be considered having been set up within a reasonable time for consideration counting from the date of registration of the domain name.

The web page remained, according to the evidence, unchanged until at least 19 January 2014. On 30 January 2014 the domain name was not pointing to any active website. But as of at least 11 February 2014, the domain name points to another one-page web site displaying a photograph of logs and the text “STUBHUBRACING”. Consequently, the meagre content of the web site remained unchanged for more than two years. Furthermore, these changes of the web site were posted after the filing of the present application for dispute resolution. Under these circumstances, the Domain holder has not proven any rights or justified interest in the domain name.

On the basis of the foregoing, the Arbitrators conclude that the domain name <stubhub.se> shall be transferred to the Applicant.

On behalf of .SE

Per Carlson
(Chairman)

Petter Rindforth

Jan Rosén