

# Alternative Dispute Resolution (ADR)

**DECISION**

2011-12-19

**TICKETNUMBER**

530

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**APPLICANT**

StubHub, Inc

San Francisco, California

CA 94105

United States of America

**Counsel:**

Hogan Lovells (Paris) LLP – David T

75116 Paris

France

**OPPONENT**

OHM Group

191 34 Sollentuna

**MATTER**

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

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**DECISION**

The request for transfer of the domain name <stubhub.se> to the Applicant is denied.

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## **BACKGROUND TO THE DISPUTE**

The domain name <stubhub.se> was registered for the Opponent on December 28, 2009.

The Applicant applied to .SE for dispute resolution on October 27, 2011.

The procedure applied here is based on the Instructions governing Alternative Dispute Resolution proceedings for domain names in the top-level domain .se, in force as of February 15, 2011, here in particular to be mentioned the provisions under 7.2 referring to “Directions applicable to ATF (paragraph 7)”.

The Applicant has paid the application fee on October 27, 2011, and it has expressed the wish that matter be decided by a single Adjudicator.

.SE has appointed Gunnar W. G. Karnell as Adjudicator.

The opponent has not replied to the application.

## **CLAIM**

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

## **THE APPLICANT’S CONTENTIONS**

The Applicant bases its claim on its Community trademarks STUBHUB 004998324 and 004998316 both registered on July 25, 2007. Its global market presence is reflected in a great number of domain name registrations.

StubHub is an online marketplace for buyers and sellers of tickets for sports, concerts, theatre and other live entertainment events. STUBHUB is a completely made up term. It is exclusively associated with the applicant. It is 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.

Screen captures taken on February 24 2011 and August 29 2011 respectively showed that the disputed domain name pointed to a blank page containing the following text: “Apache is functioning normally”. The term STUBHUB has no meaning in Swedish. It only evokes the Applicant’s central ticket repository. It does not make sense in any other context. In any event the Opponent has not made any active use of the domain name. At the time of filing the present application, the domain name was still pointing to the same website content. A cease and desist letter sent to the Opponent on May 10, 2011, was not replied to.

In its Application, as mentioned dated October 27, 2011, the Applicant states that the disputed domain name is identical to the trademark STUBHUB in which the Applicant has rights protected in Sweden and it gives an elaborate account of reasons for its opinion that the Opponent acted in bad faith when he registered or used the domain name without any rights or justified interests in the domain name.

The Applicant’s arguments in support of its claim have here been condensed because of the *factum superveniens* accounted for here below.

## FINDINGS OF THE ADJUDICATOR

The account given here above about the Applicant's arguments in support of its contentions about bad faith and lack of rights or justified interest in the domain name has been held very short, due to the *factum superveniens* that visiting the domain <stubhub.se> upon receipt of the case, the Adjudicator found a home page, indicated as "posted by admin on October 31, 2011" with pictures showing stubracing activities with accompanying, explaining texts in Swedish language, as shown by the here appended three pages PDF copy, downloaded from the Internet on December 19, 2011.

The site appears to be under development, but it is clearly indicative of an interest to provide a "portal" for those who take an interest in the sport named stubracing; in particular, in the Nordic countries, developed in Denmark. A translation of the main explicative part of the Swedish text says: "This site is a Portal for you who like all kinds of stubracing. Today, it is difficult to find each other as well as information about our motorsport on the web. This site is made to provide you with a simple means to come to contacts with fans, drivers and clubs. It will help you to get going rapidly and to find the best environment for stub." In English language the site shows, among here non-significant indications for those who may reply, the phrase: "Powered by StubHub / Designed by StubHub".

The Applicant's statement about similarity between the disputed domain name and the Applicant's trademark is correct. The trademark is protected under Swedish law.

However, when it comes to the criteria about registration and use in bad faith and rights or justified interest in the domain name, the Adjudicator finds that, notwithstanding the fact that the trademark STUBHUB was registered and in worldwide use prior to the registration of the domain name, present use of the domain name on site directs to furthering a *per se* legitimate sports activity, other and afar from the Applicant's line of business. At the time of the Applicant's investigations, leading to its application to .SE, the Applicant did not find any indication on the Opponent's site about its present content, but what is now shown cannot be ignored in the present case.

The Opponent's use, in its domain name, of the element "hub" is well known English for the Swedish word "nav" and hence an appropriate word to combine with the name of the sport named "stub" (see above), as short for stubracing. Also in Sweden, "hub" is nowadays understood as a centre, e. g. as used for airports where airlines connect, which corresponds to its use in the Swedish stubracing context: a hub for the motorsport named stub or stubracing.

There is convincing reason to believe that the disputed domain name has been registered in its linguistic meaning and that it has now been brought to use in this meaning, hence evidencing a justified interest for the Opponent in its domain name, making this interest the basis of the Adjudicator's disavowal of the Applicant's claim.

It cannot be understood from what is now the use of the domain name, that its registration might have been in bad faith, nor that the domain name is presently used in bad faith. There is no indication to read out from the Opponent's site about an intention to compete with the Applicant or otherwise to infringe on any Applicant's rights. Even if it is a possibility that cannot be ruled out that the Opponent may have registered its domain name aware of the Applicant's trademark and of how the registration would stand in the way for the Applicant's registration of its trademark as a domain name, the Opponent's justified interest must prevail. That the use of the

domain name appears to have been initiated only after almost two years since its registration and most likely (the Applicant's cease and desist letter) in awareness of the Applicant's rights to its trademark does not either tell against the Opponent's justified interest in the domain name as used.

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On behalf of .SE

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Gunnar Karnell