

## **Alternative Dispute Resolution Proceeding**

### **Accelerated Proceeding**

### **Case No. DSE2022-0028**

#### **1. Petitioner**

The Petitioner is Rawbite ApS, Denmark, represented by Bahlsen GmbH & Co. KG, Germany.

#### **2. Domain Holder**

The Domain Holder is B.C and A.K., Skumgaarden ApS, Denmark.

#### **3. Domain Name and Procedural History**

This Alternative Dispute Resolution proceeding relates to the domain name <rawbite.se>.

This Petition was filed under the Terms and Conditions of registration (the “.se Policy”) and the Instructions governing Alternative Dispute Resolution proceeding for domain names in the top-level domain .se (the “.se Rules”).

The WIPO Arbitration and Mediation Center (“the Center”) verified that the Petition satisfied the formal requirements of the .se Policy and the .se Rules. The Center sent an invitation to the Petitioner to amend its Petition on September 27, 2022. The Petitioner submitted an amendment to the Petition on September 29, 2022. In accordance with Section 13 of the .se Rules, the Center formally notified the Domain Holder of the Petition on September 29, 2022. The Domain Holder did not submit any response and, accordingly, the Center notified the Domain Holder’s default on October 31, 2022.

The Center appointed Johan Sjöbeck as the sole Arbitrator in this matter on November 2, 2022. The Arbitrator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with Section 1 of the .se Rules.

#### **4. Factual Background**

The Petitioner is a Danish company that offers bars made of fruits and nuts under the domain name <rawbite.com>.

The Petitioner is the owner of a number of trademark registrations that are legally valid in Sweden, including the following:

RAW BITE THE ORGANIC FRUIT & NUT BITE (fig), European Union registration No. 010673796 with application date February 24, 2012, and registration date September 7, 2012, for class 29, 30, and 31.

RAW BITE (fig), European Union registration No. 016515884 with application date March 28, 2017, and registration date July 11, 2017, for class 29, 30, and 31.

RAWBITE (word), European Union registration No. 017248121 with application date September 25, 2017, and registration date January 15, 2018, for class 29, 30, and 31.

The disputed domain name <rawbite.se> was registered by the Domain Holder on September 1, 2018, and it does not resolve to an active website.

## **5. Claim**

The Petitioner claims that the disputed domain name shall be transferred to the Petitioner. Furthermore, the Petitioner also requests to have the dispute decided as an Accelerated Proceeding if the Domain Holder does not respond to the Petition.

## **6. Parties' Contentions**

### **A. Petitioner**

The disputed domain name <rawbite.se> is identical to the Petitioner's RAWBITE trademark and the Domain Holder is preventing the Petitioner from registering and using its trademark as a domain name in the Swedish country code Top-Level Domain ("ccTLD") ".se".

The Domain Holder was aware of the Petitioner and its trademark RAWBITE when registering the disputed domain name. The RAWBITE trademark has a strong reputation. The disputed domain name was registered with the sole purpose to be sold to the Petitioner or to a competitor of the Petitioner. A representative of the Domain Holder stated in an e-mail dated May 17, 2022, that the disputed domain name was to be offered to a large competitor of the Petitioner. In an e-mail dated May 27, 2022, the Domain Holder stated that no infringement is at hand since the Domain Holder does not produce or sell any goods or services under the name "rawbite".

The Domain Holder has no right or justified interest in the disputed domain name. The Domain Holder owns no rights to any name that is identical or similar to the disputed domain name. The Domain Holder does not have any connection to the RAWBITE trademark and the Petitioner has not licensed or otherwise permitted the Domain Holder to use the trademark or to register and use a domain name incorporating the trademark.

The disputed domain name has not been registered in its linguistic meaning. The disputed domain name appears to be passively held for the sole purpose of being sold to the Petitioner or to competitors of the Petitioner. On May 9, and May 23, 2022, the Petitioner contacted the Domain Holder and requested the disputed domain name to be transferred to the Petitioner but the Domain Holder did not comply with the requests.

### **B. Domain Holder**

The Domain Holder did not file a Response to the Petition.

## **7. Discussion and Findings**

A domain name may, in accordance with the .se Policy Paragraph 7.2, be deregistered or transferred to the party requesting dispute resolution proceedings if all of the following three conditions are fulfilled:

1. The disputed domain name is identical or similar to a name which is legally recognized in Sweden and to which the party requesting dispute resolution can prove its rights, and
2. The disputed domain name has been registered or used in bad faith, and
3. The Domain Holder has no rights or justified interest in the disputed domain name.

All three conditions must be met in order for a petitioner to succeed in its action.

### **A. The Domain Name is identical or similar to a name which is legally recognized in Sweden and to which the Petitioner can prove its rights**

The Arbitrator finds that the Petitioner has a name legally recognized in Sweden (see section 4 above) and that the disputed domain name <rawbite.se> is identical to the Petitioner's trademark RAWBITE.

The Petitioner has proven the first requirement under Paragraph 7.2 of the .se Policy.

### **B. The Domain Name has been registered or used in bad faith**

The Petitioner's trademark registrations for RAWBITE predate the registration of the disputed domain name <rawbite.se>. From the submitted evidence, it is clear that the Domain Holder has communicated that it intends to offer the disputed domain name for sale to a competitor of the Petitioner. In the absence of any evidence to the contrary, the Arbitrator finds on the balance of probabilities that the Domain Holder registered the disputed domain name with the Petitioner's trademark and business in mind and with the intention to sell it to the Petitioner. Another factor to weigh in the balance is the fact that the Domain Holder has not bothered to respond to the Petitioner's contentions.

There is no evidence in the case file that refutes the Petitioner's submissions. Therefore, the Arbitrator concludes that the Petitioner has also proven the second requirement under Paragraph 7.2 of the .se Policy and that the disputed domain name <rawbite.se> has been registered in bad faith.

### **C. The Domain Holder has no rights or justified interest in the Domain Name**

Despite given the opportunity, the Domain Holder has not submitted any evidence in this case to demonstrate that the Domain Holder is the owner of a trademark, or any other right, similar to the disputed domain name or that the Domain Holder is commonly known by the disputed domain name. By not submitting a Response, the Domain Holder has failed to invoke any circumstances, which could demonstrate pursuant to Paragraph 7.2 of the .se Policy, any rights or justified interests in respect of the disputed domain name. Consequently, there is no evidence in the case that refutes the Petitioner's submissions, and the Arbitrator concludes that the Petitioner has also proven the third requirement under Paragraph 7.2 of the .se Policy.

## **8. Decision**

For the foregoing reasons, in accordance with Paragraph 7.2 of the .se Policy, the Arbitrator orders that the disputed domain name <rawbite.se> shall be transferred to the Petitioner.

**Johan Sjöbeck**

Date: November 5, 2022