

ADJUDICATOR DECISION

CASE NUMBER:	ZA2010-0058
DECISION DATE:	30 November 2010
DOMAIN NAME:	pocket-media.co.za
THE DOMAIN NAME REGISTRANT:	Jackie Hunter
REGISTRANT'S LEGAL COUNSEL:	None
THE COMPLAINANT:	G W MCDONALD
COMPLAINANT'S LEGAL COUNSEL:	SPOOR & FISHER
THE 2 nd LEVEL DOMAIN NAME ADMINISTRATOR: Administrators)	UniForum SA (CO.ZA

1) Procedural History

1. The Dispute was filed with the South African Institute of Intellectual Property Law (the "SAIPL") on **19 August 2010**. On **23 August 2010** the SAIPL transmitted by email to UniForum SA a request for the registry to suspend the domain name(s) at issue, and on **23 August 2010** UniForum SA confirmed that the domain name had indeed been suspended. The SAIPL verified that the Dispute satisfied the formal requirements of the .ZA Alternate Dispute Resolution Regulations (the "Regulations"), and the SAIPL's Supplementary Procedure.

2. In accordance with the Regulations, the SAIPL formally notified the Registrant of the commencement of the Dispute on **13 September 2010**. In accordance with the Regulations the due date for the Registrant's Response was **11 October 2010**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on **02 November 2010**.
3. The SAIPL appointed **Mike du Toit** as the Adjudicator in this matter on **10 November 2010**. The Adjudicator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the SAIPL to ensure compliance with the Regulations and Supplementary Procedure.

2) Factual Background

1. The factual background appears from the Dispute lodged by the Complainant. As no response to the Dispute was filed, there is no dispute on factual issues and the Adjudicator may accept the allegations of fact by the Complainant, as generally correct.
2. The Dispute relates to the domain name, pocket-media.co.za, which was registered on 3 June 2010.
3. According to the Whois facility, the Registrant in these proceedings is the listed .co.za registrant of the domain name in dispute, Jackie Hunter. All information known to the Complainant about the Registrant is as follows:
 - Physical: Cnr Hawley & Skeen Boulevard, Bedfordview, Null 2007
 - Postal: PO Box 1935 Bedfordview, Null 2007
 - Telephone: (+27) 11 455 3244
 - Fax: (+27) 11 455 4722
 - E-mail: info@mediablue.co.za

4. The Complainant is the proprietor of the POCKETMEDIA trade mark in various international jurisdictions, and in South Africa, in relation to goods falling within class 16. These rights pre-date 3 June 2010, the date of registration of the domain name.
5. The Complainant has licensed use of its POCKETMEDIA trade mark, in South Africa, to Z Card South Africa (Pty) Ltd ("Z Card") since 1994, and to Pocketmedia Solutions (Pty) Ltd since 2003.
6. The Registrant is a previous employee of Z Card and was employed by Z Card for the period 2001 to 2007 as a national sales manager.
7. The Registrant's domain name pocket-media.co.za features the Complainant's POCKETMEDIA trade mark. The Registrant uses the website to market and sell a competing product to the Complainant's POCKETMEDIA product under the trade mark ORIGAMI MEDIA.
8. The Complainant's attorneys, Spoor & Fisher, addressed a letter of demand to the Registrant on 4 August 2010, however, no response was received at the date of lodgement of the Complaint.

3) Parties' Contentions

1. The basis of the Complainant's objection is that the domain name is an abusive registration.

2. The Complainant submits that the Registrant has registered the domain name pocket-media.co.za in a manner which, at the time when it was registered, took unfair advantage of and was unfairly detrimental to the Complainant's rights.

4) Discussion and Findings

1. Complainant's Rights

1. Having read the Dispute, the Adjudicator is satisfied that:
 - a. the Complainant has established statutory and common law rights in the POCKETMEDIA trade mark;
 - b. the Complainant's statutory and common law rights, in the POCKETMEDIA trade mark, pre-date the Registrant's registration of the pocket-media.co.za domain name; and
 - c. the pocket-media.co.za domain name is identical to the Complainant's POCKETMEDIA trade mark.

2. Abusive Registration

1. In terms of Section 3(1)(a) of the Regulations, to succeed with its Dispute, the Complainant has to prove, on a balance of probabilities, that:
 - 1.1 it has rights in respect of a name or mark which is identical or similar to the domain name; and
 - 1.2 the domain name, in the hands of the Registrant, is an abusive registration as defined.

2. In terms of Section 1(a) of the Regulations, an abusive registration means a domain name which –

was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the complainant's rights; or ...

3. In terms of the proviso to Section 5¹, provided the Complainant proves that the domain name registered by the Registrant is identical to its POCKETMEDIA trade mark, the burden of proof shifts to the Registrant to show that the registration is not abusive.²

4. The subject name of the domain name is the mark POCKET-MEDIA. This mark, save for the hyphen which, in my view does not serve to distinguish the domain name, is identical to the Complainant's POCKETMEDIA trade mark.

5. The Complainant has alleged registered and common-law rights and I consider the rights established for the purpose of this Dispute.

¹ Section 5(c) of the Regulations states the following: "Provided that the burden of proof shifts to the registrant to show that the domain name is not an abusive registration if the domain name (not including the first and second level suffixes) is identical to the mark in which the complainant asserts rights, without any addition".

² See a discussion on this in paragraphs 4.6 and 4.7 of the SAIPL Decision - Federation Internationale de Football Association (FIFA) v X Yin (ZA2007-0007).

6. The burden of proof has been shifted to the Registrant to prove that the registration of the pocket-media.co.za domain name is not an abusive registration and, in light of the fact that the Registrant has not responded to the Complaint, the matter has been disposed of.

7. I am of the view that the domain name amounts to an abusive registration in the hands of the Registrant.

5) Decision

1. For all the foregoing reasons, in accordance with Regulation 9, the Adjudicator orders that the domain name, pocket-media.co.za be transferred to the Complainant.

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MIKE DU TOIT
SAIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za