

Decision

[ZA2013-0136]

**.ZA ALTERNATE DISPUTE RESOLUTION
REGULATIONS (GG29405)**

ADJUDICATOR DECISION

CASE NUMBER:	ZA2013-0136
DECISION DATE:	5 June 2013
DOMAIN NAME	Alamocarrental.co.za
THE DOMAIN NAME REGISTRANT:	Amy Hill
REGISTRANT'S LEGAL COUNSEL:	n/a
THE COMPLAINANT:	Vanguard Trademark Holdings USA LLC
COMPLAINANT'S LEGAL COUNSEL:	Spoor & Fisher
2 nd LEVEL ADMINISTRATOR:	UniForum SA (CO.ZA)

1 Procedural History

- a) The Dispute was filed with the South African Institute of Intellectual Property Law (the "SAIPL") on **4 April 2013**. On **8 April 2013** the SAIPL transmitted by email to UniForum SA a request for the registry to suspend the domain name(s) at issue, and on **8 April 2013** 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.
- b) In accordance with the Regulations, the SAIPL formally notified the Registrant of the commencement of the Dispute on **9 April 2013**. In accordance with the Regulations the due date for the Registrant's Response was **9 May 2013**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on 13 May 2013.
- c) The Complainant did not submit any Reply.
- d) The SAIPL appointed **Mike du Toit** as the Adjudicator in this matter on **22 May 2013**. 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

- 2.1 The Complainant has various international registered trade marks and common law rights in the trade mark ALAMO. The registered rights in South Africa relate to trade mark registration nr 1991/10916 ALAMO in cl 39 in relation to "transportation and storage" The trade mark has also being used in South Africa since before the registration of the disputed domain name.

The Registrant registered alamocarrental.co.za with Uniforum SA on 21 August 2012. The Registrant has a website, www.alamocarrental.co.za, offering sponsored links to other car rental services supplied by the Complainant's competitors. The website also offers the disputed domain name for sale and has a link to a bidding site where one can purchase the disputed domain name.

2.2 The Complainant lodged a dispute in terms of the .ZA ALTERNATIVE DISPUTE RESOLUTION REGULATIONS but the Registrant declined to lodge any response.

2.3 This dispute will therefore be adjudicated on an unopposed basis.

3 Parties' Contentions

3.1 Complainant

a) The Complainant's dispute relies on the fact that the disputed domain name is identical or similar to a name or mark in which the Complainant has rights.

The Complainant relies on the existence of the following registered trade mark:

- 1991/10916 ALAMO in cl 39 in respect of transportation and storage.

b) The Complainant refers to two of its websites at www.alamo.co.uk and www.alamo.com.

c) The Complainant also relies on its common law rights in the ALAMO trade mark. It claims to have built up these rights since 1974 in the USA and entered the South African market in 1999.

- d) The Complainant argues that the disputed domain name wholly incorporates its registered and well known ALAMO trade mark and refers to services in respect of which the registered ALAMO trade mark is registered. It claims that the disputed domain name is so similar to the Complainant's well known trade mark that it is bound to lead to confusion and deception arising in the market. In addition, the disputed domain name is very similar, if not identical to the name and trade mark in respect of which it holds substantial rights.
- e) The Complainant relies on the fact that the domain name in the hands of the Registrant is an abusive registration.
- f) The Complainant believes that the continued use and registration of the disputed domain name is abusive in that:
1. it was registered in a manner which , at the time when the registration took place, took advantage of and was unfairly detrimental to the Complainant's rights; and
 2. It has been used in a manner that takes unfair advantage of and is unfairly detrimental to the Complainant's rights.
- g) The Complainant relies on the adoption and use of the disputed domain name in the www.alamocarrental.co.za website by the Registrant without the Complainant's consent or without any rights in or legitimate interest in the ALAMO trademark.
- h) The Registrant also offers the disputed domain name for sale, which the Complainant contends has the potential to disrupt its business. The use of the disputed domain name also prevents the Complainant from exercising its trade mark rights.

3.2 Registrant

- a) The Resistant did not reply to the Complainant's contentions and the dispute is uncontested.

4 Discussion and Findings

- a) The Complainant's rights in and to its ALAMO trade marks, whether registered or at common law are unchallenged as the Registrant has not filed a response to the complaint. The undisputed facts established that it, at the very least, makes unauthorised use of the registered trade mark, prevents the Complainant from exercising its rights and disrupts unfairly the business of the Complainant.

4.1 Complainant's Rights

- 4.1.1 The Complainant has submitted that it has registered rights in terms of the Trade Marks Act in its ALAMO trade mark in cl 39. It has further submitted that it has substantial common law rights in its ALAMO trade mark in relation to transportation and storage services. These rights are accepted as proven.

4.2 Abusive Registration

- 4.2.1 The Complainant has established that the disputed domain name is identical or similar to a name or mark in which it has rights. The Complainant's reference to Vanguard Trademark Holdings USA LLC v Wang Liqun, ZA 2013-0123 nr 2957(23 February 2013) is applied and the decisions referred to in "ACR-7" are noted.

The Complainant's submissions are accepted in that the continued use and registration of the disputed domain name are abusive. The disputed domain name is preventing the Complainant from freely exercising its rights.

4.3 Offensive Registration

4.3.1 n/a

5. Decision

5.1 For all the foregoing reasons, in accordance with Regulation 9, the Adjudicator orders that the domain name alamocarrental.co.za be transferred to the Complainant.

.....
Mike du. Toit
SAIIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za