

Decision

[ZA2013-0154]

.ZA ALTERNATE DISPUTE RESOLUTION
REGULATIONS (GG29405)

ADJUDICATOR DECISION

CASE NUMBER:	ZA2013-0154
DECISION DATE:	23 December 2013
DOMAIN NAME	littlemiraclesuif.co.za
THE DOMAIN NAME REGISTRANT:	Adele van Rensberg
REGISTRANT' S LEGAL COUNSEL:	N/A
THE COMPLAINANT:	The Devonne Family Trust and Little Miracle Products and Services (Pty) Ltd
COMPLAINANT' S LEGAL COUNSEL:	Berdou Attorneys
2 nd LEVEL ADMINISTRATOR:	UniForum SA (CO.ZA)

1 Procedural History

- a) The domain in issue is <littlemiraclesuif.co.za>, which was registered on 19 April 2007.
- b) The Complainant is The Devonne Family Trust and Little Miracle Products & Services (Pty) Ltd. The Registrant is Adele van Rensburg (on behalf of Little Miracles UIF Services CC).
- c) This dispute was filed with the South African Institute of Intellectual Property Law (“SAIPL”), on **25 October 2013**. On **28 October 2013** the SAIPL transmitted by email to UniForum SA a request for the registry to suspend the domain name, and on the same day UniForum SA confirmed the suspension.
- d) In accordance with the Regulations, the SAIPL formally notified the Registrant of the commencement of the dispute on **30 October 2013** and a response was due from the Registrant by **27 November 2013**. The Registrant has not filed a response to the dispute.
- e) The SAIPL appointed **Adv Owen Salmon** as the Adjudicator in this matter on **2 December 2013**. On **2 December 2013** the Adjudicator 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 Devonne Family Trust is the registered proprietor of the trade mark LITTLE MIRACLE in classes 16, 25 and 35 in South Africa. These entries in the register date from 2004. Little Mirracle Products & Services (Pty) Ltd is its exclusive licensee in respect of the mark, and reference herein to the Complainant means the trade mark

proprietor.

- 2.2 The facts set out in the complaint are not in dispute. They show the following.
- 2.3 The Complainant has spent considerable amounts of money, time and effort in securing, developing, promoting, advertising and protecting its LITTLE MIRACLE mark. It has a website, at www.littlemiracle.co.za, which showcases its LITTLE MIRACLE range of goods, as well as its (well-known) distributors.
- 2.4 A letter of demand was sent to the Registrant on 20 August 2009, informing her of the rights of the Complainant and requesting, *inter alia*, deregistration of the offending domain name. After some months of correspondence, the Registrant agreed to “... *never use the LITTLE MIRACLE trade marks or any confusingly similar trade marks in relation to any goods or services whatsoever ...*” However, the Registrant continued to use the offending domain name, but a further letter addressed by Berdou Attorneys, on behalf of the Complainant, met with no response.

3 Parties’ Contentions

3.1 Complainant

- a) It is a reasonable conclusion that the Registrant registered, and is using and holding the offending domain name for some bad faith reason - for example, to profit from the sale of the domain name to another party and/or to eventually use the site to “catch” internet users looking for the Complainant and/or the Complainant’s services. There can be no other credible reason why the Registrant would register a domain name that is so closely associated with the Complainant’s registered mark.

(A point not made by the Complainant, but perhaps of note, is that the Registrant offers UIF claims services for maternity leave mothers. The Complainant's core business is disposal diapers.)

- b) The Registrant has no legitimate rights in and to the term LITTLE MIRACLE (or any variations thereof) and has breached her undertaking in which she agreed to cease the use thereof.
- c) In light of the above, it is concluded that the Registrant was aware of the Complainant's rights in and to the LITTLE MIRACLE trade mark at the time that the Registrant registered the offending domain name. Thus, it appears likely that Registrant submitted its domain name registration with full knowledge that the offending domain name infringed. It is also contented that the continued use was in breach of her undertaking.
- d) In the circumstances, the Complainant submits that it has demonstrated factors, as itemised in Regulation 4(1), which indicate that the offending domain name is an abusive registration.

3.2 Registrant

- a) There is no response from the Registrant.

4 Discussion and Findings

- a) The domain name <littlemiraclesuif.co.za> is obviously not identical to the name or mark in which the Complainant asserts it has rights, namely LITTLE MIRACLE. Nevertheless, in the Adjudicator's view, the name <littlemiraclesuif> is similar, within the meaning of the

Regulations, to LITTLE MIRACLE.

- b) The next question is whether the Complainant has ‘rights’ in the mark “LITTLE MIRACLE” . Clearly it does, if only by virtue of the trade mark registrations (wherein the mark is presumed to be distinctive).
- c) The question therefore to be decided is whether the domain name:-
- was registered or otherwise acquired in a manner which took unfair advantage of or was unfairly detrimental to the Complainant’ s rights; or
 - has been used in a manner that takes unfair advantage of, or is unfairly detrimental to the Complainant’ s rights.
- d) There are two potential abuses:-
- registration with abusive intent; and
 - abusive use,
- and the nature of “abusiveness” as contemplated by the Regulations does not require a positive intention to abuse the Complainant’ s rights, but that abuse was the effect of the use or registration.
- e) There exists an element of difficulty, in the absence of contentions from the Registrant, in concluding that the complaint is without substance. Given the Complainant’ s allegations (summarized above) the absence of a response leads to the inference that they are correct. This, in turn, means that the domain falls to be found abusive within the meaning of the Regulations. Moreover, in the Adjudicator’ s view, the undertaking covers the domain name, and it

has clearly not been given full effect.

5. Decision

- 5.1 For the foregoing reasons the Adjudicator's conclusion is that the domain name is abusive. In accordance with Regulation 9, the Adjudicator orders that the domain name be transferred to the Complainant.

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Adv Owen Salmon
SAIIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za