

ADJUDICATOR DECISION

CASE NUMBER:	ZA2016-0254
DECISION DATE:	23 January 2017
DOMAIN NAME	anglogoldashantiafrica.co.za
THE DOMAIN NAME REGISTRANT:	Sipho Pityana
REGISTRANT'S LEGAL COUNSEL:	Not represented
THE COMPLAINANT:	AngloGold Ashanti Limited
COMPLAINANT'S LEGAL COUNSEL:	Tyrone Walker, Moore Attorneys
THE 2 nd LEVEL DOMAIN NAME ADMINISTRATOR:	ZA Central Registry (CO.ZA Administrators)

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1) Procedural History

- a. The Dispute was filed with the South African Institute of Intellectual Property Law (the "SAIPL") on **2 December 2016**. On **2 December 2016**, the SAIPL transmitted by email to the AZ Central Registry (ZACR) a request for the registry to suspend the domain name at issue, and on **2 December 2016** ZACR 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 **5 December 2016**. In accordance with the Regulations the due date for the Registrant's Response was **5 January 2017**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on **9 January 2017**.
- c. The SAIPL appointed **Mike du Toit** as the Adjudicator in this matter on **16 January 2017**. 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

- a. The Complainant, AngloGold Ashanti Limited was founded in June 1998 with the consolidation of the gold mining interests of Anglo American Limited. The Complainant as it is now, was formed in April 2004 following the merger between AngloGold Limited and Ashanti Goldfields Company Limited.
- b. The Complainant enjoys extensive common law rights. It contends that its "ANGLOGOLD ASHANTI" trademarks are a widely-recognised brand. The Complainant contends that due to its extensive exposure in the market place it has become a well-known brand in South Africa.

c. The Complainant is the proprietor in South Africa of the following trademarks:

- Trade Mark No. 1997/11814 ANGLOGOLD in class 35,
- Trade Mark No. 1997/11815 ANGLOGOLD in class 36,
- Trade Mark No. 1997/11816 ANGLOGOLD in class 37,
- Trade Mark No. 1997/11817 ANGLOGOLD in class 40,
- Trade Mark No. 1997/11818 ANGLOGOLD in class 42,
- Trade Mark No. 1998/19913 ANGLOGOLD LOGO in class 14,
- Trade Mark No. 1999/16160 ANGLOGOLD LOGO in class 37,
- Trade Mark No. 1999/16161 ANGLOGOLD LOGO in class 40,
- Trade Mark No. 2008/00072 ANGLOGOLD ASHANTI in class 14,
- Trade Mark No. 2008/00073 ANGLOGOLD ASHANTI in class 37,
- Trade Mark No. 2008/00074 ANGLOGOLD ASHANTI in class 40,
- Trade Mark No. 2008/00075 ANGLOGOLD ASHANTI in class 41,
- Trade Mark No. 2008/00076 ANGLOGOLD ASHANTI in class 42,
- Trade Mark No. 2008/00078 ANGLOGOLD ASHANTI LOGO in class 14,
- Trade Mark No. 2008/00079 ANGLOGOLD ASHANTI LOGO in class 37,
- Trade Mark No. 2008/00080 ANGLOGOLD ASHANTI LOGO in class 40,
- Trade Mark No. 2008/00081 ANGLOGOLD ASHANTI LOGO in class 41,
- Trade Mark No. 2008/00082 ANGLOGOLD ASHANTI LOGO in class 42,
- Trade Mark No. 2008/10854 ANGLOGOLD ASHANTI in class 35,
- Trade Mark No. 2008/10855 ANGLOGOLD ASHANTI in class 36,
- Trade Mark No. 2008/10856 ANGLOGOLD ASHANTI LOGO in class 35,
- Trade Mark No. 2008/10857 ANGLOGOLD ASHANTI & LOGO in class 36,
- Trade Mark No. 2010/22745 ANGLOGOLD ASHANTI TECHNOLOGY INNOVATION CONSORTIUM in class 14,

- Trade Mark No. 2010/22746 ANGLOGOLD ASHANTI TECHNOLOGY INNOVATION CONSORTIUM in class 37,
 - Trade Mark No. 2010/22747 ANGLOGOLD ASHANTI TECHNOLOGY INNOVATION CONSORTIUM in class 38,
 - Trade Mark No. 2010/22748 ANGLOGOLD ASHANTI TECHNOLOGY INNOVATION CONSORTIUM in class 40, and
 - Trade Mark No. 2010/22749 ANGLOGOLD ASHANTI TECHNOLOGY INNOVATION CONSORTIUM in class 42.
- d. The Complainant is a Registrant of the following domain names:
- anglogoldashanti.co.za,
 - anglogoldashanti.com, and
 - anglogoldashantiprocure.co.za.
- e. On or about November 2015, it was brought to the Complainant's attention that the Registrant had registered the domain name anglogoldashantiafrica.co.za unlawfully and without the Complainant's authorisation.
- f. The Complainant initially assumed that it's Chairman of the Board of Directors, Mr Siphon Pityana had registered the disputed domain name. The Complainant launched an internal investigation to ascertain whether its Chairman (Mr Siphon Pityana) is indeed the Registrant. The investigation confirmed that Mr Pityana, the Chairman of the Board is not the Registrant of the domain name anglogoldashantiafrica.co.za, nor did he instruct any third party to register this domain name on his behalf.
- g. The Complainant sent a letter of demand to the Registrant but received no response. The Complainant ascertained that the domain name is in fact dormant.

3) Parties' Contentions

a. Complainant

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- i. The Complainant contends that the Registrant's disputed domain name is identical to the Complainant's "ANGLOGOLD ASHANTI" registered trademarks as it is visually similar and wholly incorporates the Complainant's trademarks.
 - ii. The purpose of registering the disputed anglogoldashantiafrica.co.za domain name can only be presumed to either generate website "hits" from members of the public who incorrectly believe that the disputed domain name is linked and/or associated to the Complainant and its "ANGLOGOLD ASHANTI" trademarks, alternatively to sell the domain name for a profit.
 - iii. The Registrant's purpose of registering the domain name anglogoldashantiafrica.co.za is to confuse members of the public into believing that the disputed domain name is that of the Complainant.
 - iv. The Complainant is of the view that the domain name amounts to an abusive registration in the hands of the Registrant, because the addition of the descriptive word "AFRICA" is insufficient to allay deception or confusion.
 - v. The disputed domain name in the hands of the Registrant is an abusive registration. In support of this contention, the Complainant has submitted that in terms of Regulation 4, the Registrant has registered the domain name primarily to:
 - Block intentionally the registration of a name or mark i.e. anglogoldashantiafrica.co.za in which the Complainant has rights.
 - The domain name 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.
 - The Complainant submits that it is clear that the Registrant has deliberately registered the offending domain name in

the future to possibly confuse members of the public into believing that the disputed domain name is in fact the Complainant's.

- The domain name has been registered in a manner that is unfairly detrimental to the Complainant's rights as it is visually and phonetically similar to the Complainant's "ANGLOGOLD ASHANTI" trademarks.

b. Registrant

The Respondent did not reply to the Complainant's contentions.

4) Discussion and Findings

The Complainant raised compelling arguments as to why the registration of the disputed domain name should be regarded as an abusive registration. However, it is this adjudicator's view that the most compelling argument was not raised in full, although the Complainant did lay the factual basis for the argument in terms of Regulation 4(1)(d). It provides that false or incomplete contact details in the whois database may indicate that the domain name is an Abusive registration.

In the decision of ZA2007-0003: Telkom SA Ltd vs. Cool Ideas 1290 CC the adjudicator found, with reference to the terms and conditions of Uniforum which state "Applicant (the Registrant) hereby irrevocably represents, warrants and agrees that its statements in the Application are accurate and complete", that incomplete and inaccurate information indicates bad faith on the part of the Registrant. Reference was made to WIPO/D2000-0501 and NAF/FA92016.

In the case of the disputed domain name, the Registrant is recorded as Siphon Pityana, who also happens to be a prominent businessman and current chairman of the board of the Complainant. It is simply too much of a coincidence that the Registrant has the same name and surname as the chairman of the board of the Complainant. In addition, the Complainant asserts that the physical address of the Registrant is at 67 Wessels Street, Johannesburg, Mpumalanga, 2128. Once again, the address is false as it refers to a Wessels street, in Johannesburg in the Mpumalanga province whilst the postal code refers to Bryanston, Johannesburg.

The false address and fraudulent use of the name of the chairman as Registrant, indicates that the actions of the Registrant fall within the scope of regulation 4(1)(d). All these factors indicate, on a balance of probabilities, that the disputed domain name was registered in bad faith and is an abusive registration.

I accordingly don't have to make a finding on the other grounds raised by the Complainant.

5) Decision

- a. This Adjudicator accordingly orders that the domain name anglogoldashantiafrica.co.za, be transferred to the Complainant.

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