

## ADJUDICATOR DECISION

CASE NUMBER:	<b>ZA2017-0269</b>
DECISION DATE:	<b>30 August 2017</b>
DOMAIN NAME	<b>absahomeloans.co.za</b>
THE DOMAIN NAME REGISTRANT:	<b>James Sai</b>
REGISTRANT'S LEGAL COUNSEL:	<b>None</b>
THE COMPLAINANT:	<b>Absa Bank Limited</b>
COMPLAINANT'S LEGAL COUNSEL:	<b>Tyrone Walker of Moore Attorneys Inc</b>
THE 2 <sup>nd</sup> LEVEL DOMAIN NAME ADMINISTRATOR:	<b>ZA Central Registry (CO.ZA Administrators)</b>

## 1) Procedural History

- a. The Dispute was filed with the South African Institute of Intellectual Property Law (the "SAIPL") on **5 July 2017**. On **5 July 2017** the SAIPL transmitted by email to the ZA Central Registry (ZACR) a request for the registry to suspend the domain name at issue, and on **10 July 2017** 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 **12 July 2017**. In accordance with the Regulations the due date for the Registrant's Response was **10 August 2017**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on **14 August 2017**.
- c. The SAIPL appointed **Victor Williams** as the Adjudicator in this matter on **23 August 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 is ABSA Bank Limited, a company duly incorporated according to the company laws of the Republic of South Africa, with principle place of business at Absa Towers West, 15 Troye Street, Johannesburg, Gauteng.
- b. The Registrant is James Sai, of 362 Frances Street, London, SE18 5LA, MY.
- c. The disputed domain name is absahomeloans.co.za.

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- d. The Complainant was founded in 1991, and is one of the biggest retail banks in South Africa.
  - e. The Complainant has over 1 753 000 customers who utilize the internet, and has over 9.4 million customers in South Africa.
  - f. In 2016 a number of awards were made to the Complainant for its services in the financial services sector.
  - g. The services and activities of the Complainant include providing personal loans, home loans, car vehicle finance, investments and insurance.
  - h. The Complainant is the registered proprietor in South Africa of the following trade marks:
    - (i) Trade mark No 1991/01263 ABSA in class 35;
    - (ii) Trade mark No 1991/01264 ABSA in class 36;
    - (iii) Trade mark No 1991/10303 ABSA in class 09;
    - (iv) Trade mark No 1991/10304 ABSA in class 16;
    - (v) Trade mark No 1991/10305 ABSA in class 36;
    - (vi) Trade mark No 1991/10306 ABSA in class 39;
    - (vii) Trade mark No 1991/10307 ABSA in class 41;
    - (viii) Trade mark No 1991/10308 ABSA in class 42;
    - (ix) Trade mark No 1998/16394 ABSA HOME LOAN/ABSA HUISLENING in class 36;
    - (x) Trade mark No 1999/00430 ABSA in class 36;and
    - (xi) Trade mark No 2017/03520 ABSA in class 36.
  - i. The holding company of the Complainant, Barclays Africa Group Limited, has been the registrant of the domain name absa.co.za since 1 January 1995. The Complainant has spent considerable time, money and effort in advertising and promoting the trade marks ABSA and ABSA HOME LOAN.

### **3) Parties' Contentions**

#### **a. Complainant**

- i. In February 2017 the Complainant discovered that the Registrant had registered the domain name absahomeloans.co.za.
- ii. The website is currently being used as an advertisement platform for *inter alia* ABSA HOME LOANS and HOME LOANS.
- iii. The Complainant through its legal advisors Moore Attorneys Inc addressed a letter of demand to the Registrant *inter alia* demanding transfer of the disputed domain name.
- iv. It is not possible that the Registrant was not aware of the well-known ABSA trade marks at the time that he registered the disputed domain name.
- v. The Registrant registered the disputed domain name in bad faith.
- vi. The disputed domain name is similar to the registered trade marks of the Complainant, and the Registrant is creating the impression that he is connected to the Complainant.
- vii. The Registrant is a habitual offender, having been the Defendant in a number of cases where he targeted big brands by registering domain names which incorporate their trade marks.
- viii. The registration of the disputed domain name by the Registrant is an abusive registration.

**b. Registrant**

- i. The Registrant is in default.

**4) Discussion and Findings**

- 4.1 The Registrant is in default, and has not filed any papers. The version of the Complainant therefore stands uncontested.
- 4.2 Based on the facts set out by the Complainant, it is clear that the registration of the domain name absahomeloans.co.za by the Registrant is an abusive registration.

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**a. Complainant's Rights**

- i. As set out by the Complainant, the Complainant has substantial common law rights, and registered trade mark rights, which afford the Complainant protection.

**b. Abusive Registration**

- i. The domain name absahomeloans.co.za was registered in a manner which, at the time when the registration took unfair advantage of or was unfairly detrimental to the Complainant's rights , and
- ii. The domain name absahomeloans.co.za has been used in a manner that takes unfair advantage of, or is unfairly detrimental to the Complainant's rights.

**5) Decision**

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

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**VICTOR WILLIAMS**  
SAIIPL SENIOR ADJUDICATOR  
[www.DomainDisputes.co.za](http://www.DomainDisputes.co.za)