



South African Institute of Intellectual Property Law

.za

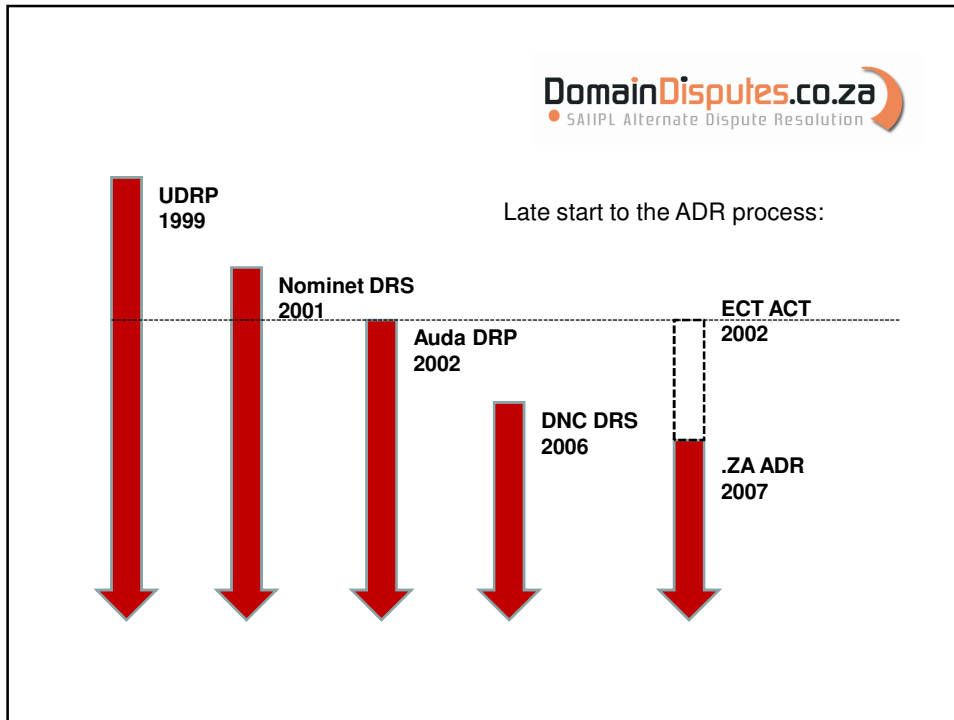


Alternate Dispute Resolution (ADR) The .ZA Experience



Introduction:

- Background Prior to 2007
- The ADR Implementation (June 2007)
- Our Experiences
- Future



Prior to the .za ADR process in 2007

- Referral to the Courts
- Limited assistance by Administrator
- Prior to ADR process, over 15 High Court matters.
- Court process grew increasingly unsuitable as zone grew in size.
 - Costs
 - Time
 - Technical

Timeline - .za implementation

2002	<ul style="list-style-type: none"> • ECT Act (August 2002) Chapter 10, Part 6 <ul style="list-style-type: none"> • DOC in consultation with DTI must establish an ADR process for the .ZA namespace • Develop Regulations with due regard to international precedent
2004/2005	<ul style="list-style-type: none"> • Consultative and Collaborative process between the Authority, UniForum SA, the Department of Communications and other significant stakeholders to develop and finalise the Regulations.
2005/2006	<ul style="list-style-type: none"> • General public consultative process.
2006/2007	<ul style="list-style-type: none"> • Regulations Gazetted (November 2006) <ul style="list-style-type: none"> • Concepts of an Abusive and Offensive Registration • Stipulate basic Procedure for administration of Disputes • Accreditation of ADR Providers • Only co.za domains
Feb 2007	<ul style="list-style-type: none"> • Accreditation of the SAIPL and AFSA (February 2007)
April 2007	<ul style="list-style-type: none"> • Establishment of DomainDisputes.co.za (SAIPL) (March 2007)
May 2007	<ul style="list-style-type: none"> • First Case filed with the SAIPL
June 2007	<ul style="list-style-type: none"> • First Case Decision (June 2007) – mrplastics.co.za

The .za ADR process in 2006/2007

- Started with the preparation of the .za ADR Policy (Regulations).
- Important Considerations:
 - Subjugation (Contract vs Legislation)
 - New or Existing Procedure (unique local requirements & international precedent)
 - Mediation (additional resources)
 - Accessibility (Financial Assistance)
 - Representation (local adjudicator, skills transfer)
 - Naming Sensitivities (offensive registrations)



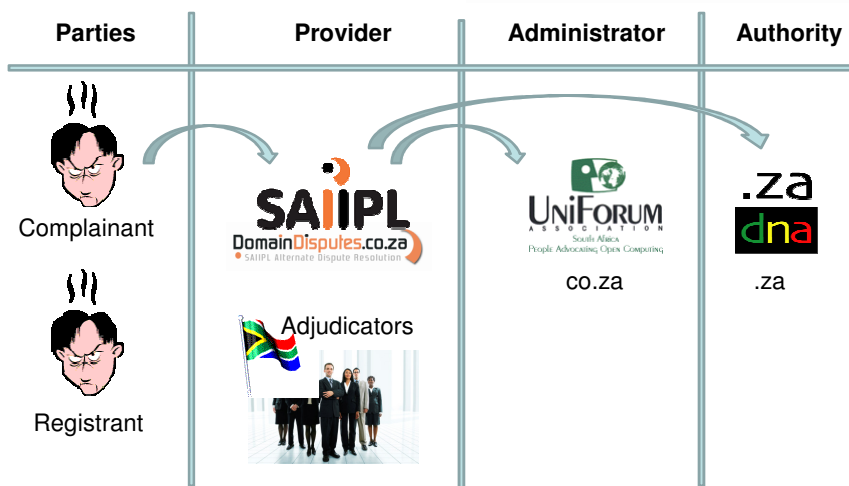
Regulations

- **Offensive Registration:**
 “means a domain name in which the complainant cannot necessarily establish rights but the registration of which is contrary to law, contra bonos mores or is likely to give offence to any class of persons”

- **Abusive Registration:**
 “means a domain name which either-
 (a) 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
 (b) has been used in a manner that takes unfair advantage of, or is unfairly detrimental to the complainant's rights”

- **Rights:**
 “includes intellectual property rights, commercial, cultural, linguistic, religious and personal rights protected under South African law, but is not limited thereto”.

Implementation & Experience



DomainDisputes.co.za
SAIPL Alternate Dispute Resolution

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FILING A DISPUTE

Guidelines to Filing a Dispute

The SAIPL has prepared a Dispute Template intended to serve as a guide for the preparation and submission of a Dispute under the Regulations and Supplementary Procedure. Download and complete the editable Dispute template.

Dispute Template (.odt Open Office format) Dispute Template (.doc WORD format)

You may choose to submit the Dispute either:

- in digital format by sending it as an email attachment to admin@DomainDisputes.co.za; or
- by post by sending it to the SAIPL.

Payment: Submit the required payment to the SAIPL, as specified in the Supplementary Procedure. The following payment methods are available:

- Cheque Payments sent to the above postal address; or
- Direct Deposits or Electronic Fund Transfers into the following account:
South African Institute of Intellectual Property Law
Standard Bank
Church Square
Cheque Account
Acc No. 010649514

Please send your remittance to admin@DomainDisputes.co.za citing the concerned domain as a reference.

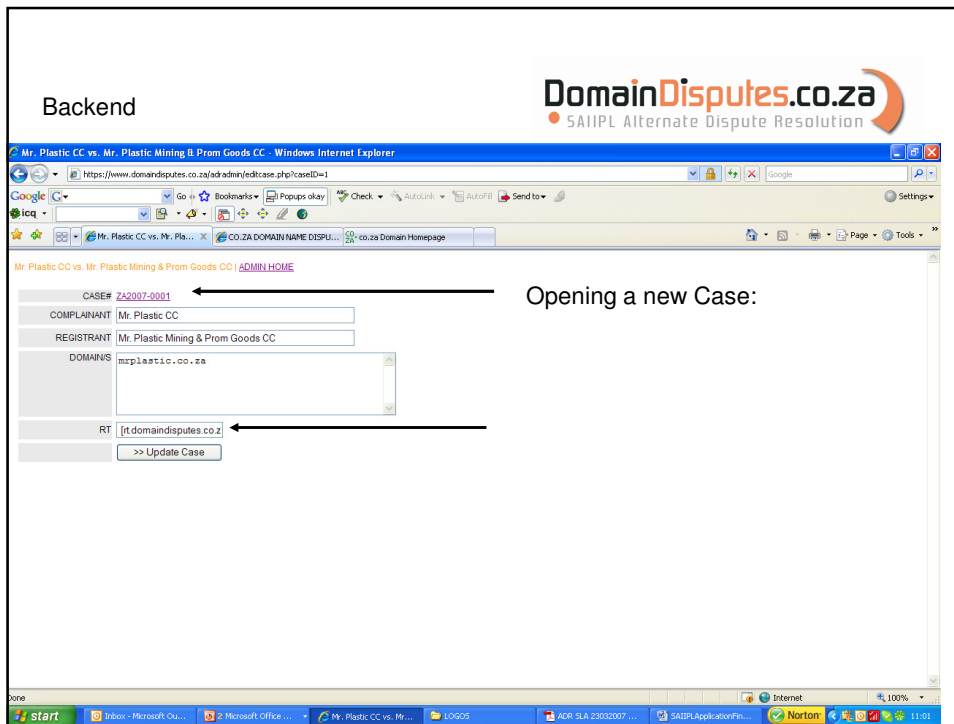
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CASES & DECISIONS

Case Number	Complainant	Registrant	Domain Names	Decision
ZA2007-0001	Mr. Plastic CC	Mr. Plastic Mining & Prom Goods CC	mrplastic.co.za	Refused
ZA2007-0002	Sales Hire CC	Hire City	saleshire.co.za	Settled
ZA2007-0003	Telkom SA Ltd	Cool Ideas 1920 CC	telkomedia.co.za	Transfer
ZA2007-0004	Telkom SA Ltd	Customer Care Solutions (Pty) Ltd	telcombusiness.co.za; telcom-business.co.za; telkomcorporate.co.za; telkom-corporate.co.za; and telkom-internet.co.za	Transfer
ZA2007-0005	Telkom SA Ltd & TDS Directory Operations (Pty) Ltd	The Internet Corporation	phonebook.co.za; whitepages.co.za	Appeal
ZA2007-0006	Standard Bank of South Africa Limited	Daniel Cox	standardbank.co.za; standardbank.co.za; wwwstandardbank.co.za; standerbank.co.za; standardbank.co.za; standerbank.co.za; standardban.co.za; standardbank.co.za; standardbank.co.za; standardbank.co.za; sandardbank.co.za	Transfer
ZA2007-0007	Fédération Internationale de Football Association (FIFA)	X Yin	fifa.co.za	Transfer
ZA2007-0008	HornFront Trading 272 CC	Jan Ward	privatesale.co.za	Refused



Backend **DomainDisputes.co.za**
SAIPL Alternate Dispute Resolution

Telkom SA Ltd vs. Customer Care Solutions (Pty) Ltd - Windows Internet Explorer

https://www.domaindisputes.co.za/admin/case.php?caseID=4

upload case decision pdf

CASE# [ZAC2007-0004](#)

COMPLAINANT Telkom SA Ltd

REGISTRANT Customer Care Solutions (Pty) Ltd

DOMAINS telkombusiness.co.za, telkom-business.co.za, telkom-corporate.co.za, telkom-corporate.co.za, and telkom-internet.co.za

RT [it.domaindisputes.co.za #34]

CASE DATE 2007-06-16

ASSIGN CASE

Alan Dunlop	ADJUDICATOR 1
none	ADJUDICATOR 2
none	ADJUDICATOR 3

ACTIVE Yes No

DECISION Successful Unsuccessful

TYPE Abusive Offensive

SPECIAL COMMENTS & NOTES (ONLY AVAILABLE TO OTHER ADJUDICATORS)

Assigning a Case to an Adjudicator

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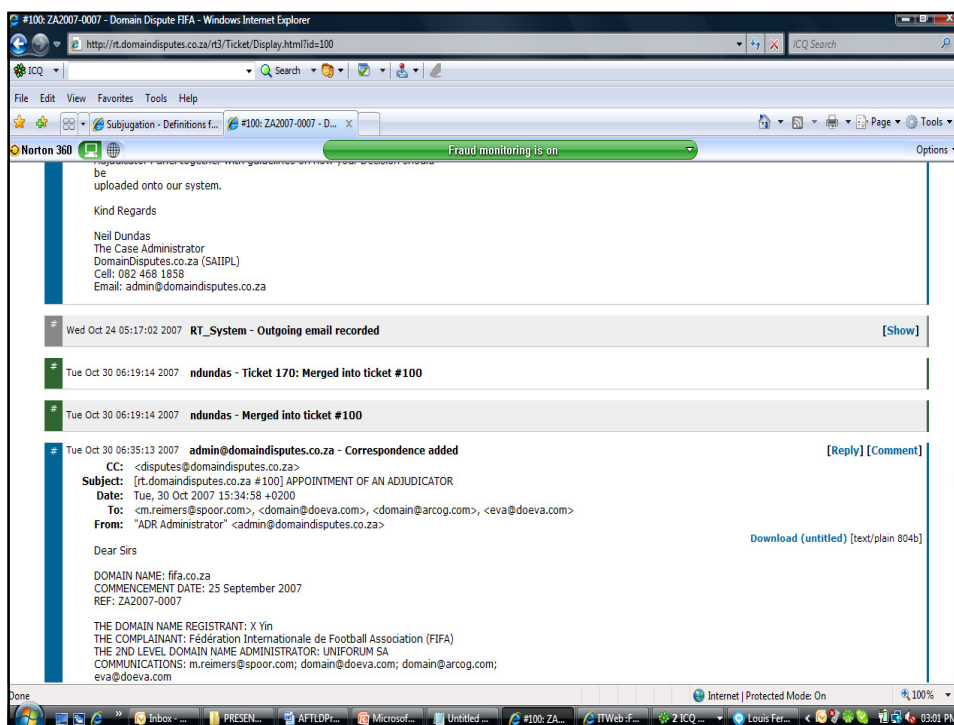
CATEGORISE DECISION - RIGHTS

<input type="checkbox"/> Trade Mark Rights	<input type="checkbox"/> Commercial Rights
<input type="checkbox"/> Registered Trade Mark Rights	<input type="checkbox"/> Personality Rights
<input type="checkbox"/> Common Law Rights	<input type="checkbox"/> Geographic Identifiers
<input type="checkbox"/> Company Name	<input type="checkbox"/> Territorial effect
<input type="checkbox"/> Well-Known Mark	<input type="checkbox"/> Licensees

ABUSIVE REGISTRATION

<input type="checkbox"/> At registration took unfair advantage of	<input type="checkbox"/> Fair Use and Free Speech
<input type="checkbox"/> At registration was unfairly detrimental to	<input type="checkbox"/> Criticism & Commentary
<input type="checkbox"/> Used to take unfair advantage of	<input type="checkbox"/> Parody Sites
<input type="checkbox"/> Use that is unfairly detrimental to	<input type="checkbox"/> Fan Sites
<input type="checkbox"/> Misspelling ("Typosquatting")	<input type="checkbox"/> Acquisition of domain name from third party
<input type="checkbox"/> Phonetical similarity	<input type="checkbox"/> Registration of domain name prior to mark registration
<input type="checkbox"/> Translation/Transliteration	<input type="checkbox"/> Non-web site use
<input type="checkbox"/> Overall impression	<input type="checkbox"/> Inaction / Passive holding
<input type="checkbox"/> Prefix + mark	<input type="checkbox"/> Offer to sell / rent or license (Solicited)
<input type="checkbox"/> Mark with nonhierarchical term	<input type="checkbox"/> Offer to sell / rent or license (Unsolicited)

Adjudicator must upload and classify Decision. Assigned back to the Administrator for Activation.



Our Experience so far

- 17 Cases of which:
 - 7 were successful (transferred)
 - 3 were refused, including 1 appeal that confirmed a refusal
 - 3 were settled
 - 4 are still pending Decision

STATISTIC REPORTS

Number of Cases Filed (excl Pending cases)	13		
Number of Cases Settled	3	23%	of cases filed
Number of Cases Decided	10	77%	of cases filed

Number of Cases Opposed	7	70%	of cases decided
Number of Cases Unopposed	3	30%	of cases decided

Successful Disputes	7	70%	of cases decided
Unsuccessful Disputes	3	30%	of cases decided

OPPOSED CASES:

Opposed Cases that lead to a Refusal	3	43%	of opposed cases
Opposed Cases that lead to a Transfer	4	57%	of opposed cases

UNOPPOSED CASES:

Unopposed Cases that lead to a Refusal	0	0%	of unopposed cases
Unopposed Cases that lead to a Transfer	3	100%	of unopposed cases

LEGAL COUNSEL:

Cases with Legal Counsel for Complainant	11	85%	of cases filed
Cases with Legal Counsel for Registrant	5	38%	of cases filed

Adjudicators & Training

- over 50 South African adjudicators with legal and/or academic backgrounds, ranging from Professors of Law, Senior Trade Mark Specialists and Senior Legal Counsel.



- Many more applications





Future Objectives and Expectations

- Gradual Increase in Dispute filed per month. Will increase as zone increases and more foreign investment (FIFA 2010).
- Continually refine the service
- Promote awareness of the SAIPL's ADR services, particularly abroad
- Possibly expand and localize the service into rest of Africa.



THANK-YOU

Details available for download at
<http://presentations.domaindisputes.co.za>