

## Decision

**ZA2016-0235**

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

### ADJUDICATOR DECISION

CASE NUMBER:	<b>ZA2016-0235</b>
DECISION DATE:	<b>30 May 2016</b>
DOMAIN NAME	<b>fujikura80s.co.za</b>
THE DOMAIN NAME REGISTRANT:	<b>Mr Dewan Hattingh</b>
REGISTRANT'S LEGAL COUNSEL:	<b>None</b>
THE COMPLAINANT:	<b>Fujikura Ltd</b>
COMPLAINANT'S LEGAL COUNSEL:	<b>Spoor &amp; Fisher</b>
2nd LEVEL ADMINISTRATOR:	<b>ZA Central Registry (CO.ZA )</b>

## 1 Procedural History

- a) The Dispute was filed with the South African Institute of Intellectual Property Law (the “SAIIPL”) on **6 April 2016**. On **11 April 2016** the SAIPL transmitted by email to the ZA Central Registry (ZACR) a request for the registry to suspend the domain name(s) at issue, and on **12 April 2016** the 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 April 2016**. In accordance with the Regulations the due date for the Registrant’s Response was **12 May 2016**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on **16 May 2016**.
- c) The Complainant did not submit any Reply because the Registrant was in default.
- d) The SAIPL appointed **Mr Andre van der Merwe** as the Adjudicator in this matter on **19 May 2016**. 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.
- e) The Adjudicator notes from correspondence with the Administrator that the parties herein had engaged in WITHOUT PREJUDICE settlement discussions but that no agreement had been reached between the parties. Accordingly, this adjudication will proceed on the basis of the Registrant being in default of filing a formal response herein. The Adjudicator confirms that correspondence sent to the Administrator that has not been submitted in terms of the Regulations viz that has not been submitted under oath, cannot be considered by the Adjudicator.

## 2 Factual Background

- 2.1 The Complainant was founded in 1910 in Tokyo, and is an electrical equipment manufacturer that develops and manufactures power and telecommunications system products. These products include devices used to cut, splice and otherwise manipulate optical fibres. The Complainant has expanded its business to become a global company with subsidiaries, distributors and agents located across Europe,

Asia, North and South America and Africa. It is listed on the Tokyo Stock Exchange, and its name and trademark FUJIKURA (which is the last name of its founder) is widely recognized in this highly specialized trade sector.

- 2.2 The Complainant is the proprietor of various (-in excess of 40) trademark registrations in South Africa for its name and trademark FUJIKURA & device, dating from 1988 viz well before the date of registration of the disputed domain name viz 9 October 2014. These trademark registrations are presently in force, and are assumed to be valid.
- 2.3 The Complainant commenced doing business in South Africa in 1988, initially selling FUJIKURA-branded optical communication equipment, optical fibre and fusion splicing equipment directly to clients in South Africa. Regarding fusion splicing equipment, the Complainant subsequently concluded a sole distribution agreement with a South African company, IC Logistix (Pty) Limited (hereinafter referred to as “IC Logistix”), in 2011. From that time all official marketing and sales activities for FUJIKURA-branded products have been managed by this South African company. The activities of IC Logistix, including those indicated below, have been confirmed under oath by Mr Zach Yacumakis, a director of IC Logistix.
- 2.4 The Complainant has submitted figures in US\$ from 2011 to 2014 of its sales to IC Logistix as well as copies of invoices, showing such sales. The Complainant and IC Logistix have explained that they spend significant time, effort and costs in marketing FUJIKURA optical fibre splicing machines, including a particular model of these machines known as the “FUJIKURA 80S” model. This includes an Internet Archive for FUJIKURA products which shows *inter alia* that these FUJIKURA machines are imported and sold in South Africa by the Complainant and by other suppliers. The aforementioned is supported by various exhibits attached to the Complaint. Accordingly, the Complainant submits that the FUJIKURA name and trademark has become well-known and that the model name FUJIKURA 80S has become exclusively associated with the Complainant world-wide and in South Africa. In 2013 the Complainant started selling another optical fibre fusion splicer in South Africa viz the “FUJIKURA 70S” model which has also become associated with the Complainant *inter alia* because this is a highly specialized technical field.

- 2.5 The Complainant had registered and owns the domain name registration **fujikura.co.za** since its registration on 25 June 2014.
- 2.6 The Registrant had registered the disputed domain name **fujikura80s.co.za** on 9 October 2014 viz more than 3 months after the above-mentioned domain name registration by the Complainant.
- 2.7 The Registrant (or a related business) has been, and is presently, using the disputed domain name to offer FUJIKURA 80S products for sale, and to sell such products in South Africa, at, and using, the disputed domain name site.
- 2.8 The Complainant's attorneys had sent the Registrant a letter of demand dated 13 April 2015 regarding the disputed domain name registration, and requiring its transfer to the Complainant. However, the Registrant has refused to comply with the demands set out in that letter.

### 3 Parties' Contentions

#### 3.1 Complainant

- a) The Complainant contends that, based on the above facts, it enjoys both statutory rights in respect of its name and trademark FUJIKURA and common law rights in respect of FUJIKURA and in respect of its product names FUJIKURA 80S and FUJIKURA 70S. The Complainant also contends that these latter rights entitle it to protect these names/trademarks from deception or confusion in the marketplace based on the South African law of delict relating to unlawful competition, including but not limited to passing off.
- b) The Complainant contends that the disputed domain name **fujikura80s.co.za** wholly incorporates the Complainant's registered and reputed FUJIKURA name and trademark as its first and dominant element. Hence the disputed domain name is highly similar to the Complainant's name/trademark and domain name registration, and the addition of the element "80s" (which is likely to be understood by the specialist buying public as a model number or in a descriptive or generic sense) does not serve

to distinguish the disputed domain name from the FUJIKURA trademark. In any event the Complainant contends that it enjoys a reputation and hence common law rights in the name/trademark FUJIKURA 80S. Hence the disputed domain name is highly similar or identical to the name and trademarks in which the complainant has rights.

- c) The Complainant contends that, although, in terms of the Regulations, because the disputed domain name is identical to a name/trademark in which the Complainant has rights viz FUJIKURA 80S, the burden of proof shifts to the Registrant to show that the disputed domain name is not an abusive registration, it has nevertheless submitted four factors from the Regulations to indicate that the disputed domain name is an abusive registration. These four factors will be discussed and considered further hereunder.
- d) The Complainant contends that, for various reasons that will be discussed below, the Registrant had not acted in a *bona fide* manner when it registered the disputed domain name. It is inconceivable that the Registrant, given that he has been selling, and offering FUJIKURA 80S products for sale, would not have been aware of the FUJIKURA and FUJIKURA 80S names/trademarks. Additional reasons for this contention will be discussed below. The Complainant contends that Registrant could readily and in good faith have selected another domain name for its business.
- e) The Complainant in addition contends that the Registrant's (apparent) parallel importation and sale of FUJIKURA 80S products does not comply with the Consumer Protection Act, no. 68 of 2008, and its Regulations, that require that such parallel or "grey goods" must be sold accompanied by a conspicuous notice provided on all websites stating that such goods have been imported without the approval of the owner of the trademark and that no guarantee or warranty will be honoured. No such notice is visible on the website to which the disputed domain name resolves, and hence the Registrant is acting in breach of the provisions of that Act.
- f) Accordingly, in the circumstances, the Complainant contends that the disputed domain name, in the hands of the Registrant, is an abusive

registration, and that it should be transferred to the Complainant.

### 3.2 Registrant

- a) The Respondent did not reply to the Complainant's contentions. Accordingly the Complaint will be dealt with on a default basis namely solely on the basis of the above-mentioned facts and contentions made by the Complainant.

## 4 Discussion and Findings

- a) The Adjudicator has carefully perused and considered the Complaint filed namely the Complainant's founding affidavit and annexures attached thereto, and sets out his discussion, reasoning and findings hereunder.

In order to make a finding that the disputed domain name is an abusive registration, the Adjudicator is required to find that the Complainant has proved, on a balance of probabilities, in terms of Regulation 3(2), that the required elements in terms of Regulation 3(1)(a) are present viz that –

- i. the Complainant has rights in respect of a name or mark
- ii. which is identical or similar to the (disputed) domain name; and
- iii. in the hands of the Registrant, the (disputed) domain name is an abusive registration.”

An abusive registration is defined in the definition section viz in Regulation 1, to mean 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 IN RESPECT OF A NAME OR MARK**

In terms of Regulation 1 the term “rights” is widely defined. The Regulation states that “rights” and “registered rights” include intellectual property rights, commercial, cultural, linguistic, religious and personal rights protected under South African law but is not limited thereto.

As has been decided by the appeal decisions in [www.seido.co.za](http://www.seido.co.za) (ZA2009-0030) and [www.xnets.co.za](http://www.xnets.co.za) (ZA2011-0077), the notion of “rights” for the purposes of Regulation 3(1)(a) is not trammelled by trade mark jurisprudence. It is *inter alia* a matter of *locus standi* in order to make sure that the person who complains is someone with a proper interest in the complaint. The threshold in this regard should be fairly low.

#### **A NAME OR MARK?**

The first part of the present enquiry includes a determination whether the Complainant has *locus standi* in the sense of a name or mark that is unique or distinctive of it and its activities (and that is not merely descriptive, general or generic, for example).

#### **DOES THE COMPLAINANT HAVE RIGHTS?**

The first element that the Adjudicator needs to establish is whether, on a balance of probabilities, the Complainant has rights in respect of the names/ trademarks FUJIKURA and FUJIKURA 80S. In terms of the facts set out above, it will be seen that the Complainant is the proprietor of various South African trademark registrations for FUJIKURA & DEVICE, that are in full force and effect. In other words, it has statutory viz registered rights that date from 1988 that it can enforce in an infringement situation viz where a third party uses the trademark FUJIKURA or FUJIKURA 80S in an unauthorized manner in terms of the Trade Marks Act [section 34(1)(a)]. These rights predate the date of registration of the disputed domain name.

See in this regard the textbook South African Law of Trade Marks, (4<sup>th</sup> Edition) by Webster and Page (now Webster and Morley), paragraph 12.6 *et seq* and the authorities quoted there.

From the above facts and contentions, it also appears clearly that the Complainant, through its worldwide and extensive South African business activities, enjoys a large reputation, as a component of its goodwill, in South Africa in terms of the common law in respect of its names/trademarks FUJIKURA and FUJIKURA 80S.

See in this latter regard the textbook South African Law of Trade Marks (4<sup>th</sup> Edition) by Webster and Page (now Webster and Morley) paragraph 15.10 and *inter alia* the decided case cited here, viz Adcock-Ingram Products Limited v Beecham

SA (Pty) Limited 1977 4 SA 434 (W) which was approved in *Caterham Car Sales & Coachworks Ltd v Birkin Cars (Pty) Ltd* [1998] 3 All SA 175 (A).

These common law rights can be breached by the wrong known as passing off. See Webster and Page (*supra*) paragraph 15.5 and *inter alia* the decided case cited there, viz *Capital Estate & General Agencies (Pty) Ltd v Holiday Inns Inc* 1977 2 SA 916 (A).

Accordingly the Adjudicator finds that the Complainant has proved, on a balance of probabilities, that it has both statutory viz registered trademark rights, and (unregistered) common law rights, in South Africa in respect of its names/trademarks FUJIKURA and FUJIKURA 80S. These rights can be enforced in the event of unauthorized use by a third party.

These rights date from 1988 and predate the date of registration of the disputed domain name registration viz 9 October 2014.

This finding also provides the Complainant with the necessary *locus standi* to bring this complaint.

#### **NAME OR MARK IDENTICAL OR SIMILAR TO DOMAIN NAME?**

The second element that the Adjudicator needs to establish is whether the Complainant has proved, on a balance of probabilities, that its names/trademarks FUJIKURA and FUJIKURA 80S, in which it has rights as set out above, are identical or similar to the disputed domain name viz FUJIKURA 80S.

The Complainant has contended that the disputed domain name is identical, or very similar, to the Complainant's registered trademark.

Firstly, it is accepted in domain name decisions that the suffix .co.za does not affect the assessment of identity or similarity of a registered trademark and the disputed domain name. In support thereof, the adjudicator refers to the foreign domain name decision D2002-0810 *Benneton Group SA v Azra Khan*; and the South African domain name decision ZA2008-0015 *Luxottica US Holding Corp v Preshal Iyar*.

From a factually perspective, the Complainant's names/trademarks FUJIKURA and FUJIKURA 80S are each, respectively, incorporated wholly in the disputed domain name. Further to this, the Complainant's name/trademark FUJIKURA 80S is identical to the disputed domain name **fujikura80s.co.za**. Secondly the Complainant's name/trademark FUJIKURA is highly similar to the disputed domain

name, **fujikura80s.co.za**, for the reason that the first and dominant common element is the Complainant's well-known name/trademark mark FUJIKURA and that the only difference is the addition of the element 80S which is a descriptive or generic term which can in effect be ignored (and which customers would probably assume to be a reference to a model number).

In support of the above, see the following foreign domain names decisions viz in WIPO/D2000-1598 NIKE was found to be similar to niketravel and nikesportstravel; in DRS04601 NIKE was found to be similar to nikestore; and in DRS01493 NOKIA was found to be similar to nokia-ringtones.

See also the following South African domain name decisions – in ZA2007-0003 TELKOM was found to be similar to telkommedia; in ZA2007-0010 MWEB was found to be similar to mwebsearch; in ZA2008-0025 SUN CITY was found to be similar to suncityshuttle; in ZA2009-0034 ABSA was found to be similar to absapremiership; in ZA2010-0048 ETRAVEL was found to be similar to etravelmag; and in ZA2013-00149 AUTOTRADER was found to be similar to autotraderauction.

Accordingly, the Adjudicator finds that the Complainant has proved, on a balance of probabilities, that its name/trademark FUJIKURA 80S is identical to the disputed domain name; and that its name/trademark FUJIKURA is similar to the disputed domain name.

### **IS THE DISPUTED DOMAIN NAME AN ABUSIVE REGISTRATION?**

The third element that the Adjudicator needs to establish is whether, the Complainant has proved, on a balance of probabilities, that the disputed domain name, in the hands of the Registrant, is an abusive registration. The Complainant asserts that the disputed domain name is an abusive registration.

The Adjudicator is required to determine whether the disputed domain name is an abusive registration as defined in the definition section of the Regulations viz in Regulation 1, and as set out above. According to the definition, and to various Nominet decisions, there are two potential abuses (or two types of abuse) viz:

- a) Registration with an abusive intent; and/or
- b) Use in an abusive manner.

The Adjudicator refers to the foreign decisions DRS 02464 (Aldershot Car Spares v

Gordon); and DRS 00658 (Chivas Brothers Ltd v David William Plenderleith) in which the Expert found that: “Where a Respondent registered a domain name:

1. which is identical to a name in which the complainant has rights;
2. where that name is exclusively referable to the complainant;
3. where there is no obvious justification for the Respondent having that name for the domain name; and
4. where the Respondent has come forward with no (reasonable) explanation for having selected the domain name; it will ordinarily be reasonable for an expert to infer first that the Respondent registered the domain name for a purpose and secondly that such purpose was abusive.”

See also the South African decision ZA2007-007 (FIFA v X Yin) in this regard. The Adjudicator concurs with the view that the nature of “abusive” in the Regulations does not necessarily require a positive intention by the Registrant to abuse the Complainant’s rights but that such abuse can be the effect or consequence of the registration or use of the disputed domain name.

Before dealing with the Regulations, the Adjudicator wishes to deal with the question of good faith, or otherwise, of the Registrant.

The general contention has been made by the Complainant that the Registrant has acted in bad faith. Its reasoning for this contention is, firstly, because it is inconceivable that the Registrant did not know about the Complainant’s well-known FUJIKURA and FUJIKURA 80S names/trademarks at the time of registering the disputed domain name; secondly that it is highly unlikely that the Registrant had conceived of the disputed domain name independently; and thirdly, that there is no reason why the Registrant could not have registered another domain name that does not wholly incorporate the Complainant’s names/trademarks for its business.

See in this regard the foreign decided domain name decisions viz WIPO Case No D2000-0037, WIPO Case No 2000-0137-1492, WIPO Case No 2001-1492, and WIPO Case No 2003-0257, in which it was held that bad faith may be inferred from the registration of a well-known trademark as part of a domain name.

In spite of the above, the Registrant had proceeded to register and use the disputed domain name for himself (or a related business). Even if the Registrant was an agent or distributor of the Complainant – which is denied by the Complainant – such registration of the disputed domain name would have been an act of bad faith in the

absence of clear consent by the Complainant, which has apparently never been granted.

Over and above the aforementioned considerations, the Registrant had warranted, when applying to register the disputed domain name, in terms of the ZA Central Registry (ZACR) terms and conditions (clause 5.1) that:

- I. “It has the right without restriction to use and register the Domain Name”
- II. “The use or registration of the Domain Name (by the Registrant) does not or will not interfere with, nor infringe the right of any third party in any jurisdiction with respect to trade mark, service mark, trade name, company name, close corporation name, copyright, or any other intellectual property right.”

Clause 5.1.1 of the ZACR terms and conditions state further (to which the Registrant had agreed): “Applicant (the Registrant) hereby irrevocably represents, warrants, and agrees that its statements (above) in the Application are accurate and complete.”

It seems undeniable that the Registrant had, at all material times, known of the Complainant and its rights in and to its names/trademarks FUJIKURA and FUJIKURA 80S.

Hence it appears to the Adjudicator, both from the above considerations and directly from the above false statements or warranties by the Registrant, that the Registrant has clearly acted in bad faith and that the disputed domain name was registered and is being used by the Registrant in bad faith. This is invariably a strong indication that the disputed domain name is an abusive registration.

In support of the above, the Adjudicator refers to the decided foreign (WIPO) case D2005-0866 (Encyclopaedia Britannica v LaPorte Holdings) in which it was found that the registration and use of domain names “so obviously connected with such a well-known product ... by a person with no connection with the product suggest opportunistic bad faith.”

Turning now to Regulation 4, this provides a list of (non-exhaustive) factors which may indicate that a disputed domain name is an abusive registration. More particularly, Regulation 4 lists various factors that may indicate that the Registrant has registered or is using the disputed domain names primarily to achieve certain

objectives. The Complainant has asserted some of these factors that will be discussed below viz:

- a) **That the Registrant has registered the disputed domain name primarily to block intentionally the registration of a name or mark in which the Complainant has rights**

The Complainant has clearly established that it has rights in and to the names/trademarks FUJIKURA and FUJIKURA 80S, and that the former is similar, and the latter is identical, to the disputed domain name. In these circumstances, the Complainant contends that, because the Registrant was aware of this, it is intentionally blocking the Complainant from registering its FUJIKURA 80S product name/trademark as a corresponding.co.za domain name.

Although the Regulations (and definitions) are silent on precisely what a “blocking registration” is or involves, it is clear both in general terms and from various Nominet decisions that a blocking registration appears to have two critical features. The first is that it must act against a name or mark in which the Complainant has rights. The second is intent or motivation and suggests some knowledge and hence a purpose in registering a domain name to prevent the Complainant from doing so. See the foreign decisions DRS00583 and DRS01378.

The disputed domain name undeniably prevents the Complainant from registering this domain name, or its product name/trademark in this form, for itself. As indicated above, the Registrant’s actions herein appear to indicate a measure of bad faith on the part of the Registrant in registering and using the disputed domain name.

The Adjudicator is obliged to conclude that the registration of the disputed domain name has the simple consequence of barring, and hence blocking, the Complainant from using and registering this domain name for itself, as the legitimate owner of rights to the relevant names/trademarks FUJIKURA and FUJIKURA 80S. The Adjudicator is also obliged to conclude that it was the primary purpose of the Registrant to intentionally block the registration of a domain name in which the Complainant has rights so that the Registrant could use the disputed domain name for himself (and for his own business purposes).

In support of the above, see WIPO/D2000-0545; and the leading United Kingdom authority dealing with domain names and their “blocking” effect viz British

Telecommunications plc v One in a Million Ltd [1999] FSR 1 (CA). In this case, the Court of Appeal held that the disputed domain name registrations were unlawful on the grounds of trademark infringement and passing off, and interdicted One in a Million Ltd and those who controlled it from such conduct, and ordered them to transfer the disputed domain name registrations to the companies that in reality traded under those names.

In further support of the above, see also the foreign decision WIPO/D2000-0766 (Red Bull GmbH v Harold Gutch) which is cited in the South African decision ZA2008-0014 (Automobiles Citroen v Mark Garrod).

Accordingly the Adjudicator comes to the conclusion that this factor applies in the present dispute, and that this factor may indicate that the disputed domain name is an abusive registration.

**b) That there are circumstances indicating that the Registrant has registered the disputed domain name to disrupt unfairly the business of the Complainant**

The Complainant contends that the Registrant is unfairly disrupting the Complainant's business in South Africa by preventing it from operating a website from that domain name or redirecting the domain name to the Complainant's website or that of IC Logistix. The complainant accordingly wishes to secure the transfer of the disputed domain name so that it or IC Logistix can use the domain name to market their goods and services.

The disputed domain name is likely to unfairly disrupt the Complainant's business by causing people or businesses who visit the website to which the disputed domain name resolves to complain (to the Complainant) if they are misled or deceived by the misrepresentations and also by unfairly depriving the Complainant of business or of visits to its legitimate website.

In this regard, the first four natural results returned by a Google search for "fujikura 80s" limited to South African websites relate to the disputed domain name. This will obviously disrupt the Complainant's business, and is clearly unfair to the Complainant.

In support of the above, the Adjudicator refers to the South African domain name decision ZA2008-0022 [samsungcartridge.co.za](http://samsungcartridge.co.za) and [samsungcartridges.co.za](http://samsungcartridges.co.za), in

which it was held that disruption of the complainant's business may be inferred if the registrant has registered a variation of the complainant's mark. In the Adjudicator's view, this will apply more particularly if the Registrant has registered, and is using, as the disputed domain name a mark identical to that of the Complainant.

Hence the Adjudicator comes to the conclusion that this is a real and present factor in the present dispute, and that this factor may indicate that the disputed domain name is an abusive registration.

**c) That the Registrant has registered the disputed domain name primarily to prevent the Complainant from exercising its rights**

The Complainant contends that the disputed domain name blocks it from registering its own domain name, as set out above; and hence the disputed domain name prevents the Complainant from exercising its legitimate rights in South Africa viz by registering its own **fujikura80s.co.za** domain name that it should be entitled to do but is prevented from doing by the disputed domain name.

Besides the factual question of the disputed domain name preventing the Complainant from exercising its rights ie by registering its own domain name, this begs the question of whether the Registrant had acted in good faith or otherwise in registering the disputed domain name, as also set out above. From the above explanation of the Registrant's actions in registering and using the disputed domain name and the false statements made by the Registrant when registering the disputed domain name, it appears that the Registrant had in effect acted in bad faith.

In support of this proposition, it appears undeniable that the Registrant had, at all material times, known of the Complainant and its rights in and to its names/trademarks FUJIKURA and FUJIKURA 80S. Hence it appears both from this knowledge, and directly from the above false statements or warranties by the Registrant, that the disputed domain name was registered in bad faith *inter alia* primarily to prevent the Complainant from exercising its rights.

Accordingly the Adjudicator comes to the conclusion that this factor applies in the present dispute, and that this factor may indicate that the disputed domain name is an abusive registration.

**d) That there are circumstances indicating that the Registrant is using, or has registered, the domain name in a way that leads people or**

**businesses to believe that the domain name is registered to, operated or authorized by, or otherwise connected with the Complainant**

The Complainant has explained that not only does a Google search shows that the first four natural search results resolve to the disputed domain name, but also the disputed domain name resolves to a website which features products of the Complainant for sale. The Complainant has not authorized this use or the website, and the Complainant is not affiliated with the aforementioned website page.

In addition the Registrant has used the disputed domain name in a manner that leads users to believe that the disputed domain name is registered to, operated by, or authorized by the Complainant. In its Complaint, the Complainant has attached an Internet Archive extract for the website to which the disputed domain name resolves. This clearly shows that the Registrant is offering FUJIKURA 90S models for sale at the disputed domain name. In particular, the Registrant had included the following statement on its website: “Main importers of Fujikura in South Africa”, while this is a false statement; and “Fujikura South Africa.” These statements are an express and/or implicit claim that the Registrant is an authorized or licensed, official importer or distributor of the Complainant (which is not the case). It is significant that, after the above-mentioned letter of demand had been sent, the Registrant removed the word “Main” from the above “Main importers” statement.

Hence the Complainant contends that this use of the disputed domain name amounts to circumstances indicating that the Registrant has registered, and is using, the disputed domain name in a manner that will lead people or businesses to believe that the disputed domain name is registered to, operated or authorized by, or otherwise connected with the Complainant, which is not the case.

Accordingly the Adjudicator finds that this is a factor in the present dispute, and that this factor may indicate that the domain name is an abusive registration.

#### **4.1 Abusive Registration**

4.1.1 The Adjudicator finds, on a balance of probabilities, that the disputed 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; and

4.1.2 has been used in a manner that takes unfair advantage of, or is unfairly detrimental to, the Complainant's rights.

4.1.3 The Adjudicator therefore finds that the disputed domain name, in the hands of the Registrant, is an abusive registration.

## **5. Decision**

5.1 For all the foregoing reasons, in accordance with Regulation 9, the Adjudicator orders that the disputed domain name, **fujikura80s.co.za**, be transferred to the Complainant.

.....  
**ANDRE VAN DER MERWE**  
SAIIPL SENIOR ADJUDICATOR  
www.DomainDisputes.co.za