

Decision

ZA2012-0122

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

ADJUDICATOR DECISION

CASE NUMBER:	ZA2012-0122
DECISION DATE:	28 January 2013
DOMAIN NAME	africanloanbank.co.za
THE DOMAIN NAME REGISTRANT:	MegaLoans
REGISTRANT'S LEGAL COUNSEL:	N/A
THE COMPLAINANT:	African Bank Limited
COMPLAINANT'S LEGAL COUNSEL:	Adams & Adams
2 nd LEVEL ADMINISTRATOR:	UniForum SA (CO.ZA)

1 Procedural History

- a) The Dispute was filed with the South African Institute of Intellectual Property Law (the "SAIPL") on **6 December 2012**. On **7 December 2012** the SAIPL transmitted by email to UniForum SA a request for the registry to suspend the domain name(s) at issue, and on **7 December 2012** UniForum SA 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 **10 December 2012**. In accordance with the Regulations the due date for the Registrant's Response was **17 January 2013**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on **21 January 2013**.
- c) The SAIPL appointed **Victor Williams** as the Adjudicator in this matter on **23 January 2013**. 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 African Bank Limited, a company providing banking, financial and credit services and has been doing so for more than 20 years.
- b) It is the proprietor of trademark registration nr 2008/20370 AFRICAN BANK

LIMITED, registered in cl 36 in respect of “insurance, financial affairs; monetary affairs; real estate affairs”. This is uncontested and accordingly accepted based on the evidence.

- c) It claims to have acquired a reputation and common law trade mark rights in and to the AFRICAN BANK trade mark through widespread and long term during the past 10 years. This is uncontested and accordingly accepted based on the evidence.
- d) The Registrant registered the disputed domain name on 5 August 2012, almost three years after the Complainant applied for its aforementioned registered trade mark and at least 10 years after the Complainant started using its African Bank trade mark.

3 Parties' Contentions

3.1 Complainant

- a) The complainant contends that the combination of the trade mark AFRICAN BANK with the word “loan” is confusingly similar to its AFRICAN BANK and AFRICAN BANK LIMITED trademarks and that the use of the disputed domain name amounts to passing off and trade mark infringement. It therefore contends that it offends Reg 3(1) (a) in that it is identical or similar to a name or mark in which the Complainant has rights.
- b) The Complainant attached as Annexure “C”, a copy of email correspondence received by one of its employees. The correspondence directed the employee to a website situated at www.africanloanbank.co.za that offered loan services. The Complainant contends that the registration offends Reg 3(1) (a) in

that it is an abusive registration. It contends that the disputed domain name is, at least, preventing the Complainant from freely exercising its trade mark rights.

3.2 Registrant

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

4 Discussion and Findings

- a) In the absence of any response to the Complaint, this adjudicator considered the evidence and contentions of the Complainant only.

The Complainant's evidence of statutory and common law rights in its AFRICAN BANK LIMITED and AFRICAN BANK trademarks is accepted.

The Complainant's reference to the matter of 4microsoft2000.com (D2000-1493) is accepted and applied.

Accordingly, the disputed domain name is found to be in breach of Reg 3(1) (a) in that it is identical or similar to a name or mark in which the Complainant has rights.

In the absence of any explanation as to why the Registrant chose to register the disputed domain name, why it was used in the manner in which Annexure "C" illustrates and why the website was subsequently revised to show "under construction", the disputed domain name is found to be an abusive registration for purposes of Reg 3(1)(a). The Complainant's reference to the decision of movingforward.co.za (ZA2010-0050) is accepted and applied.

4.1 Complainant's Rights

- a) It is found that the Complainant's trade marks AFRICAN BANK

LIMITED and AFRICAN BANK are identical or similar to the domain name africanloanbank.co.za.

4.2 Abusive Registration

- a) It is found that the circumstances under which it was registered and used, took unfair advantage of or was unfairly detrimental to the Complainant's rights.
- b) It is further found that the manner in which it was used was aimed at misleading people or businesses into believing that it is somehow connected to the Complainant.

5. Decision

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

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Victor Williams
SAIIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za