

ADJUDICATOR DECISION

CASE NUMBER:	ZA2013-0128
DECISION DATE:	2 MAY 2013
DOMAIN NAME	inetsa.co.za
THE DOMAIN NAME REGISTRANT:	Johan Jordaan
REGISTRANT'S LEGAL COUNSEL:	n/a
THE COMPLAINANT:	I-Net Bridge (PTY) LTD
COMPLAINANT'S LEGAL COUNSEL:	MOORE ATTORNEYS
THE 2 nd LEVEL DOMAIN NAME ADMINISTRATOR:	UniForum SA (CO.ZA Administrators)

1 Procedural History

- 1.1 The Dispute was filed with the South African Institute of Intellectual Property Law (the “SAIPL”) on **26 February 2013**. On **27 February 2013** the SAIPL transmitted by email to UniForum SA a request for the registry to suspend the domain name at issue, and on the same date 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.
- 1.2 In accordance with the Regulations, the SAIPL formally notified the Registrant of the commencement of the Dispute on **28 February 2013**. In accordance with the Regulations the due date for the Registrant’s Response was **2 April 2013**. The Registrant submitted no Response by **2 April 2013**. The SAIPL notified the Registrant of its default on **3 April 2013**. An informal reply was sent by the Registrant on **3 April 2013** but did not satisfy the formal requirements of the Regulations and the SAIPL’s Supplementary Procedure. The SAIPL accordingly considered the Registrant to be in default and proceeded with appointing the Adjudicator.
- 1.3 The SAIPL appointed **Janusz F Luterek** as the Adjudicator in this matter on **16 April 2013** after another attempt to appoint another adjudicator came to nought. The Adjudicator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence on **16 April 2013**, as required by the SAIPL to ensure compliance with the Regulations and Supplementary Procedure.

2 Factual Background

- 2.1 The domain was registered on 29 May 2007 by Johan Jordaan with himself as the administrative contact.
- 2.2 The following facts are undisputed and, their not being palpably implausible, the Adjudicator accepts them for the purposes of this adjudication.

- 2.3 The Complainant is I-Net Bridge (Pty) Ltd, was established in 1990 as a joint venture between stockbroker, Ivor Jones Roy (now Deutsche Securities) and newspaper publisher, Times Media Limited (TML). It currently forms part of the Times Media Group Limited group of companies which is a leading player in the South African media and entertainment business.
- 2.4 The Complainant provides a wide range of investment products comprising real-time and historical market data, packaged with breaking news and powerful analytical tools, allowing investors to make expedient, informed decisions.
- 2.5 The Complainant's website (www.inet.co.za) provides an electronic platform that allows the consumer to efficiently view live prices, data, sophisticated research tools and breaking news from South Africa and more than 30 (thirty) major international markets. The Complainant has, as shown in its submission, since the year 1990 built up significant reputation and spent substantial time, effort and money in marketing, advertising and promoting its brand and services within South Africa and the www.inet.co.za domain names.
- 2.6 The Complainant is further an internet service provider (ISP) and also has connectivity into all South African major tiers 1 ISP's. The Complainant started providing these services in 2002. The effect of the above is that any organisation that uses I-Net Bridge's web hosting services is superbly positioned in terms of connectivity and potential reach into the market.
- 2.7 The Registrant's www.inetsa.co.za offers the same services as that of the Complainant viz. web and mail hosting service on Linux and Windows platforms.
- 2.8 On 15 March 2011 The Registrant made an offer of R 25 000 to transfer the domain name to an anonymous party.

3 Parties' Contentions

3.1 Complainant

- 3.1.1 I-NET Bridge is well known and widely recognised as a result of the Complainant's extensive marketing which commenced in 1990, including the launch of its webs hosting services in 2002, and continues to develop new services to date.

- 3.1.2 It is improbable, if not impossible, that the Registrant was unaware of the existence of the Complainants' rights in the www.inet.co.za when it registered the corresponding domain name inetsa.co.za on 29 May 2007.
- 3.1.3 The Complainant has registered the "I-NET" trade mark in South Africa under Registration numbers 1999/11087 - 11090. The Registrant's use of the domain name in question infringes Complainant's rights in the "I-NET" trade mark because combination of the trade mark "I-NET" with the postscript "SA" creates a domain name that cannot be anything but confusingly similar to the Complainant's "I-NET" trade mark. As a result of the above, the Complainant submits that there is a substantial likelihood that Internet users and consumers will be confused into believing that there is some affiliation or connection between the Complainant and the Respondent, when in fact, there is no such relationship. The Complainant therefore contends that the disputed domain name is confusingly similar to the Complainant's I-NET trade mark.
- 3.1.4 The Complainant refers to various cases referred to in SAIPL decision of case number ZA2007-0003; wherein it dealt with the use of the generic word "media" in the domain name telkommedia.co.za and it was found that it did not differentiate the two.
- 3.1.5 The Complainant further contends Registrant's conduct falls within the ambit of Regulation 4(1) in that there is evidence supporting that the registration of the disputed domain name is abusive in that, at least, it is preventing the Complainant from freely exercising its rights.
- 3.1.6 In conclusion based on the foregoing, the Complainant alleged that the domain registration is abusive within the meaning of Regulation 4(1).

3.2 Registrant

- 3.2.1 The Registrant has not made any submissions of substance supported by any documents or evidence and accordingly the Response is merely a statement by the Registrant and it is thus not necessary to decide whether to accept the late filed Response or not.

4 Discussion and Findings

- 4.1 The Adjudicator finds that the Complainant has rights in respect of the trade mark "I-NET" as contemplated by Regulation 3(1)(a). The question is whether the domain in question is abusive in the hands of the Registrant.

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- 4.2 An abusive registration denotes a domain which either:-
- 4.2.1 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
- 4.2.2 has been used in a manner that takes unfair advantage of, or is unfairly detrimental to the Complainant's rights.
- 4.3 The Complainant is required by Regulation 3(2) to prove that the foresaid elements are present to support a finding that the disputed domain registration is abusive.
- 4.4 The Registrant has not proffered cogent reasons why he chose to register the disputed domain name, nor has he given any reason why he registered the domain name at the time he did. The Adjudicator is therefore entitled to hold that the domain name inetsa.co.za is an abusive domain registration in the hands of the Registrant.
- 4.5 The Adjudicator finds the domain registration inetsa.co.za to be abusive. Consequently, the Adjudicator upholds the Complainant's complaint.

5 Decision

- 5.1 For the above reasons, in accordance with Regulation 9(a), the Adjudicator orders that the domain name, inetsa.co.za be transferred to the Complainant.

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JANUSZ F LUTEREK
SAIIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za