



SAIPL Decision

[2013-0137]

.ZA ALTERNATE DISPUTE RESOLUTION
REGULATIONS (GG29405)

ADJUDICATOR DECISION

CASE NUMBER:	ZA2013-0137
DECISION DATE:	11 June 2013
DOMAIN NAME	petrobras.CO.ZA
THE DOMAIN NAME REGISTRANT:	Wang, Liqun
REGISTRANT' S LEGAL COUNSEL:	n/a
THE COMPLAINANT:	Petroleo Brasileiro S.A.
COMPLAINANT' S LEGAL COUNSEL:	SPOOR & FISHER
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 **5 April 2013**. On **8 April 2013** the SAIPL transmitted by email to UniForum SA a request for the registry to suspend the domain name at issue, and on **8 April 2013** 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 **11 April 2013**. In accordance with the Regulations the due date for the Registrant’s Response was **10 May 2013**. The Registrant submitted no Response by **10 May 2013**. The SAIPL notified the Registrant of its default on **13 May 2013**. 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 **23 May 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 **23 May 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 8 August 2013 by Wang Liqun with himself/herself as the contact.
- 2.2 The following facts are undisputed and, they are not being palpably implausible, the Adjudicator accepts them for the purposes of this adjudication.
- 2.3 The Complainant is Petroleo Brasileiro S.A. is a semi-public Brazilian company, a fifth biggest energy company in the world with a presence in twenty eight countries

in five continents (hereinafter referred to as "Petroleo Brasileiro" or the "Complainant").

- 2.4. Petroleo Brasileiro has a daily production of 2,621,000 barrels of natural gas per day, 7 plants of biofuels, 16 plants of thermoelectric and 4 plants of wind energy. Petroleo Brasileiro's brand value sits at \$19.7 billion.
- 2.5. On 22 January 2013 the Complainant sent a letter demanding transfer of the domain to it, to which The Registrant made an offer of US\$6000 to transfer the domain name to an anonymous party.

3 Parties' Contentions

3.1 Complainant

- 3.1.1 The Petroleo Brasileiro is well known and widely recognised as a result of the Complainant's extensive presence in 28 Countries and by virtue of being the 5th biggest energy company in the world and it is known by the acronym "Petrobras.
- 3.1.2 The Complainant has registered "PETROBRAS" trade mark in South Africa under Registration numbers 2004/01017 - 01023. The Registrant's use of the domain name in question infringes Complainant's rights in the "PETROBRAS" trade mark because it entirely includes the Complainant's 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 abusive in the hands of the Registrant.
- 3.1.3. The Complainant refers to the SAIPL decision of case number ZA2007-0007 and the cases referred to therein, which case dealt with the use of the trade mark "FIFA" in a domain name and it was found to be an abusive registration.

3.1.4. 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.

4 Discussion and Findings

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

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 any 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 petrobras.co.za is an abusive domain registration in the hands of the Registrant.

4.5 The Adjudicator finds the domain registration petrobras.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, petrobras.co.za be transferred to the Complainant.

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JANUSZ F LUTEREK
SAIPL SENIOR ADJUDICATOR
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