

Decision

[ZA2015-0205]

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

ADJUDICATOR DECISION

CASE NUMBER:	ZA2015-0205
DECISION DATE:	19 August 2015
DOMAIN NAME	avusamedialive.co.za
THE DOMAIN NAME REGISTRANT:	Pavel Yemelyanov
REGISTRANT'S LEGAL COUNSEL:	None
THE COMPLAINANT:	Times Media (Proprietary) Limited
COMPLAINANT'S LEGAL COUNSEL:	Moore Attorneys – Tyrone Walker
2 nd LEVEL ADMINISTRATOR:	ZA Central Registry (CO.ZA)

1 Procedural History

- a) The Dispute was filed with the South African Institute of Intellectual Property Law (the “SAIPL”) on **19 June 2015**. On **22 June 2015** 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 **23 June 2015** 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 **25 June 2015**. In accordance with the Regulations the due date for the Registrant’s Response was **23 July 2015**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on **27 July 2015**.
- c) The SAIPL appointed **Megan Reimers** as the Adjudicator in this matter on **31 July 2015**. 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

- 2.1 The Complainant is Times Media (Pty) Ltd, which was previously called Avusa Limited. The Complainant is in the entertainment, media and publication industry. Some of its businesses include the Sowetan and Sunday Times newspapers.

2.2 The Complainant owns the following trade mark registrations in South Africa for trade marks consisting of or incorporating the word AVUSA or the phrase AVUSA MEDIA:

Trade Mark No. 2007/18896 AVUSA in class 36

Trade Mark No. 2007/18897 AVUSA in class 39

Trade Mark No. 2007/18898 AVUSA MEDIA in class 09

Trade Mark No. 2007/18899 AVUSA MEDIA in class 16

Trade Mark No. 2007/18900 AVUSA MEDIA in class 35

Trade Mark No. 2007/18901 AVUSA MEDIA in class 36

Trade Mark No. 2007/18902 AVUSA MEDIA in class 38

Trade Mark No. 2007/18903 AVUSA MEDIA in class 39

Trade Mark No. 2007/18904 AVUSA MEDIA in class 41

Trade Mark No. 2007/18905 AVUSA MEDIA GROUP In class

Trade Mark No. 2007/18906 AVUSA MEDIA GROUP In class

Trade Mark No. 2007/18907 AVUSA MEDIA GROUP in class

Trade Mark No. 2007/18908 AVUSA MEDIA GROUP in class

Trade Mark No. 2007/18909 AVUSA MEDIA GROUP in class

Trade Mark No. 2007/18910 AVUSA MEDIA GROUP in class

Trade Mark No. 2007/18911 AVUSA MEDIA GROUP in class

Trade Mark No. 2007/18912 AVUSA GROUP in class 09

Trade Mark No. 2007/18913 AVUSA GROUP in class 16

Trade Mark No. 2007/18914 AVUSA GROUP in class 35

Trade Mark No. 2007/18915 AVUSA GROUP in class 36

Trade Mark No. 2007/18915 AVUSA GROUP in class 38

Trade Mark No. 2007/18917 AVUSA GROUP in class 39

Trade Mark No. 2007/18918 AVUSA GROUP in class 41

Trade Mark No. 2007/19043 AVUSA in class 9

Trade Mark No. 2007/19044 AVUSA in class 16

Trade Mark No. 2007/19045 AVUSA in class 35

Trade Mark No. 2007/19046 AVUSA in class 38

Trade Mark No. 2007/19047 AVUSA in class 41

These registrations were all filed in 2007.

2.3 The Registrant registered the domain name avusamedialive.co.za on 30 July 2014.

2.4 The website to which the avusamedialive.co.za domain name points refers to some of the Complainant's trade marks, including SOWETAN, CAREER JUNCTION, AUTO JUNCTION and TIMES LIVE and creates the impression that it is an official website of the Complainant.

2.5 The Complainant addressed a letter of demand to the Registrant on 23 March 2015 for the transfer of the offending domain name. At the date of filing the complaint, no response had been received to the letter of demand.

3 Parties' Contentions

3.1 Complainant

a) The Complainant alleges that it is the registered proprietor in South Africa of several trade mark registrations consisting of or incorporating the word AVUSA or the phrase AVUSA MEDIA. The Complainant also alleges that it has used these trade marks extensively since 2007 and that it has acquired a reputation therein.

b) The Complainant alleges that the domain name avusamedialive.co.za is identical to the AVUSA and AVUSA MEDIA trade marks and that it is an abusive registration in the hands of the Registrant.

c) The Complainant alleges that because the Registrant is using the

Complainant's other trade marks on the website found at www.avusamedialive.co.za, the website creates the impression that it is affiliated in some way with the Complainant.

3.2 Registrant

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

4 Discussion and Findings

4.1 Complainant's Rights

4.1.1 The Adjudicator finds in terms of Regulation 3 that the offending domain name is identical or similar to the AVUSA and AVUSA MEDIA trade marks in which the Complainant has statutory rights.

4.1.2 The Complainant owns several trade mark registrations in South Africa consisting of or incorporating the word AVUSA or the phrase AVUSA MEDIA. These registrations are valid and in force. The offending domain name, avusamedialive.co.za, incorporates these trade marks entirely and is identical or similar to them. The addition of the word "live" in the offending domain name does not serve to separate the domain name from the Complainant's trade marks. Indeed, the word "live", a word commonly used in the media and publication industry, particularly for online offerings and news reports, serves only to bring the avusamedialive.co.za domain name closer to the Complainant's trade marks.

4.1.3 Support for this finding can be found in Case Number ZA2008-0023 in the Dispute pertaining to the domain name suncityvacation.co.za dated 11 November 2008, in which the Adjudicator found:

“With regard to the inclusion of the word “vacation” in the disputed domain name, it is a settled principle in Domain Name Dispute resolution that the inclusion of a generic word or a word generic to the industry in question, is not a distinguishing feature (see WIPO decisions [wwwzonediet.com 20070286](#)]; [fryelectronic.com \[D20061435\]](#) and Nominet decisions [allianceandleicesterbankplc.co.uk \[DRS 20063280\]](#) and [mirauk.co.uk \[DRS 20063727\]](#)).”

4.1.4 The Complainant has not submitted evidence to establish the renown of the AVUSA trade marks, but it is not necessary to make a finding on the Complainant’s common law rights in view of the Complainant’s statutory rights.

4.2 Abusive Registration

4.2.1 The Adjudicator finds, in terms of Regulation 3, that the offending 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. In addition, the offending domain name has been used in a manner that takes unfair advantage of and is unfairly detrimental to the Complainant’s rights.

4.2.2 The offending domain name was registered in 2014, seven years after the registration of the AVUSA and AVUSA MEDIA trade marks.

4.2.3 The website to which the offending domain name points appears to be a cloned website and creates a very clear impression that it is an official website which is connected to the Complainant.

4.2.4 In the absence of a response from the Registrant, the ineluctable conclusion from the above facts is that the offending domain name is an abusive registration in terms of Regulation 3.

5. Decision

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

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Megan Reimers
SAIIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za