

ADJUDICATOR DECISION

CASE NUMBER:	ZA2015-0212
DECISION DATE:	9 DECEMBER 2015
DOMAIN NAME	SAMANCORP.CO.ZA
THE DOMAIN NAME REGISTRANT:	Lameck Mwasisebe
REGISTRANT'S LEGAL COUNSEL:	None
THE COMPLAINANT:	Samancor Chrome Limited
COMPLAINANT'S LEGAL COUNSEL:	Moore Attorneys
THE 2 nd LEVEL DOMAIN NAME ADMINISTRATOR:	ZACR (CO.ZA Administrators)

1) Procedural History

- a. The Dispute was filed with the South African Institute of Intellectual Property Law (the "SAIPL") on **6 August 2015**. On **12 August 2015** the SAIPL transmitted by email to ZA Central Registry (ZACR) a request for the registry to suspend the domain name(s) at issue, and on **13 August 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 **13 August 2015**. In accordance with the Regulations the due date for the Registrant's Response was **10 September 2015**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on **14 September 2015**. On the same day, **14 September 2015** the Registrant in an email informed the Administrator that the domain had been set for termination and on **16 September 2015** the Registrant confirmed that the domain name can be terminated. The Registrant and Complainant were informed on **17 September 2015** by the Administrator that the domain is locked and cannot be transferred from the Registrant to the Complainant without a Settlement Agreement to this effect or a decision by an Adjudicator.
- c. As no Settlement Agreement was forthcoming, the SAIPL appointed **Gavin Morley S.C.** on **3 November 2015** but prior to rendering a decision **Mr Morley** passed away suddenly and **Janusz F Luterek** was invited as the Adjudicator in this matter on **25 November 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

- a. The Complainant is Samancor Chrome Limited, a company duly organized in accordance with the laws of South Africa. Samancor Chrome Limited was created in 1975, as a result of a merger between SA Manganese Ltd and Amcor Ltd, to become the world's largest integrated ferrochrome producer and South Africa's leading exporter of chemical-grade chromite and foundry sand.
- b. The complainant is the proprietor of registered trade marks in respect of SAMANCOR dating back to 1980.

3) Parties' Contentions

a. Complainant

- i. Immediately upon discovering the domain name registration, the Complainant through its attorneys, Moore Attorneys, addressed a letter of demand to the Registrant on 10 February 2015, pointing out the Complainant's rights and the Registrant's abusive registration, and claiming transfer of the domain name to the Complainant. The letter of demand was sent to the Registrant's email address, as provided in the WHOIS records on 10 February 2015.
- ii. On 10 February 2015, correspondence was received from Lameck Mwasisebe wherein he advised that he registered the domain name on behalf of his client.
- iii. On 26 February 2015, the Complainant's attorneys received correspondence from Dheena Saman wherein she advised that she embarked on the domain name registration by virtue of her surname "SAMAN" by including the letters "CORP" at the end, and that she was merely exercising her birth right. She further enquired if the Complainant was willing to make an offer for the domain name.

- iv. On 04 March 2014, the Complainant through its attorneys advised the registrant that they will not be making an offer for the domain name and that the registrant must cease use and transfer the domain name to the Complainant.
- v. The Complainant attended to conduct a search of the Registrant's website to ascertain what services it offers. Through its investigation, it ascertained that the abusive domain name is inactive and dormant.

b. Registrant

- i. The Registrant as the Respondent did not reply to the Complainant's contentions.

4) Discussion and Findings

a. Complainant's Rights

- i. Complainant has rights in respect of a name or mark which is identical or similar to the domain name in dispute, for example, SAMANCOR 1980/05238.
- ii. It is to be noted that the registration of the Complainant is in respect of the name SAMANCOR in block letter form. There is thus no other matter as part of any of the registrations which detract from or dilute the distinctiveness of the trade mark SAMANCOR.
- iii. In support of its submission in respect of each of the domain names in respect of which the complaint has been filed, the Complainant refers to SAIPL Decision 2011-0081 wherein it was stated that:

"The Adjudicator is of the view that the Complainant has indeed shown that it owns rights in respect of the trade mark HIPPO. The Complainant has registered rights in its HIPPO trade marks. The Complainant also submitted that its HIPPO trademarks are well

known and the Adjudicator has no reason to question this assertion."

The Adjudicator concurs with the view in this decision and its applicability in the present complaint since the Registrant has not responded to the complaint except to agree informally to abandon its registration.

b. Abusive Registration

- i. Regulation 4(1) provides a non-exhaustive list of factors that indicate that a domain name is an abusive registration. These include:
 - (a) Circumstances indicating that the Registrant has registered or otherwise acquired the domain name to disrupt unfairly the business of the Complainant.
 - (b) Circumstances indicating that the Registrant is using, or has registered, the domain names in a way that leads people or businesses to believe that the domain name is registered to, operated or authorised by, or otherwise connected with the Complainant.
 - (c) Evidence, in combination with other circumstances indicating that the domain name in dispute is an abusive registration, that the registrant is engaged in a pattern of making abusive registrations.
- ii. Under the circumstances there is sufficient evidence indicating that the Registrant has registered or otherwise acquired the domain name in an abusive manner in accordance with Regulation 4(1). Accordingly, the registration of the domains in suite by the Registrant is held to be abusive.

c. Offensive Registration

- i. NOT APPLICABLE

5) Decision

For all the foregoing reasons, in accordance with Regulation 9, the Adjudicator orders that the domain name, SAMANCORP.CO.ZA be transferred to the Complainant.

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Janusz F Luterek
SAIIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za