

Decision

[ZA2015-0214]

.ZA ALTERNATE DISPUTE RESOLUTION
REGULATIONS (GG29405)

ADJUDICATOR DECISION

CASE NUMBER:	ZA2015-0214
DECISION DATE:	22 October 2015
DOMAIN NAMES:	transluxbus.co.za
THE DOMAIN NAME REGISTRANT:	James Sai
REGISTRANT'S LEGAL COUNSEL:	None
THE COMPLAINANT:	Autopax Passenger Services (SOC) Ltd
COMPLAINANT'S LEGAL COUNSEL:	Moore Attorneys
2 nd LEVEL ADMINISTRATOR:	ZA Central Registry (co.za)

1. Procedural history

- 1.1 The domain in this complaint is <transluxbus.co.za>, which was registered on **4 April 2015**. The Registrant is James Sai, of 23-AC, Menara-B, mpaj Kuala Lumpur, Pandan, indah-55100, Malaysia.
- 1.2 The Complainant is Autopax Passenger Services (COC) Ltd, a subsidiary of Passenger Rail Agency of South Africa. It is hereinafter referred to as “the Complainant”.
- 1.3 This dispute was filed with the South African Institute of Intellectual Property Law (“SAIPL”), on **31 August 2015**. On **1 September 2015** SAIPL emailed a request to ZA Central Registry for the registry to suspend the domain name, and on **2 September 2015** they confirmed the suspension.
- 1.4 In accordance with the Regulations, the SAIPL formally notified the Registrant of the commencement of the Dispute on **16 September 2015**. The due date for the Registrant’s Response was **13 October 2015**. The Registrant had not submitted a Response by **14 October 2015**, and is in default.
- 1.5 The SAIPL appointed Adv Owen Salmon SC as the Adjudicator in this matter on **15 October 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. An extension was agreed to for the delivery of this adjudication finding.

2 The Facts, Complainant's contentions, Discussions and Findings

2.1 The Complainant is the operator of the luxury couch/bus service under the brand TRANSLUX and which was established in 1985. In the subsequent 30 years, till date, this has become a well-known mark in South Africa. The Complainant is the Applicant for registration of the trade mark TRANSLUX in several classes, and is about to take assignment of a registration for the trade mark TRANSLUX in Class 39 (covering transportation services) from the proprietor Transnet SOC Ltd, effectively its predecessor-in-title. I am satisfied that this affords the Complainant the right as contemplated by Regulation 3(1)(a) to call upon the Registrant to submit to this adjudication.

2.2 The Registrant is a Malaysian resident. He has been a respondent in several domain name complaints, successfully filed with the South African Institute of Intellectual Property Law.¹ The contention advanced by the Complainant, that the Registrant *"targets big brands and registers domain names which incorporate famous brand names, probably with the view of selling such domain names for a profit"*, is not contested by Mr Sai.

2.3 In the absence of an explanation by the Registrant as to why a Malaysian resident would have a *bona fide* interest in a South African domain name which incorporates, substantially, such a well-known trade mark the conclusion – on the probabilities - is inescapable that Mr Sai registered the domain name either to: -

- intentionally block the registration of a name in relation to which the Complainant would have some rights;

¹ ZA2014-00187; ZA2014-00189; ZA2015-00197.

- take unfair advantage of the Complainant's rights;
- confuse members of the public into believing that the disputed domain name is in fact that of the Complainant's;
- unfairly disrupt the business of the Complainant; or
- trade in the domain name, potentially to the detriment of the Complainant and in all probability for a sum of money in excess of that paid by Mr Sai for registering the domain.

2.4 These contentions are all advanced by the Complainant in support of the complaint that the domain name is abusive as contemplated by the Regulations. I agree.

3 **Decision**

3.1 In the circumstances, the complaint that the domain name is abusive is upheld. I order that it be transferred to the Complainant.

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ADV OWEN SALMON SC
SAIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za