

Decision

ZA2017-0266

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

ADJUDICATOR DECISION

CASE NUMBER:	ZA2017-0266
DECISION DATE:	3 July 2017
DOMAIN NAME	TRAVELOCITY.CO.ZA
THE DOMAIN NAME REGISTRANT:	LIQUN WANG
REGISTRANT'S LEGAL COUNSEL:	N/A
THE COMPLAINANT:	TRAVELSCAPE, LLC
COMPLAINANT'S LEGAL COUNSEL:	ADAMS & ADAMS, PRETORIA
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 May 2017**. On **22 May 2017** the SAIPL transmitted by email to the ZA Central Registry (ZACR) a request for the registry to suspend the domain name at issue, and on **22 May 2017** 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 **22 May 2017**. In accordance with the Regulations the due date for the Registrant’s Response was **20 June 2017**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on **21 June 2017**.
- c) The SAIPL appointed Mr Andre van der Merwe as the Adjudicator in this matter on **23 June 2017**. 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.
- d) In view of the failure by the Registrant to file a Response herein, the Adjudicator will consider this dispute on the basis of a default dispute.

2 Factual Background

- 2.1 The Complainant, and more particularly its predecessor-in-title, (hereinafter referred to jointly as the Complainant) had founded the Travelocity business in 1996. This business is a provider of consumer-direct travel services for the leisure and business traveller.
- 2.2 The Complainant is owned by Expedia, Inc., which is one of the world’s largest travel companies, and which owns various world-wide travel brands including EXPEDIA.COM, HOTWIRE, HOTELS.COM, TRIVAGO, HOMEAWAY, and TRAVELOCITY. Expedia, Inc. offers travellers a comprehensive selection of travel

options, and powers the technology platforms of the Complainant's various websites.

- 2.3 The Complainant's central website, TRAVELOCITY.COM, was launched in 1996. This is one of the most powerful one-stop travel sites on the Internet, providing reservation information for more than 700 airlines, more than 50 000 hotels, and more than 50 car rental companies, including hotels, airlines and car rental companies based in South Africa. More particularly, TRAVELOCITY.COM offers more than 6 500 vacation packages as well as tour and cruise departures, including packages covering South Africa, such as the wine route/estates in Franschhoek.
- 2.4 The Complainant has been using the name and trademark TRAVELOCITY, either alone or in combination with other word or design elements, for its travel-related services since 1996. During this period, the Complainant has continuously advertised and offered its services under the TRAVELOCITY name and trademark throughout the world, including in South Africa.
- 2.5 The Complainant has for many years extensively promoted its TRAVELOCITY services throughout the world, including various third- party internet publications based in South Africa (as expressly exemplified in the Complaint) that refer to the Complainant's Roaming Gnome visiting South Africa. The Complainant has also used its name and trademark TRAVELOCITY on various social media platforms including Twitter, Facebook, YouTube, LinkedIn, and it also operates mobile applications.
- 2.6 The Complainant owns various trademark registrations for the TRAVELOCITY trademark in many countries around the world including the United States of America, the European Community, India, China and Brazil (but not in South Africa). These registrations are *prima facie* valid and in force.
- 2.7 The Complainant and its TRAVELOCITY.COM website have received several awards over the years and the Complainant has exemplified five of these awards which include the "World's Leading Travel Internet Site" for nine consecutive years.

2.8 The Complainant's TRAVELOCITY website had received over 6.6 million visits in April 2016, and is ranked #542 in terms of websites visited in the USA and #1812 globally. In addition to the aforementioned, the Complainant has a number of visitors/customers, including active customers, in South Africa.

2.9 The disputed domain name, travelocity.co.za, was registered by the Registrant on 28 August 2016.

3 Parties' Contentions

3.1 Complainant

- a) Based on the extent of its promotional and sales activities as set out above, and the period of such activities, the Complainant contends that it has developed an extensive reputation in and to its name and trademark TRAVELOCITY throughout the world, including a reputation, and goodwill, in South Africa under the common law.
- b) The Complainant contends that its name and trademark TRAVELOCITY has become a well-known trademark in South Africa, and hence that it is entitled to (statutory) protection in South Africa terms of section 35 of the Trade Marks Act, No 194 of 1993.
- c) In addition to the aforementioned rights The Complainant also contends that it has registered rights namely trademark registrations in various countries, as set out above (but not in South Africa).
- d) The Complainant contends that the disputed domain name is identical, or at least similar, to its TRAVELOCITY.COM name and trademark.
- e) The Complainant contends that, for various reasons, as set out in detail in its Complaint, the disputed domain name, in the hands of the Registrant, is an abusive registration.

3.2 Registrant

- a) The Respondent did not file a Response herein, and hence did not respond to

the Complainant's above contentions.

4 Discussion and Findings

- a) In order to make a finding that the disputed domain name is an abusive registration, the Complainant has to prove, on a balance of probabilities, in terms of Regulation 3(2), that the required elements in terms of Regulation 3(1)(a) are present viz that:
- i) the Complainant has rights in respect of a name or mark,
 - ii) which is identical or similar to the disputed domain name; and
 - iii) in the hands of the Registrant, the disputed domain name is an abusive registration.

An abusive registration is defined in the definition section viz in Regulation 1, to mean a domain name which either:-

- a) 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
- b) has been used in a manner that takes unfair advantage of, or is unfairly detrimental to, the Complainant's rights.

SUBSTANTIVE ASPECTS

Turning to the substantive aspects of the Complaint, the Adjudicator has carefully perused the Complaint filed herein, and has fully considered the facts and contentions set out therein.

RIGHTS IN RESPECT OF A NAME OR MARK

In terms of Regulation 1, the term "rights" is widely defined. The Regulation states that "rights" and "registered rights" include intellectual property rights, commercial, cultural, linguistic, religious and personal rights protected under South African law but is not limited thereto.

As has been decided in the South African ADR appeal decisions of www.seido.co.za (ZA2009-0030) and www.xnets.co.za (ZA2011-0077), the notion of "rights" for the purposes of Regulation 3(1)(a) is not trammelled by trade mark jurisprudence. The threshold in this regard should be fairly low.

It is also a matter of *locus standi* in order to make sure that the person who complains is someone with a proper interest in the complaint. The threshold in this

regard should also be fairly low.

DOES THE COMPLAINANT HAVE RIGHTS?

The first element that the Adjudicator needs to establish is whether, as set out above, and in terms of Regulation 3(1)(a), on a balance of probabilities, the Complainant has rights in respect of the name and trade mark TRAVELOCITY. This will also determine whether the Complainant has the necessary *locus standi* to bring this Complaint. The Complainant contends that it has rights in and to the name and mark TRAVELOCITY. The Registrant has not contested this.

The Complainant has contended and shown that it has registered its name and trade mark TRAVELOCITY as a trade mark in various foreign countries (but not in South Africa), from as early as 1996. These trade mark registrations are shown to be in force, and are considered by the Adjudicator to be *prima facie* valid.

Hence the Complainant has such registered rights in and to the name and trademark TRAVELOCITY. The rights flowing from these registrations could hypothetically be enforced by the Complainant against an infringer who without authority was to use the name and trade mark TRAVELOCITY, or a confusingly similar trade mark, in the relevant country or countries, in the course of trade.

The Complainant has also contended and shown that it has enjoyed considerable sales and promotion of its TRAVELOCITY services over about 20 years, namely both internationally and in South Africa. It also asserts that it has expended considerable resources on marketing and promoting its TRAVELOCITY services, which have become known to, and associated by, a substantial number of the public, with the Complainant. Accordingly, the Complainant contends that, by virtue of its aforementioned activities internationally and in South Africa, it has developed a substantial repute or reputation, and hence goodwill, in terms of the common law.

Such reputation, as forming part of the goodwill, in respect of its name or trade mark TRAVELOCITY, could be damaged by means of unlawful competition or more particularly passing-off under the common law by another party wrongly representing that it is, or is associated with, or part of, the Complainant and its business.

It was pointed out in the South African domain name decision ZA2007-0003 (telkommedia.co.za) that the registration, adoption and use of a domain name being

a name or mark that enjoys a reputation, of another person, could readily amount to passing-off under the common law.

The Complainant therefore claims to have justifiable and justiciable rights in other countries, and under the common law in South Africa respect of its name and trade mark TRAVELOCITY viz rights that can be enforced against others who infringe or would be likely to damage such rights.

In support of the above, the Adjudicator refers to the above-mentioned South African domain name decision ZA2007-0003 at page 9; and the textbook Webster and Page, *op cit*, at paragraphs 15.5 and 15.7 and the South African and foreign court decisions cited therein.

The Complainant has further contended that its name and trademark TRAVELOCITY has become well-known in South Africa, and hence that it is entitled to protection in terms of section 35 of the Trade Marks Act, No 194 of 1993. The Adjudicator is not convinced that the name and trademark TRAVELOCITY has become well-known in South Africa because insufficient evidence in this regard has been submitted in the Complaint. However, this does not detract from the opinion of the Adjudicator regarding the rights of the Complainant.

Finally, the Adjudicator points out that the Registrant has chosen not to dispute that the Complainant has registered and common law rights in respect of TRAVELOCITY.

Considering all the above factors, the Adjudicator therefore finds that the Complainant has proved, on a balance of probabilities, that it has both registered and unregistered rights viz common law rights in respect of the name and trade mark TRAVELOCITY. The Complainant has thereby also established that it has the necessary *locus standi* to bring this Complaint.

NAME OR MARK IDENTICAL OR SIMILAR TO THE DISPUTED DOMAIN NAME?

The second element that the Adjudicator needs to establish is whether, on a balance of probabilities, the Complainant has proved that its name or mark TRAVELOCITY, in which it has rights as set out above, is identical or similar to the disputed domain name. The Complainant contends that its name and mark

TRAVELOCITY is identical, or at least is similar, to the disputed domain name. The Registrant has chosen not to dispute this.

The Complainant's name and mark (in which it has rights) is TRAVELOCITY, while the disputed domain name is travelocity.co.za. Ignoring the first and second level suffixes, as indicated in Regulation 5(c), the comparison becomes TRAVELOCITY v travelocity namely that the name or trademark is identical to the (disputed) domain name.

Accordingly, the Adjudicator finds on a simple and factual comparison that the Complainant has proved, on a balance of probabilities, that its name and trade mark TRAVELOCITY is identical to the disputed domain name.

IS THE DISPUTED DOMAIN NAME AN ABUSIVE REGISTRATION?

The third element that the Adjudicator needs to establish is whether, on a balance of probabilities, the disputed domain name, in the hands of the Registrant, is an abusive registration, as defined in the definition section viz in Regulation 1, and as set out above. The Complainant asserts that the disputed domain name is an abusive registration while the Registrant has chosen not to contest this.

According to the definition, and to various Nominet decisions, there are two potential abuses (or two types of abuse) viz:

- a) Registration with an abusive intent; and/or
- b) Use in an abusive manner.

At the outset, the Adjudicator refers to the foreign decisions DRS02464 (Aldershot Car spares v Gordon); and to DRS00658 (Chivas Brothers Ltd v David William Plenderleith); in which the Expert found that: "Where a Respondent registered a domain name

- 1) Which is identical to a name in which the complainant has rights;
- 2) Where that name is exclusively referable to the complainant;
- 3) Where there is no obvious justification for the Respondent having that name for the domain name; and
- 4) Where the Respondent has come forward with no (reasonable) explanation for having selected the domain name; it will ordinarily be reasonable for an expert to infer firstly that the Respondent registered the domain name for a purpose and secondly that such purpose was abusive."

Against the background of the aforementioned decisions, the Adjudicator concurs with the view that the nature of “abusive” in the Regulations does not necessarily require a positive intention to abuse the Complainant’s rights but that such abuse can be the result/effect or consequence of the registration and/or use of the disputed domain name.

Regulation 4 provides a list of (non-exhaustive) factors/circumstances, which may indicate that a disputed domain name is an abusive registration. More particularly, Regulation 4 lists various factors or circumstances that may indicate that the disputed domain name is an abusive registration. The Complainant has asserted the following factors or circumstances that will be discussed below viz:

Regulation 4(1)(a)(i) – Circumstances indicating that the Registrant has registered or otherwise acquired the (disputed) domain name primarily to sell, rent or otherwise to transfer the domain name to a complainant for valuable consideration in excess of the registrant’s reasonable out-of-pocket expenses directly associated with acquiring the domain name.

In addition to using the disputed domain name to redirect consumers to a competitor’s website, the (disputed) website has at times indicated that the disputed domain name was for available for sale. The minimum offer was US\$90 during December 2016. However, when the Complainant made an anonymous approach to purchase the disputed domain name shortly thereafter, the purchased price drastically increased to US\$5 000 (approx. R67 000) viz 55 times more than a month earlier. This dramatic increase is far in excess of the Registrant’s reasonable out-of-pocket expenses directly associated with acquiring ie registering the disputed domain name.

Accordingly, the Adjudicator concludes that this circumstance applies in the present dispute, and that this factor indicates that the disputed domain name may be an abusive registration.

Regulation 4(1)(a)(ii) – Circumstances indicating that the registrant has registered or acquired the (disputed) domain name primarily to block intentionally the registration of a name or mark in which the complainant has rights.

The Complainant points out that the Registrant is not offering any of his own

services on the website associated with the disputed domain name. Instead the website has, at various times, redirected consumers to (i) websites of the Complainant's competitors such as www.booking.com, and/or to (ii) a click-through revenue portal with sponsored links related to travel, and/or to (iii) the Complainant's TRAVELOCITY.COM website through masked affiliate redirects. Given this use of the disputed domain name, it appears that the Registrant has no legitimate interest in the disputed domain name except to sell it to the Complainant for profit and/or to syphon off web traffic for his own profit, and in the process to block the Complainant from registering and using the disputed domain name for a legitimate purpose in its own business in South Africa.

Although the Regulations (and definitions) are silent on what a "blocking registration" is or involves, it is clear both in general terms and from various Nominet decisions that a blocking registration appears to have two critical features. The first is that it must act against a name or mark in which the Complainant has rights. The second is intent or motivation and suggests some knowledge and hence a purpose in registering a domain name to prevent the Complainant from doing so. See the foreign decisions DRS00583 (club1830uncovered.co.uk) and DRS01378. The disputed domain name undeniably prevents the Complainant from registering and using this domain name, or its name or trade mark in this form, for itself whether through the intent of the Registrant and/or as an unintended consequence of the disputed domain name registration.

Although the Registrant has chosen not to offer any reason(s) for registering the disputed domain name, the Adjudicator is obliged to conclude that the registration of the disputed domain name has the simple consequence of barring, and hence blocking, the Complainant from using and registering this domain name for itself, as the legitimate owner of rights in and to the relevant name and trade mark TRAVELOCITY. The Adjudicator is also obliged to conclude that it was the primary purpose of the Registrant to intentionally block the registration of a name or trade mark (which is a unique and invented name) in which the Complainant has rights so that the Registrant could use the disputed domain name for his own business purposes.

In support of the above, see WIPO/D2000-0545 (bancolumbia.com); and the leading United Kingdom authority dealing with domain names and their "blocking" effect

viz British Telecommunications plc v One in a Million Ltd [1999] FSR 1 (CA). In this case, the Court of Appeal held that the disputed domain name registrations were unlawful on the grounds of trade mark infringement and passing off, and interdicted One in a Million Ltd and those who controlled it from such conduct, and ordered them to transfer the disputed domain name registrations to the companies that in reality traded under those names.

In further support of the above, see also the foreign decision WIPO/D2000-0766 (Red Bull GmbH v Harold Gutch) which is cited in the South African decision ZA2008-0014 (Automobiles Citroen v Mark Garrod).

Accordingly, the Adjudicator concludes that this circumstance applies in the present dispute, and that this factor indicates that the disputed domain name may be an abusive registration.

Regulation 4(a)(iii) – Circumstances indicating that the registrant has registered the (disputed) domain name primarily to disrupt unfairly the business of the complainant.

The Complainant points out that the disputed domain name not only blocks the Complainant from registering and using its own domain name, but also diverts internet users away from the Complainant's services to the websites and services offered by a competing third party. The Complainant accordingly argues that this clearly unfairly disrupts its business.

The Adjudicator concludes that this circumstance applies in the present dispute, and that this factor indicates that the disputed domain name may be an abusive registration.

Regulation 4(a)(iv) – Circumstances indicating that the registrant has registered the (disputed) domain name primarily to prevent the complainant from exercising its rights.

The Complainant contends that the disputed domain name blocks it from registering its own domain name, as set out above; and hence the disputed domain name prevents the Complainant from exercising its legitimate rights in South Africa viz by registering its own South African domain name, TRAVELOCITY.CO.ZA, that it should, as of right, be entitled to do but is prevented from doing by the disputed domain name.

Besides the factual question of the disputed domain name preventing the Complainant from exercising its rights ie by registering its own South African domain name, this raises the question of whether the Registrant had acted in good faith or otherwise in registering the disputed domain name. From the above explanation of the Registrant's actions in registering and using the disputed domain name and the false statements made by the Registrant when registering the disputed domain name (-see below in this regard), it appears that the Registrant had not acted in good faith but had in fact acted in bad faith.

In support of this proposition, it appears undeniable that the Registrant had, at all material times, not known of the Complainant and its rights in and to its name and trademark TRAVELOCITY. Hence it appears both from this imputed knowledge and directly from the false statements or warranties by the Registrant (-see below) that the disputed domain name was registered in bad faith inter alia primarily to prevent the Complainant from exercising its rights.

Accordingly, the Adjudicator concludes that this circumstance applies in the present dispute, and that this factor may indicate that the disputed domain name is an abusive registration.

Regulation 4(1)(b) - Circumstances indicating that the registrant is using, or has registered the (disputed) domain name in a way that leads people or businesses to believe that the (disputed) domain name is registered to, operated or authorised by, or otherwise connected with the complainant.

The Complainant has clearly established that it has rights in and to the name and mark TRAVELOCITY in respect of various travel services; and the Complainant's name and trade mark TRAVELOCITY is identical to the disputed domain name. Hence there is a likelihood that a significant number of persons will be confused or deceived into thinking that the Registrant and its services are somehow linked, or are associated with, the Complainant. Consequently, there appears to be a real likelihood of passing-off taking place in the marketplace. See also the brief discussion under the above heading '**DOES THE COMPLAINANT HAVE RIGHTS?**'.

In view of potential passing off taking place, it appears to the Adjudicator that the abovementioned relevant circumstances are present.

The above Regulation requires either registration OR use. Various foreign decisions have found that actual use is not a hard and fast requirement. These decisions have found that sites “under construction” or “coming soon”, for example, create a likelihood or confusion, or have found that, if the disputed domain name were used, it would create confusion. See for example the decisions in the foreign cases WIPO/D2000-0545; NAF/FA91359, NAF/FA95464 and NAF/FA95498.

Actual confusion is also not necessary – and the potential or (reasonable) likelihood for confusion is sufficient. In support hereof, various foreign decisions have found that confusion may be inferred in situations where the disputed domain name contains the complainant’s name/trade mark (plus a generic term). See for example the foreign decisions in WIPO/D2000-0777, WIPO/D2000-0878, NAF/FA95033 and NAF/FA95402; as well as the foreign NIKE and NOKIA decisions. See also the South African decision ZA2007-0003 (Telkom SA Limited v. Cool Ideas 1290 CC) and subsequent cases citing that decision in this regard.

Accordingly, the Adjudicator concludes that this circumstance applies in the present dispute, and that this factor indicates that the disputed domain name may be an abusive registration.

Regulation 4(1)(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.

The Complainant has indicated that the Registrant had been engaged in registering a number of other disputed domain name registrations, in which the Registrant was ordered to transfer such registrations to the respective complainants. Seven such registrations in various jurisdictions have been cited by the Complainant, one of which was <petrobас.co.za> which was held to be confusingly similar to the PETROBAS trademark in South Africa.

The Complainant has further indicated that in three of these disputes, namely <petrobас.co.za>, <asurion-mobile.com> and <getresponse.be>, the Registrant had attempted to sell the disputed domain name for an amount far in excess of his reasonable out-of-pocket expenses in registering these. This simply supports the above circumstance raised under Regulation 4(a)(1).

Accordingly, the Adjudicator concludes that the above circumstance under Regulation 4(1)(c) applies in the present dispute, and that this factor indicates that

the disputed domain name may be an abusive registration.

DISCUSSION OF OTHER FACTORS HEREIN

(a) The Registrant should reasonably have been aware of the Complainant's name and trademark TRAVELOCITY, which is a name and trademark that has an extensive reputation world-wide, and the effect that the disputed domain name would have on the Complainant and its business. This begins to call into question whether the Registrant acted in good faith in registering the disputed domain name.

Although awareness or lack of awareness of the Complainant's name and trade mark TRAVELOCITY at the relevant time is not *per se* a requirement herein, in circumstances where the Registrant should have reasonably known or been aware thereof, this raises a suspicion that the Registrant was not acting in good faith at that time viz when it decided to register the disputed domain name.

See in this regard the foreign decided domain name decisions viz WIPO/D2000-0037, WIPO/2000-0137-1492, WIPO/2001-1492, and WIPO/2003-0257, in which it was held that bad faith may be inferred from the registration of a well-known trade mark as part of a domain name.

(b) In addition to the above considerations, the direct question arises whether the Registrant had acted in good faith or otherwise in registering the disputed domain name. In this regard, the Registrant had warranted, when applying to register the disputed domain names, in terms of the Uniform SA terms and conditions (in clause 5.1) that:

I. "It has the right without restriction to use and register the Domain Name";
and

II. "The use or registration of the Domain Name [by the Registrant] does not or will not interfere with, nor infringe the right of any third party in any jurisdiction with respect to trade mark, service mark, trade name, company name, close corporation name, copyright, or any other intellectual property right."

Clause 5.1.1 of the Uniform SA terms and conditions state further (-to which the Registrant had agreed): "Applicant (the Registrant) hereby irrevocably represents, warrants, and agrees that its [above] statements in the Application are accurate and complete."

It is unlikely that the Registrant had not known, at all material times, of the Complainant and its rights in and to its name and trade mark TRAVELOCITY (which is a unique and invented name and trademark), and hence it appears both from this knowledge and more directly from the above false statements or warranties by the Registrant that the disputed domain name was registered in bad faith.

In support of the above, the Adjudicator refers to the South African decision ZA2012-0117 (South African Revenue Services v Antonie Goosen) and the foreign decisions: WIPO/D2005-0283 (associatedbritishfoods.com) and WIPO/D2009-0286 (qualitair4u.com).

(c) In the Adjudicator's view, although the disputed domain name has to date not been used for bona fide services offered by the Registrant, it can be used by the Registrant (or another person), and if used, it has the potential of disrupting and potentially damaging the reputation and business of the Complainant, and eroding the distinctive character of its name and trade mark TRAVELOCITY. The Complainant alleges the dispute domain name is being held passively, and that this is evidence of bad faith.

Regarding such non-use, in certain foreign decisions such as Telstra Corporation Limited v. Nuclear Marshmallows (WIPO/D2000-0003), it was established that registration together with "inaction" can support a finding of bad faith. The above decision has been cited for that proposition and followed by subsequent panels.

In further support of the above, it has been held that failure to make use of a domain name during a two-year period after registration, constitutes bad faith. See the foreign cases Hexagon v. Xspect Solutions Inc (D2005-0472), and Mondich & American Wine Biscuits Inc v. Brown (D2000-2000-0004).

In the South African case Telkom SA Ltd & TDS Directory Operations (Pty) Ltd v. The Internet Corporation (ZA2007-0005), the Adjudicator stated that the Registrant had failed to explain why it did not make good faith use of the disputed domain name.

Accordingly, the Adjudicator comes to the conclusion that the above factors and circumstances apply in the present Dispute, and more particularly that the Registrant has generally acted in bad faith.

4.1 Complainant's Rights

4.1.1 The Adjudicator therefore finds, on a balance of probabilities, that the Complainant has rights in respect of the name and trade mark, TRAVELOCITY, which is identical to the domain name in dispute.

4.2 Abusive Registration

4.2.1 The Adjudicator also finds, on a balance of probabilities, that the disputed 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; or

4.2.2 Has been used in a manner that takes unfair advantage of, or is unfairly detrimental to the Complainant's rights.

4.2.3 Accordingly, the Adjudicator finds, on a balance of probabilities, that the disputed domain name, in the hands of the Registrant, is an abusive registration.

5. Decision

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

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ANDRE VAN DER MERWE
SAIIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za