

ADJUDICATOR DECISION

CASE NUMBER:	ZA2017-0267
DECISION DATE:	11 July 2017
DOMAIN NAME	acdexpress.co.za
THE DOMAIN NAME REGISTRANT:	Jan Botha
REGISTRANT'S LEGAL COUNSEL:	n/a
THE COMPLAINANT:	ACDC Express Franchising
COMPLAINANT'S LEGAL COUNSEL:	Spratt Digital Consulting (Pty) Ltd
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 **31 May 2017**. On **1 June 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 **1 June 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 **1 June 2017**. In accordance with the Regulations the due date for the Registrant's Response was **30 June 2017**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on **3 July 2017**.
- c. The Complainant did not submit any Reply.
- d. The SAIPL appointed **Vanessa Lawrance** as the Adjudicator in this matter on **5 July 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.

2) Factual Background

The Registrant registered the domain name `acdexpress.co.za`. This domain name is identical to the Complainant's registered trade mark. The Registrant was formerly employed by one of the Complainant's franchise outlets. The registrant conducted a competing business after it left the employ of the Complainant's franchisee.

3) Parties' Contentions

a. Complainant

- i. The Complainant is the proprietor of Trade Mark Registration No. 2010/03529 ACDC EXPRESS, registered in class 35.
- ii. The Registrant is a former employee of one of the Complainant's franchises.
- iii. The Registrant conducted a business identical to that of the Complainant.
- iv. In e-mail correspondence between the Registrant and the Complainant's representative, the Registrant "alluded" to the "possibility of leveraging position of the disputed domain name, in pursuit of personal gain".
- v. The Complainant believes, for the reasons set out above, that the domain name is abusive.

b. Registrant

- i. None of the above was denied by the Registrant.

4) Discussions and Findings

a. Complainant's Rights

- i. The Complainant has registered rights in a trade mark identical to the domain name.
- ii. There was clearly a relationship between the Complainant and the Registrant, in terms of which the Registrant would have known of the Complainant's rights in the trade mark ACDC EXPRESS, and the value that the Complainant attached to its mark.
- iii. The Registrant was involved in a business competing with the Complainant, and there therefore appears to be the possibility that

the domain name has been or may, in the future be used in respect of such business.

- iv. The Complainant did attempt to obtain ownership of the domain name from the Registrant. The correspondence between the parties was fairly innocuous. The Registrant did not ask for an exorbitant sum for transfer of ownership; it merely advised the Complainant that a "trade", as proposed by the Complainant, "would not work for" [the Registrant].
- v. I do not agree with the Complainant's interpretation of this correspondence as being an attempt, by the Registrant, to "leverage the position of the disputed domain name in pursuit of personal gain".
- vi. Notwithstanding this, I am of the view that the domain name, in the hands of the Registrant, who clearly was aware of the Complainant's rights in the trade mark ACDCEXPRESS, disrupts the business of the Complainant and prevents the Complainant from exercising its rights. The domain name is not presently being used, and the Registrant seems to be holding on to it to intentionally block the registration thereof by the Complainant.

b. Abusive Registration

- i. It therefore appears that the domain name `acdcepress.co.za` was registered in a manner which, at the time when the registration took place, took unfair advantage of or was unfairly detrimental to the Complainant's rights.

5) Decision

For all the foregoing reasons, in accordance with Regulation 9, the Adjudicator orders that the domain name, [acdcexpress.co.za](#) be transferred to the Complainant.

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VANESSA LAWRENCE
SAIIPL SENIOR ADJUDICATOR
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