

## ADJUDICATOR DECISION

CASE NUMBER:	<b>ZA2017-0270</b>
DECISION DATE:	<b>4 September 2017</b>
DOMAIN NAME	<b>midea.co.za</b>
THE DOMAIN NAME REGISTRANT:	<b>Zhao Ke</b>
REGISTRANT'S LEGAL COUNSEL:	<b>N/A</b>
THE COMPLAINANT:	<b>The Midea Group Co. Ltd</b>
COMPLAINANT'S LEGAL COUNSEL:	<b>CSC Digital Brand Services</b>
THE 2 <sup>nd</sup> LEVEL DOMAIN NAME ADMINISTRATOR:	<b>ZA Central Registry (CO.ZA Administrators)</b>

## 1) Procedural History

- a. The Dispute was filed with the South African Institute of Intellectual Property Law (the "SAIPL") on **5 July 2017**. On **6 July 2017** 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 **7 July 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 **12 July 2017**. In accordance with the Regulations the due date for the Registrant's Response was **10 August 2017**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on **15 August 2017**.
- c. The SAIPL appointed **Rachel Sikwane** as the Adjudicator in this matter on **18 August 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

- a. The Complainant is an electrical appliance manufacturer, headquartered in Guangdong, China.
- b. The Complainant is a publicly listed company and, since 2016, has been listed as a Fortune 500 company. In 2015, the Complainant posted a net revenue of over 22 billion USD.
- c. The Complainant employs over 100,000 employees, has operations in more than 200 countries worldwide and is renowned for providing a full

range of residential and commercial air conditioning products and home appliances.

- d. The MIDEA brand and trade mark are owned by the Complainant.
- e. The Complainant is the registered proprietor of the MIDEA trade mark in South Africa, Europe and in the United States in relation to goods or services falling, *inter alia*, in classes 7, 9, 11 and 37. As evidence of this, the Complainant submitted copies of extracts from the online trade marks registers of these jurisdictions.
- f. The Complainant's trade mark registrations in South Africa date back to as early as 1999.
- g. The Complainant states that, for almost 50 years, it has continuously used the MIDEA name as its trading name and as a trade mark in relation to the electronic products that it offers for sale in various countries around the world.
- h. The Complainant states that it began doing business in South Africa in 2013 and, since then, has become well-known for providing a full range of residential or commercial air conditioner products and home appliances. The Complainant submitted evidence, including a copy of a business plan setting out, *inter alia*, details of projects that the Complainant proposed to undertake in South Africa in 2017, images of the Complainant's new and upgraded facilities in South Africa and the Complainant's marketing and digital strategy.
- i. The Complainant concludes its background submissions by stating that it maintains a high web presence. To this end, the Complainant submitted website analytics evidence from SimilarWeb.com and Alexa.com relating to its primary website situated at [www.midea.com](http://www.midea.com). The midea.com domain name was created on 11 May 1998.

---

### 3) Parties' Contentions

#### a. Complainant

- i. The Complainant contends that the Disputed Domain Name is identical to a trade mark, which the Complainant owns, namely MIDEA.
- ii. The Complainant contends further that the Disputed Domain Name in the hands of the Registrant is abusive because –
  1. it 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; and
  2. it has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's rights.
- iii. Regulation 4 sets out several factors which may indicate that a Disputed Domain Name is an abusive registration. The Complainant has asserted a number of these factors as its grounds for lodging the Dispute. In particular, the Complainant contends that the Disputed Domain Name is an abusive registration because –
  1. it amounts to a blocking registration against a name or mark in which the Complainant has rights;
  2. it was registered for the purpose of unfairly disrupting the business of the Complainant;
  3. the Registrant is not commonly known by a name or legitimately connected with a mark which is identical or similar to the Disputed Domain Name;
  4. it was registered to prevent the Complainant from exercising its rights; and
  5. the Disputed Domain Name is not generic or descriptive and the Registrant is not making fair use of it.

- iv. In addition, the Complainant contends that the Disputed Domain Name was registered to sell, rent or otherwise transfer the domain name to the Complainant or to a competitor of the Complainant or any third party, for valuable consideration in excess of the Registrant's reasonable out-of-pocket expenses directly associated with acquiring or using the Disputed Domain Name. The Complainant submitted a screen shot of a webpage from the www.afternic.com website on which the Disputed Domain Name is offered for the amount of USD19,999. The Complainant contends that this amount is valuable consideration in excess of the Registrant's out-of-pocket expenses.
- v. Finally, the Complainant also contends that the Registrant has engaged in a pattern of making abusive registrations. The Complainant submitted three judgments handed down against the Registrant in relation to the domains <Mozilla.co.za>, <myfortic.co.uk> and <basf-usa.com>.

**b. Registrant**

- i. The Registrant did not respond to the Dispute lodged by the Complainant, therefore, no arguments were raised by the Registrant to rebut the Complainant's arguments.

**4) Discussion and Findings**

Regulation 3 provides that in order to succeed in a domain name dispute based on an alleged abusive registration, a complainant is required to prove, on a balance of probabilities, that the following three elements are present:

- i) that the complainant has rights in respect of a name or mark; and
- ii) that such name or mark is identical or similar to the domain name in dispute; and
- iii) that the domain name in the hands of the registrant is an abusive registration.

---

**a. Complainant's Rights**

- i. The Complainant has contented and shown that it has registered the MIDEA trade mark in various countries, including in South Africa.
- ii. The Registrant has not responded to the Dispute, therefore, there is no evidence before the Adjudicator that would give her reason to doubt that the MIDEA trade mark registrations are in force and *prima facie* valid.
- iii. Therefore, the Adjudicator finds, on a balance of probabilities, that the Complainant has rights in respect of the trade mark MIDEA.

**b. Identical or Similar to Disputed Domain Name**

- i. The Disputed Domain Name is identical to the Complainant's MIDEA trade mark, save for the ".co.za" country code Top Level Domain ("ccTLD") identifier.
- ii. Generally, as in this case, the ccTLD identifier serves no purpose other than a purely technical one and is excluded from consideration for the purposes of the assessment of identity or similarity between a trade mark and a domain name.
- iii. Therefore, the Adjudicator finds, on a balance of probabilities, that the Disputed Domain Name is identical to the MIDEA trade mark, in which the Complainant has rights.

**c. Abusive Registration**

- i. MIDEA is a made up word, which is not descriptive. The Complainant uses the trade mark as its trading name and as a trade mark.
- ii. The Disputed Domain Name was created on 9 September 2015.
- iii. The Registrant does not use the Disputed Domain Name, other than in relation to a "we're coming soon" parked website.

- iv. The Registrant did not respond to the Dispute and provided no justification for having adopted the name MIDEA as its name for the Disputed Domain Name. Given the opportunity afforded to the Registrant to provide an explanation in response to the Dispute, and the Registrant's failure to do so, the Adjudicator is unable to conceive a reason how the Registrant could have selected the Disputed Domain Name without being aware of the existence of the Complainant and the Complainant's MIDEA trade mark.
- v. As indicated above, the Complainant has asserted a number of the factors set out in Regulation 4 as its grounds for lodging the Dispute. Some of these factors are discussed below.
- vi. Regulation 4(1)(a)(i) provides that where there are circumstances indicating that a Registrant has registered or otherwise acquired the Disputed Domain Name primarily to sell, rent or otherwise transfer the domain name to a Complainant or to a competitor or the Complainant, or any third party, for valuable consideration in excess of the Registrant's reasonable out-of-pocket expenses directly associated with acquiring or using the domain name, such circumstances may indicate that the domain name is an abusive registration.
- vii. The Complainant submitted evidence of the Disputed Domain Name having been offered for sale for an amount of USD19,999. This amount is considerably more than what the Registrant's reasonable out-of-pocket expenses directly associated with acquiring or using the domain name could have been.
- viii. Under Regulation 4(1)(c), evidence, in combination with other circumstances indicating that the Disputed Domain Name is an abusive registration, that the Registrant is engaged in a pattern of making abusive registrations may also indicate that the Disputed Domain Name is an abusive registration.

- ix. As referred to previously, the Complainant submitted copies of decisions that show that the Registrant has behaved in a similar manner in relation to other well-known brand names.
- x. The Complainant alleges that the Registrant registered the Disputed Domain Name with the intention of preventing the Complainant from exercising its rights in the domain name and for the purpose of unfairly disrupting the business of the Complainant.
- xi. The Registrant has not responded to the Dispute nor led evidence to challenge the Complainant's contentions. The Adjudicator has no reason not to agree with the Complainant's contentions in this regard.
- xii. Accordingly, the Adjudicator finds that based on just the above factors alone, on a balance of probabilities, the Disputed Domain Name is an abusive registration.
- xiii. For all the reasons above, and in the absence of any justification from the Registrant for having adopted the Disputed Domain Name, the Adjudicator finds that the Disputed Domain Name is an abusive registration.

## 5) Decision

- a. For all the foregoing reasons, in accordance with Regulation 9, the Adjudicator orders that the Disputed Domain Name, midea.co.za, be transferred to the Complainant.

.....  
**RACHEL SIKWANE**  
SAIPL ADJUDICATOR  
www.DomainDisputes.co.za