

## **ADJUDICATOR DECISION**

CASE NUMBER:	<b>2007-0006</b>
DECISION DATE:	<b>2007-11-02</b>
DOMAIN NAME	<b>standerdbank.co.za; standarbank.co.za; wwwstandardbank.co.za; standerdank.co.za; standardank.co.za; stanardbank.co.za; standardban.co.za; standadbank.co.za; standardbak.co.za;stndardbank.co.za; stadardbank.co.za; sandardbank.co.za</b>
THE DOMAIN NAME REGISTRANT:	<b>Daniel Cox</b>
REGISTRANT'S LEGAL COUNSEL:	<b>Self represented (unrepresented)</b>
THE COMPLAINANT:	<b>Standard Bank of South Africa Limited</b>
COMPLAINANT'S LEGAL COUNSEL:	<b>Ms. M Reimers, Spoor &amp; Fisher</b>
THE 2 <sup>nd</sup> LEVEL DOMAIN NAME ADMINISTRATOR:	<b>UniForum SA (CO.ZA Administrators)</b>

### **1 Procedural History**

The Dispute was filed with the South African Institute of Intellectual Property Law (the "SAIIPL") on 19 September 2007. On **18 September 2007** the SAIIPPL transmitted by email to UniForum SA a request for the registry to suspend the domain name(s) at issue, and on **18 September 2007** UniForum SA confirmed that the domain name had indeed been suspended. The SAIIPPL verified that the Dispute satisfied the formal requirements of the .ZA Alternate Dispute Resolution Regulations (the "Regulations"), and the SAIIPPL's Supplementary Procedure.

In accordance with the Regulations, the SAIIPL formally notified the Registrant of the commencement of the Dispute on **19 September 2007**. In accordance with the Regulations the due date for the Registrant's Response was **17 October 2007**. The Registrant did not submit a response in accordance with Regulation 18, and accordingly, the SAIIPL notified the Registrant of its default on **18 October 2007**. Further correspondence with the Registrant regarding the failure to respond in terms of Regulation 18 followed on **18 October 2007**, however, the Registrant has not filed a response which complies with Regulation 18.

The SAIIPL appointed **Janusz Luterek** as the Adjudicator in this matter on **22 October 2007**. The Adjudicator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the SAIIPL to ensure compliance with the Regulations and Supplementary Procedure.

## **2 Factual Background**

The Complainant, The Standard Bank of South Africa Limited, is big full service South African bank, offering a range of banking and related financial services and holds trade marks which all companies within the Standard Bank Group are authorised to use in the conduct of their business and in the offering of their products.

## **3 Parties' Contentions**

### **3.1 Complainant**

***The domain names are identical or similar to a name or mark in which the Complainant has rights [Regulation 3(1)(a)]***

- 3.1.1 Use of the trade mark STANDARD BANK by the complainant in many jurisdictions in the world over a significant period of time has served to create enormous repute and goodwill in the STANDARD BANK trade mark. This repute and goodwill has caused strong common law rights in the STANDARD BANK trade mark to vest in the Complainant.

- 3.1.2 The Complainant is the proprietor of numerous registered trade marks consisting of or incorporating the word STANDARD BANK in South Africa and internationally.
- 3.1.3 The offending domain names are, for all intents and purposes, identical to the Complainant's STANDARD BANK trade mark.
- 3.1.4 Accordingly, the Complainant contends, it has established that the offending domain names are identical or at least similar to a trade mark in which the Complainant has rights, as required by Regulation 3(1)(a).

***The domain names in the hands of the Registrant are abusive registrations [Regulation 3(1)(a)]***

- 3.1.5 The Complainant submits that the Registrant has registered the offending domain names in a manner which, at the time when they were registered, took unfair advantage of and was unfairly detrimental to the Complainant's rights.
- 3.1.6 Complainant contends that it is clear that the Registrant has deliberately registered and is using the offending domain names to trade off the goodwill and reputation of the Complainant's STANDARD BANK trade marks.
- 3.1.7 Complainant contends that the offending domain names are used as url's to connect to websites which have no particular branding other than the domain names themselves.
- 3.1.8 It is further contended that the websites appear to be portals which promote a variety of primarily financial services on behalf of different entities which services range from credit card application to home loans to bankruptcy assistance. There is consequently a direct overlap

between the services offered on the websites and those of Standard Bank Group. Further, a direct competitor of Complainant, First National Bank, is prominent on the websites while the Complainant is not referenced on the websites, except for the misspelled domain name.

3.1.9 The Complainant's attorneys addressed a letter to the Respondent on 24 May 2007 advising the Registrant of its rights in the STANDARD BANK trade mark and demanding that the domain names be transferred to the Complainant.

3.1.10 the Complainant submits that it has shown at least the following factors, as itemised in Regulation 4(1), which indicate that the offending domain names are abusive registrations:

3.1.10.1 The Registrant has registered the domain names to block intentionally the registration of a name or mark in which the Complainant has rights;

3.1.10.2 The Registrant has registered the domain names to disrupt unfairly the business of the Complainant;

3.1.10.3 The Registrant has registered the domain names to prevent the Complainant from exercising its rights; and/or

3.1.10.4 The Registrant is using, or has registered, the domain names in a way that leads people or business to believe that the domain names are registered to, operated or authorised by, or otherwise connected with the Complainant. The Respondent uses the domain names to attract internet users to his own websites and does so for commercial gain, by creating confusion with the Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of those websites.

### **3.2 Registrant**

The Registrant did not reply in terms of Regulation 18 to the Complainant's contentions.

## **4 Discussion and Findings**

### **4.1 Complainant's Rights**

- 4.1.1 The Complainant is the proprietor of numerous registered trade marks consisting of or incorporating the word STANDARD BANK in South Africa and internationally. Details of these trade mark registrations were attached to the complaint as annexe "G".
- 4.1.2 Complainant attached copies of certificates of registration in respect of South African trade mark registration nos. 78/1181-2 STANDARD BANK, issued in terms of Section 50 of the Trade Marks Act 194 of 1993.
- 4.1.3 The domain names at issue are, for all intents and purposes, identical to the Complainant's STANDARD BANK trade mark.
- 4.1.4 The Respondent's use of the offending domain names amounts to what has been recognised in many WIPO administrative panel decisions as "typo squatting". Examples of such decisions include Case No. D2000-0680 - Let'sbuyit.com versus Steven Ward.
- 4.1.5 It was held in WIPO Case No. D2000-0441 Reuters Limited versus Global Net 2000 Inc. that the practical effect of preceding a trade mark with the letters www in a domain name is so-called "typo-piracy". The domain name wwwstandardbank.co.za cannot but be held to be confusingly similar to the Complainant's trade mark STANDARD BANK.

- 4.1.6 The Complainant has thus established that the domain names in issue are identical or at least similar to a trade mark in which the Complainant has rights, as required by Regulation 3(1)(a).

## **4.2 Abusive Registration**

- 4.2.1 The domain names in issue are used as url's to connect to websites which are all very similar to one another. The sites have no particular branding other than the domain names themselves.
- 4.2.2 The websites are portals which promote a variety of primarily financial services on behalf of different entities. Services offered range from credit card application to home loans to bankruptcy assistance. There is consequently a direct overlap between the services offered on the websites and those of Standard Bank Group and its member companies' services.
- 4.2.3 First National Bank (FNB) appears prominently on the websites. FNB is one of the other big four South African banks and is a direct competitor of the Complainant. The Complainant, on the other hand, whose STANDARD BANK brand is misspelled in each of the offending domain names, does not appear anywhere on the websites.
- 4.2.4 Several of the websites, including the website which is linked to the domain name standerdbank.co.za, which happens to be the Afrikaans spelling of the Complainant's STANDARD BANK brand, appear in blue, the exact colour which is very strongly associated with the Standard Bank Group in South Africa.
- 4.2.5 In the WIPO decisions discussed above, the panel found this type of conduct to be evidence that the registration and use of the domain name was in bad faith.

- 4.2.6 Regulation 4(1), lists various factors which may be considered as indicating that registration of a domain name is an abusive registrations:
- 4.2.6.1 The Registrant has registered the domain names to block intentionally the registration of a name or mark in which the Complainant has rights;
  - 4.2.6.2 The Registrant has registered the domain names to disrupt unfairly the business of the Complainant;
  - 4.2.6.3 The Registrant has registered the domain names to prevent the Complainant from exercising its rights; and/or
  - 4.2.6.4 The Registrant is using, or has registered, the domain names in a way that leads people or business to believe that the domain names are registered to, operated or authorised by, or otherwise connected with the Complainant.
- 4.2.7 The Registrant uses the domain names to attract internet users to his own websites and does so for commercial gain, by creating confusion with the Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of those websites.
- 4.2.8 The domain names have thus been used in a manner that takes unfair advantage of, or is unfairly detrimental to the Complainant's rights.

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## 5 Decision

For all the foregoing reasons, in accordance with Regulation 9, the Adjudicator orders that the domain names; standerdbank.co.za, standarbank.co.za, wwwstandardbank.co.za, standerdank.co.za, standardank.co.za, stanardbank.co.za, standardban.co.za, standadbank.co.za, standardbak.co.za, stndardbank.co.za, stadardbank.co.za, and sandardbank.co.za, be transferred to the Complainant.

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**JANUSZ LUTEREK**  
SAIIPL SENIOR ADJUDICATOR  
[www.DomainDisputes.co.za](http://www.DomainDisputes.co.za)