

## Decision

[ZA2014-0183]

.ZA ALTERNATE DISPUTE RESOLUTION  
REGULATIONS (GG29405)

### ADJUDICATOR DECISION

CASE NUMBER:	ZA2014-0183
DECISION DATE:	29 September 2014
DOMAIN NAME:	hardrockcafe.co.za
THE DOMAIN NAME REGISTRANT:	S Lennon
REGISTRANT'S LEGAL COUNSEL:	N/A
THE COMPLAINANT:	Hard Rock Cafe International (USA), Inc.
COMPLAINANT'S LEGAL COUNSEL:	Adams & Adams
2 <sup>nd</sup> LEVEL ADMINISTRATOR:	ZA Central Registry

## 1. Procedural history

- 1.1 The domain in issue is <hardrockcafe.co.za>, which was registered on 16 February 2006.
- 1.2 The Complainant is Hard Rock Cafe International (USA), Inc., hereinafter referred to as “the Complainant”. The Registrant is S Lennon.
- 1.1 This dispute was filed with the South African Institute of Intellectual Property Law (“SAIPL”), on 30 July 2014. On 7 August 2014 the SAIPL transmitted by email to ZA Central Registry a request for the registry to suspend the domain name, and on the same day ZA Central Registry confirmed the suspension.
- 1.2 In accordance with the Regulations, the SAIPL formally notified the Registrant of the commencement of the Dispute on 8 August 2014. The due date for the Registrant’s Response was 5 September 2014.
- 1.3 By 11 September 2014 the Registrant had not submitted its Response to SAIPL, and has still not done so.
- 1.4 On 12 September 2014 Adv Owen Salmon SC was invited to adjudicate this matter, and he duly submitted the Statement of Acceptance and Declaration of Impartiality and Independence. Subsequently Adv Salmon was appointed as the Adjudicator.

## 2 Discussion and Findings

2.1 The Complainant is the owner of the internationally famous Hard Rock Cafe business. It is the registered proprietor of this trademark all over the world, including in South Africa.

2.2 The Adjudicator finds that the Complainant has rights in the mark HARD ROCK CAFE within the meaning of Regulation 3(1)(a).

2.3 The question is whether the registration in the hands of the Registrant is an abusive registration. In the Adjudicator's view, it obviously is abusive.

2.4 Given that the domain incorporates the exact mark in which the Complainant has rights, the onus is on the Registrant to establish that the name is not abusive within the meaning of the Regulations. The Registrant has not filed a response, and therefore fails to discharge the onus.

2.5 In any event, the domain is not in use.

2.6 In Encyclopaedia Britannica, Inc. v LaPorte Holdings<sup>1</sup> it was held that the registration and use of domain names "*so obviously connected with such a well-known product ... by someone with no connection with the product suggests opportunistic bad faith*". Furthermore, in

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<sup>1</sup> D2005-0866 (WIPO Oct 11, 2005).

the matter FIFA v X Yin,<sup>2</sup> as the Adjudicator there I held that a domain name registration will be abusive when the registrant registers a domain name which is

2.6.1 identical to a name in which the complainant has rights;

2.6.2 that name is exclusively associated with the complainant;

2.6.3 there is no obvious justification for the registrant having adopted that name for a domain name; and

2.6.4 the registrant has come forward with no explanation for having selected the domain name.

2.7 Accordingly, the Adjudicator finds that the registration is abusive and upholds the Complainant's Dispute.

### 3 Decision

In accordance with Regulation 9, the Adjudicator orders that the domain name be transferred to the Complainant.

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

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<sup>2</sup> ZA2007-0007 (SAIPL November 14, 2007).