

## Decision

**ZA2015-0199**

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

### ADJUDICATOR DECISION

|                                      |                           |
|--------------------------------------|---------------------------|
| CASE NUMBER:                         | <b>ZA2015-0199</b>        |
| DECISION DATE:                       | <b>23 June 2015</b>       |
| DOMAIN NAME                          | <b>pylones.co.za</b>      |
| THE DOMAIN NAME REGISTRANT:          | <b>Bambury- Niki Witt</b> |
| REGISTRANT'S LEGAL COUNSEL:          | <b>none</b>               |
| THE COMPLAINANT:                     | <b>Pylones SAS</b>        |
| COMPLAINANT'S LEGAL COUNSEL:         | <b>Adams &amp; Adams</b>  |
| 2 <sup>nd</sup> LEVEL ADMINISTRATOR: | <b>ZACR (CO.ZA )</b>      |

## 1 Procedural History

- a) The Dispute was filed with the South African Institute of Intellectual Property Law (the "SAIPL") on **6 May 2015**. On **6 May 2015** the SAIPL transmitted by email to ZA Central Registry (ZACR) a request for the registry to suspend the domain name at issue, and on **7 May 2015** the 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 **13 May 2015**. In accordance with the Regulations the due date for the Registrant's Response was **10 June 2015**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on **11 June 2015**.
- c) The SAIPL appointed **Vanessa Lawrance** as the Adjudicator in this matter on **17 June 2015**. 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

- 2.1 The Complainant is Pylones SAS, A French corporation. The Registrant of the disputed domain name is Bambury- Niki Wit, of PO Box 2785, Houghton, 2041.

2.2 The Complainant is the proprietor of various trade mark registrations for the trade mark PYLONES in South Africa and other countries elsewhere.

2.3 The Complainant also claims to have common law rights in the PYLONES trade mark in South Africa. It has submitted reasonable evidence and the existence of these rights has not been disputed. Accordingly, the adjudicator finds, for purposes of this decision, that such rights exist.

2.4 The domain name is linked to a “parked” page.

### **3 Parties' Contentions**

#### **3.1 Complainant**

- a) Bambury is an Australian wholesaler of bedding, homeware and lifestyle products. It is not clear whether the Registrant is linked to Bambury, but the possibility exists that the domain name is intended to be used in relation to Bambury products, which are similar to those goods in respect of which the Complainant has registered its PYLONES trade mark and acquired common law rights therein.
- b) Registration of the domain name is likely to give rise, in the mind of the public, to the belief that the domain name is registered, authorised by or operated by the Complainant, because it comprises the Complainant's well-known trade mark.
- c) Registration of the domain name which is identical to the Complainant's trade mark has been effected for the purpose of:
  - i) Intentionally blocking the registration of a name or mark in which the Complainant has rights; or
  - ii) Disrupt unfairly the business of the Complainant; or

iii) Preventing the Complainant from exercising its rights

### **3.2 Registrant**

a) The Respondent did not reply to the Complainant's contentions.

## **4 Discussion and Findings**

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

4.1.1 The existence of the Complainant's rights in the PYLONES trade mark is undisputed and, their not being palpably implausible, the Adjudicator accepts them for the purposes of this adjudication.

4.1.2 The disputed domain name is identical to the Complainant's registered trade mark.

### **4.2 Abusive Registration**

4.2.1 As correctly cited, vawaterfront.co.za (ZA2011-0099) provides that registration of a domain name identical to the trade mark of another creates the impression that the domain name is registered to, authorised by, or operated by the trade mark proprietor, and the onus rests on the Registrant to prove that the domain name is not an abusive registration. The Registrant has not taken the opportunity presented to do so.

4.2.2 The Registrant has not disputed the Complainant's submission that the domain name was registered for the purpose of:

i) Intentionally blocking the registration of a name or mark in which the Complainant has rights; or

- ii) Disrupting unfairly the business of the Complainant; or
- iii) Preventing the Complainant from exercising its rights

4.2.3 Although the domain name is not used, in the proper sense of the word, it has the potential of being used in a manner that takes unfair advantage of, or is unfairly detrimental to the Complainant's rights.

## 5. Decision

5.1 For all the foregoing reasons, in accordance with Regulation 9, the Adjudicator orders that the domain name, pylones.co.za be transferred to the Complainant.

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**VANESSA LAWRENCE**  
SAIIPL SENIOR ADJUDICATOR  
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