

ADJUDICATOR DECISION

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| CASE NUMBER: | ZA2015 -0207 |
| DECISION DATE: | 15 September 2015 |
| DOMAIN NAME | sasolbusaries.co.za |
| THE DOMAIN NAME REGISTRANT: | Avaliani Sergi |
| REGISTRANT'S LEGAL COUNSEL: | NONE |
| THE COMPLAINANT: | SASOL LIMITED |
| COMPLAINANT'S LEGAL COUNSEL: | Daniel Greenberg - Lexsynergy |
| THE 2 nd LEVEL DOMAIN NAME ADMINISTRATOR: | ZA Central Registry (CO.ZA Administrators) |

1) Procedural History

- a. The Dispute was filed with the South African Institute of Intellectual Property Law (the "SAIPL") on **16 JULY 2015**. On **20 JULY 2015** 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 **28 July 2015** the ZACR confirmed that the domain name had indeed been suspended.
- b. In accordance with the Regulations, the SAIPL formally notified the Registrant of the commencement of the Dispute on **28 JULY 2015**. In accordance with the Regulations the due date for the Registrant's Response was **27 AUGUST 2015**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on **28 AUGUST 2015**.
- c. The SAIPL appointed **MIKE DU TOIT** as the Adjudicator in this matter on **2 SEPTEMBER 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

- a. The complainant was formed in South Africa in 1950 and in 1979 was registered as a public company. It is an international petroleum, chemical, mining and technology company that conducts business in over 149 countries worldwide, specialising in the manufacture and supply of chemicals fuels and oils. In 1953 it opened an office in Dusseldorf Germany and in 1982 listed on the NASDAQ Stock market and in 2003 moved over to the New York Stock Exchange.
- b. It filed and registered the SASOL trademark in over 149 countries worldwide and the oldest registrations date back to 1964 in South Africa and 1955 in the UK. It registered over 700 domains that are identical or incorporate its SASOL trademark, such as sasol.com in 1996, sasol.co.za

in 1995, sasol.net in 2002 sasol.org in 2002, sasol.info in 2001 and sasol.biz in 2001.

- c. The Complainant launched its website www.sasol.co.za on 28 December 1996 and www.sasol.com on 7 January 1997. The Complainant had 7 537 082 hits on its .com website in 2011, 14 749 80 in 2012, 61 250 119 in 2013 and 117 526 409 in 2014. Its website is ranked as the top result on search engines such as Google and Yahoo for the term SASOL.
- d. The complainant established regional companies and supporting businesses in 18 international countries. The total turnover for 2009-2012 was R 571 974 million. It spent R 54 533 million on marketing between 2003-2014.
- e. On or about 3 July 2014 the Complainant discovered that the Registrant registered the disputed domain name and sasollearnerships.co.za forwarding them to a website comprising of affiliate advertising links to various job search service providers which compete with the Complainant's learnership/bursary programme. Affiliate advertisement providers monetize direct navigation traffic on undeveloped domains allowing registrants to earn commission on a pay-per-click basis for directing traffic to advertisers' websites.
- f. On 8 July 2014 the Complainant's representative directed a cease and desist letter to the Registrant as a result of which the sasollearnerships.co.za domain was deleted and re-registered by the Complainant. The Registrant never responded to the demands regarding the disputed domain name.

3) Parties' Contentions

a. Complainant

- i. The disputed domain name is similar to the registered SASOL trademarks.

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- ii. The Complainant relies on its substantial reputation and goodwill in the SASOL trademark. A consumer would assume that any product or service being offered or sold on a website including the word SASOL in the name, was associated with, endorsed or being supplied by the Complainant.
 - iii. The dominant and distinctive part of the disputed domain name is SASOL. The word "busaries", a misspelling of "bursaries" does not add distinctiveness to the disputed domain name but adds to the confusion that the Registrant is the Complainant. The Complainant relies on Dr Ing. H.c.F Porsche AG v Vasily Terkin D 2003-0888 and Telkom SA Limited v Cool Ideas 1290 CC SAIPL ZA 2007-0003.
 - iv. The Complainant is the registrant of, among others, the following domain names which all pre-date the disputed domain name:
 1. Sasollearnerships.com;
 2. Sasolbursaries.com and;
 3. Sasolbursaries.co.za
 - v. Accordingly, the Complainant contends that it has established that the disputed domain name is similar to the SASOL trademark in which it has rights.
 - vi. The disputed domain name is an abusive registration because it was registered in a manner that, at the time the registration took place, took unfair advantage of and was unfairly detrimental to the Complainant's rights and has been used in a manner that takes unfair advantage of and is unfairly detrimental to the Complainant's rights.
 - vii. The registrant's website is littered with a variety of affiliate advertising job vacancies at the Complainant and other businesses. It targets South African job seekers searching for employment opportunities within the Complainant's South African businesses.

One of the Registrant's purposes was to attract and profit from Internet users seeking the Complainant's website.

- viii. The misspelling of sasolbursaries.co.za is intended to divert users who erroneously misspell the Complainant's website, which in itself is an abusive registration.
- ix. The Registrant is engaged in a pattern of registering domain names that infringe upon the rights of other trademark owners to which the Registrant has no apparent rights. Apart from the disputed domain name, the Registrant also registered siemensappliances.co.za, cartebLANche.co.za, netbankmobile.co.za and others, all of which direct to websites with affiliate advertising.
- x. The SASOL trademark is used to divert traffic to the Registrant's website.
- xi. The disputed domain name is intended by the Registrant to create a likelihood of confusion in the minds of the public as to an association between the Registrant and the Complainant.

b. Registrant

The Registrant did not reply to the Complainant's contentions.

4) Discussion and Findings

a. Complainant's Rights

Complainant has proven rights in respect of a name or mark which is identical or similar to the domain name in dispute. It has proven that it has registered and common law rights in the SASOL trademark, which all pre-date the disputed domain name. In addition, it has registered a host of domain names which all incorporate the SASOL trademark and which pre-date the Registrant's domain name. The disputed domain name is for all intents and purposes identical to the SASOL trademarks of the

Complainant, with the non-distinctive part“ busaries” not addressing any confusion, which is inevitable.

b. Abusive Registration

- i. 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. All the registered and substantial common law rights of the Complainant was proven in the complaint. In addition, all the rights pre-date the disputed domain name.
- ii. Since registration, it has been used in a manner that takes unfair advantage of, or is unfairly detrimental to the Complainant's rights. This adjudicator accepts the legal and factual contentions of the Complainant.

5) Decision

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

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Mike du Toit
SAIIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za