

ADJUDICATOR DECISION

CASE NUMBER:	2015-0221
DECISION DATE:	26 January 2016
DOMAIN NAME	supersportnews.co.za
THE DOMAIN NAME REGISTRANT:	Avaliani Sergi
REGISTRANT'S LEGAL COUNSEL:	None
THE COMPLAINANT:	Supersport International (Pty) Limited
COMPLAINANT'S LEGAL COUNSEL:	Adams & Adams
THE 2 nd LEVEL DOMAIN NAME ADMINISTRATOR:	ZACR (CO.ZA Administrators)

1) Procedural History

- a. The Dispute was filed with the South African Institute of Intellectual Property Law (the "SAIIPL") on **12 November 2015**. On **13 November 2015** the SAIPL transmitted by email to ZA Central Registry (ZACR) a request for the registry to suspend the domain name(s) at issue, and on **17 November 2015** ZACR confirmed that the domain name had indeed been suspended. The SAIPL verified that the Dispute [together with the amendment to 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 **18 November 2015**. In accordance with the Regulations the due date for the Registrant's Response was **17 December 2015**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on **5 January 2016**.
- c. The SAIPL appointed **Janusz F Luterek** as the Adjudicator in this matter on **7 January 2016**. 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

- 1.1. The Complainant Is the proprietor In South Africa of the SUPERSPORT trade mark which it has registered in relation to a wide variety of goods and services. In particular, SUPERSPORT is registered in class 41 under registration number 1997/08492.
- 1.2. In addition to broadcasting live sporting fixtures, the Complainant provides reports on the latest news in the sporting arena worldwide. This includes highlights of sporting fixtures which may not have been

broadcast live, updates on player signings by various sporting clubs and an analysis of sporting fixtures and predictions for match wins or losses. An example of the type of news broadcast by the Complainant can be seen on its official website at www.supersport.com.

3) Parties' Contentions

a. Complainant

- i. The Registrant has been made aware of the Complainant's objection on two occasions viz. Adams and Adams addressed letters to the Registrant on 18 September 2015 and 2 October 2015 by email and to date, the Registrant has failed to respond to any correspondence or comply with the Complainant's demands.
- ii. In the UDRP case of Red Bull GmbH vs Harold Gutch (02000/0766), the panel also found that the registration of a domain name which incorporates the well-known trade mark of another effectively prevents the trade mark owner from using its distinctive and well-known trade mark in the corresponding domain name. It is the Complainant's view that the disputed domain name in this case similarly prevents it from using its SUPERSPORT trade mark and therefore that the disputed domain name prevents the Complainant from exercising its rights in the SUPERSPORT trade mark.
- iii. The manner of use by the Registrant of the disputed domain name does not amount to a good faith offering of goods or services and it is submitted that the Registrant therefore has no legitimate interest in the domain name. There have also been no clear attempts by the Registrant to develop the domain name since its registration. In the circumstances, the only inference to be drawn is that the Registrant has registered the domain name supersportnews.co.za primarily to divert internet users seeking the services of the Complainant, to its own website and to derive an

unfair benefit from the reputation of the Complainant's SUPERSPORT trade mark. The Registrant's conduct in this regard will lead to a dilution of the Complainant's rights in its trade mark and unfairly disrupts the business of the Complainant.

- iv. The Registrant has also been listed in, at least, two disputes which were decided in 2015, namely BHP Billiton Limited vs. Avaliani Sergi (ZA2015-0206) and Sasol Limited vs. Avaliani Sergi (ZA2015-0207). In both cases, the disputed domain names were found to be abusive in the hands of the Registrant and the panels ordered their transfer to the Complainants.
- v. As a result, the only inference that can be drawn is that the Registrant is engaged in a pattern of making abusive registrations, as envisaged by Regulation 4(1)(c) of the Regulations.
- vi. The Complainant requests that the Adjudicator issues a decision for the transfer of the disputed domain name in terms of Regulation 9(a) if the domain name is found to be an abusive registration.

b. Registrant

- i. The Registrant as Respondent did not reply to the Complainant's contentions.

4) Discussion and Findings

a. Complainant's Rights

- i. Complainant has rights in respect of a name or mark which is identical or similar to the domain name in dispute, for example, SUPERSPORT 1997/08492.
- ii. In the UDRP case of Red Bull GmbH vs Harold Gutch (02000/0766), the panel also found that the registration of a domain name which incorporates the well-known trade mark of another effectively prevents the trade mark owner from using its

distinctive and well-known trade mark in the corresponding domain name. It is the Adjudicator's view in the present matter that the disputed domain name in this case similarly prevents Complainant from using its SUPERSPORT trade mark and therefore that the disputed domain name prevents the Complainant from exercising its rights in the SUPERSPORT trade mark.

b. Abusive Registration

- i. The disputed domain name in the hands of the Registrant prevents Complainant from using its SUPERSPORT trade mark and therefore that the disputed domain name prevents the Complainant from exercising its rights in the SUPERSPORT trade mark.
- ii. The Registrant has also been listed in at least, two disputes which were decided in 2015, namely BHP Billiton Limited vs. Avaliani Sergi (ZA2015-0206) and Sasol Limited vs. Avaliani Sergi (ZA2015-0207). In both cases, the disputed domain names were found to be abusive in the hands of the Registrant and the panels ordered their transfer to the Complainants.
- iii. The registration of the disputed domain name, which is so similar to the SUPERSPORT trade mark, by the Registrant, has the effect that the Complainant is barred from registering or using the disputed domain name for itself. The Adjudicator is in agreement with the WIPO UDRP decision of Red Bull GmbH vs. Harold Gutch where the Panel found that the mere registration of a domain name that contains the well-known mark of another effectively prevents the trade mark owner from reflecting their distinctive and well-known mark in the corresponding domain name.
- iv. The circumstances relating to the registration of the disputed domain name in the name of the Registrant are unknown and since the Registrant has failed to respond to the Complaint, the only conclusion that can be drawn is that the Registrant was never within his rights to register the disputed domain name in its own

name. Thus, in terms of Regulation 5(c) the burden to show that the registration was not abusive shifts to the Registrant, who as stated previously failed to respond and has not discharged that burden.

- v. Thus, under the circumstances there is sufficient evidence indicating that the Registrant has registered or otherwise acquired the domain name in an abusive manner in accordance with Regulation 4(1):
 - 1. to block intentionally the registration of a name or mark in which the Complainant has rights;
 - 2. to disrupt unfairly the business of the Complainant; or
 - 3. to prevent the Complainant from exercising his, her or its rights.
- vi. Thus, under all the circumstances the registration of the domain supersportnews.co.za is held to be abusive.
- vii. Furthermore, under all the circumstances, it is found that the Registrant is engaged in a pattern of making abusive registrations, as envisaged by Regulation 4(1)(c) of the Regulations.

c. Offensive Registration

- i. NOT APPLICABLE

5) Decision

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

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Janusz F Luterek
SAIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za