

## ADJUDICATOR DECISION

CASE NUMBER:	<b>2014-0160</b>
DECISION DATE:	<b>14 March 2014</b>
DOMAIN NAME	<b>textar.co.za</b>
THE DOMAIN NAME REGISTRANT:	<b>Taner Rondex Auto</b>
REGISTRANT'S LEGAL COUNSEL:	<b>None</b>
THE COMPLAINANT:	<b>TMD Friction GmbH</b>
COMPLAINANT'S LEGAL COUNSEL:	<b>None</b>
THE 2 <sup>nd</sup> LEVEL DOMAIN NAME ADMINISTRATOR:	<b>ZA Central Registry (CO.ZA Administrators)</b>

## 1) Procedural History

- a. The Dispute was filed with the South African Institute of Intellectual Property Law (the "SAIIPL") on **16 January 2014**. On **17 January 2014** the SAIPL transmitted by email to UniForum SA a request for the registry to suspend the domain name(s) at issue, and on **17 January 2014** ZA Central Registry (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 **20 January 2014**. In accordance with the Regulations the due date for the Registrant's Response was **17 February 2014**. The Registrant did not submit any response, and accordingly, the SAIPL notified the Registrant of its default on **18 February 2014**.
- c. The SAIPL appointed **Tana Pistorius** as the Adjudicator in this matter on **20 February 2014**. 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

The Complainant is a German company with limited liability with its registered address at Schlebuscher Strasse 99, Leverkusen, Germany.

The Complainant is the owner of the trade mark TEXTAR, duly registered in class 12 on the 4 September 1995 in the Republic of South Africa (registration number 95/11605).

The disputed domain name textar.co.za was registered by the Registrant on 30 July 2012.

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### 3) Parties' Contentions

#### a. Complainant

- i. The Complainant avers that the disputed domain name is identical to a mark in which the Complainant holds rights.
- ii. The disputed domain name is an abusive registration as it blocks intentionally the use of the domain name for doing business in South Africa

#### b. Registrant

- i. The Registrant failed to submit a response.
- ii. Regulation 18(1)(a) provides that a Registrant must respond to the statements and allegations contained in the Dispute in the form of a Response. In such a Response, the Registrant must detail any grounds to prove the domain name is not an abusive registration.

The Supplementary Procedure of the SAIPL provides in clause 11 for limited extensions upon good cause being shown. Clause 11 also provides that the Case Administrator shall act strictly in granting any extensions, mindful that the Regulations are intended to provide an efficient and expeditious means to resolve domain name disputes.

- iii. The Adjudicator finds that there are no exceptional circumstances for the Registrant's failure to submit a Response.
- iv. Because the Registrant failed to submit a Response, the Adjudicator must decide the matter on the Dispute (see Regulation 18(3)).
- v. Regulation 28(2) provides that, in the absence of exceptional circumstances, an Adjudicator shall draw such inferences, as it considers appropriate, from the failure of a party to comply with a provision or requirement of the Regulations.

- vi. The Adjudicator draws the following two inferences: (a) the Registrant does not deny the facts that the Complainant asserts, and (b) the Registrant does not deny the conclusions that the Complainant draws from these facts.
- vii. Notwithstanding these inferences, the Adjudicator has analysed Complainant's version in order to satisfy herself that the allegations contained in its Complaint are acceptable and probably true (see ZA2008-0015 (Luxottica U.S. Holding Corp v Preshal Iyar)).

#### **4) Discussion and Findings**

##### **a. Complainant's Rights**

- i. Complainant's has rights in respect of a trade mark which is identical to the domain name in dispute. The Complainant has provided proof of its ownership of the mark TEXTAR in South Africa.

##### **b. Burden of proof of abusive registration**

- i. The proviso to Section 5 provides that: "The burden of proof shifts to the Registrant to show that the domain name is not an abusive registration if the domain name is identical to the mark in which the Complainant asserts rights, without an addition."
- ii. The disputed domain name textar.co.za is identical to the mark in which the Complainant has registered rights. The suffix "co.za" is not regarded as "an addition" to the mark.
- iii. This shifting of the burden of proof disposes of the matter, in that the Registrant has not responded to the Complaint.
- iv. Nevertheless, the Adjudicator proceeds to consider the matter on the merits, and notwithstanding this incidence of the onus.

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**c. Abusive Registration**

- i. An abusive registration is defined as a domain name, which either:
  - (a) when the Registrant registered the domain name took unfair advantage of or was unfairly detrimental to the Complainant's rights; or
  - (b) a domain name that is being used in a manner that takes unfair advantage of, or is unfairly detrimental to the Complainant's rights.
- ii. Evidence of an abusive registration, which is deemed relevant to the Dispute, is described in Regulation 4(1)(a)-(b).
- iii. Regulation 4(1)(a)(ii) provides that a domain name may be deemed to be abusive where it can be shown that the disputed domain was registered primarily to intentionally block the registration of a mark in which the Complainant has rights.
- iv. The Adjudicator in ZA2007-0003 (Telkom SA Limited v Cool Ideas 1290 CC) held that a blocking registration has two critical features. The first is that it must act against a name or mark in which the Complainant has rights. The second feature relates to an intent or motivation in registering the domain name in order to prevent a Complainant from doing so.
- v. The Adjudicator assumes that the Registrant was aware of the Complainant's rights at the time of the domain name registration. The registration of the domain name prevents the Complainant from reflecting its trade mark in a corresponding domain name in the co.za registry.
- vi. The Adjudicator finds, on a balance of probabilities, that the Registrant registered the disputed domain name primarily to block intentionally the registration of a name in which the Complainant has rights.

- vii. By way of summary, the Adjudicator finds that the above factors indicate, on a balance of probabilities, that the disputed domain name is an abusive registration.

## **5) Decision**

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

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**TANA PISTORIUS**  
SAIIPL SENIOR ADJUDICATOR  
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