



SAIPL Decision

[2017-0277]

.ZA ALTERNATE DISPUTE RESOLUTION REGULATIONS
(GG29405)

ADJUDICATOR DECISION

CASE NUMBER:	ZA2017-0277
DECISION DATE:	2017-10-02
DOMAIN NAME	budgetinsurence.co.za
THE DOMAIN NAME REGISTRANT:	James Sai
REGISTRANT'S LEGAL COUNSEL:	None
THE COMPLAINANT:	Budget Insurance Company Limited
COMPLAINANT'S LEGAL COUNSEL:	Moore Attorneys
THE 2 nd LEVEL DOMAIN NAME ADMINISTRATOR:	ZA Central Registry (CO.ZA Administrators)

1 Procedural History

The Dispute was filed with the South African Institute of Intellectual Property Law (the "SAIIPL") on **15 August 2017**. On **15 August 2017** the SAIIPL transmitted by email to the ZA Central Registry (ZACR) a request for the registry to suspend the domain name at issue, and on **15 August 2017** ZACR confirmed that the domain name had indeed been suspended. The SAIIPL verified that the Dispute satisfied the formal requirements of the .ZA Alternate Dispute Resolution Regulations (the "Regulations"), and the SAIIPL's Supplementary Procedure.

In accordance with the Regulations, the SAIIPL formally notified the Registrant of the commencement of the Dispute on **18 August 2017**. In accordance with the Regulations the due date for the Registrant's Response was **15 September 2017**. The Registrant did not submit a response in accordance with Regulation 18, and accordingly, the SAIIPL notified the Registrant of its default on **18 September 2017**.

The SAIIPL appointed **Janusz Luterek** as the Adjudicator in this matter on **21 September 2017**. The Adjudicator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the SAIIPL to ensure compliance with the Regulations and Supplementary Procedure.

2 Factual Background

The Complainant, Budget Insurance Company Limited, forms part of Telesure Investment Holdings (Pty) Ltd and is also part of the international services group which includes BLG Group and Budget Holdings Ltd in Guernsey, United Kingdom.

The Complainant was introduced to the insurance industry in 1998, with the core focus of providing low budget and low premiums on various insurance products, without cutting the extent of cover.

3 Parties' Contentions

3.1 Complainant

- 3.1.1 The Complainant is the registered trade mark proprietor of the following trade marks "BUDGET INSURANCE", "BUDGET INSURANCE BROKERS",

"BUDGET INSURANCE BROKERS FACE 2 FACE" and "BUDGET INSURANCE COMPANY" in trade mark classes 35, 36, and 38 e.g. 2012/06568 BUDGET INSURANCE in class 35, 2012/06569 BUDGET INSURANCE in class 36, and 2012/06570 BUDGET INSURANCE in class 38.

- 3.1.2 The Complainant promotes its "BUDGET INSURANCE" trade marks in various print media platforms such as, for example pamphlets, billboards and advertisements in magazines.
- 3.1.3 There is and has also been extensive coverage of the "BUDGET INSURANCE" trade marks and the associated services on radio and television.
- 3.1.4 The Complainant has for more than a decade offered cost saving insurance products under its "BUDGET INSURANCE" trade marks. The Complainant as at 29 February 2016 recorded a total number of 144 558 (One Hundred and Forty Four Thousand, Five Hundred and Fifty Eight Thousand) active clients.
- 3.1.5 The Complainant spends a considerable sum of money on advertising and promoting its "BUDGET INSURANCE" trade marks. Set out below is the annual amounts that the Complainant has spent on advertising and promoting its "BUDGET INSURANCE" trade marks in South Africa for the period 2012 to 2016.
- 3.1.6 Accordingly, the Complainant contends, it has established that the offending domain names are identical or at least similar to a trade mark in which the Complainant has rights, as required by Regulation 3(1)(a).
- 3.1.7 The Complainant submits that the Registrant has registered the offending domain name in a manner which, at the time when it was registered, took unfair advantage of and was unfairly detrimental to the Complainant's rights.
- 3.1.8 Complainant contends that it is clear that the Registrant has deliberately registered and is using the offending domain name to trade off the

goodwill and reputation of the Complainant's BUDGET INSURANCE trade marks.

- 3.1.9 The Complainant submits that the Registrant had registered the domain name budgetinsurence.co.za unlawfully and without the Complainant's authorisation and/or consent.
- 3.1.10 The Complainant also conducted a search of the Registrant's website to ascertain what services it offers. Through its investigation, it ascertained that the website is active and features active links for Budget Car Insurance and Budget Home Insurance, which links wholly incorporate the Complainant's "BUDGET INSURANCE" trade marks. The Complainant submits that the Registrant's website makes 'unlawful use' of the Complainant's "BUDGET INSURANCE" trade marks and the Registrant at no time had the requisite consent or permission to feature the Complainant's "BUDGET INSURANCE" trade marks on its website.
- 3.1.11 The Complainant further proceeded to view the Budget Car Insurance link, which shockingly revealed competing insurance companies, such as Santam Car Insurance, King Price Insurance, Discovery Car Insurance, Momentum Car Insurance, Virgin Money Insurance, Nedbank Car Insurance, Alex Forbes Insurance etc. In addition, the Complainant identified on the Registrant's website postings which bring the Complainant into disrepute, such as Ukrainian Woman to Marry at www.anastasiadate.com, Beautiful Ukraine Women at www.loveme.com, etc. The Complainant submits that the Registrant's website is detrimental to the Complainant who has absolutely no control over the material uploaded onto the disputed domain name as well as the use of the Complainant's "BUDGET INSURANCE" trade mark on the disputed domain name.
- 3.1.12 In the present dispute, the Complainant submits that members of the public visiting the Registrant's website will be confused and deceived into believing that the business of the Complainant is linked to, or associated with that of the Registrant's website. The net effect of the

Registrant's website is the unsolicited portrayal of the Complainant's "BUDGET INSURANCE" trade marks and brand which is harmful to the Complainant's business.

3.1.13 Immediately upon discovering the domain name registration, the Complainant through its attorneys, Moore Attorneys, addressed a letter of demand to the Registrant on 12 October 2016 pointing out the Complainant's rights and the Registrant's abusive registration, and demanding transfer of the domain name to the Complainant. The letter of demand was sent to the Registrant's email address, as provided in the WHOIS records. To date, the domain name still remains active and in the Registrant's name and as a result the Complainant has been left with no alternative but to proceed with this dispute.

3.1.14 The Complainant submits that it has shown at least the following factors, as itemised in Regulation 4(1), which indicate that the offending domain names are abusive registrations:

3.1.14.1 The Registrant has registered the domain name to block intentionally the registration of a name or mark in which the Complainant has rights;

3.1.14.2 The Registrant has registered the domain name to disrupt unfairly the business of the Complainant;

3.1.14.3 The Registrant has registered the domain name to prevent the Complainant from exercising its rights; and/or

3.1.14.4 The Registrant is using, or has registered, the domain name in a way that leads people or business to believe that the domain name is registered to, operated or authorised by, or otherwise connected with the Complainant. The Registrant uses the domain name to attract internet users to his own websites and does so for commercial gain, by creating confusion with the Complainant's trade mark as to the

source, sponsorship, affiliation or endorsement of those websites.

3.2 Registrant

The Registrant did not reply in terms of Regulation 18 to the Complainant's contentions.

4 Discussion and Findings

4.1 Complainant's Rights

- 4.1.1 The Complainant is the proprietor of numerous registered trade marks consisting of or incorporating the word BUDGET INSURANCE in South Africa and internationally.
- 4.1.2 Complainant attached copies of certificates of registration in respect of South African trade marks for BUDGET INSURANCE and incorporating same, issued in terms of Section 50 of the Trade Marks Act 194 of 1993.
- 4.1.3 The domain name at issue is, for all intents and purposes, identical to the Complainant's BUDGET INSURANCE trade mark.
- 4.1.4 The Registrant's use of the offending domain name amounts to what has been recognised in many WIPO administrative panel decisions as "typo squatting". In WIPO decision D2010-1118 it was held that "typo squatting" occurs when: "a respondent purposefully includes typographical errors in the mark portion of a disputed domain name to divert Internet users who make those typographical errors." In numerous local and international domain name decisions, typo squatting has been found to warrant a decision in the complainant's favour.
- 4.1.5 The Complainant has thus established that the domain name in issue is identical or at least similar to a trade mark in which the Complainant has rights, as required by Regulation 3(1)(a).

4.2 Abusive Registration

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- 4.2.1 The domain name in issue is used as a url to connect to websites which are all very similar to one another. The sites have no particular branding other than the domain name itself.
- 4.2.2 In particular, the domain name is used to advertise insurance companies, such as Santam Car Insurance, King Price Insurance, Discovery Car Insurance, Momentum Car Insurance, Virgin Money Insurance, Nedbank Car Insurance, Alex Forbes Insurance etc. In addition, the Complainant identified on the Registrant's website postings which bring the Complainant into disrepute, such as Ukrainian Woman to Marry at www.anastasiadate.com, Beautiful Ukraine Women at www.loveme.com, etc.
- 4.2.3 The Registrant's website is thus detrimental to the Complainant who has absolutely no control over the material uploaded onto the disputed domain name as well as the use of the Complainant's "BUDGET INSURANCE" trade mark on disputed domain name.
- 4.2.4 Regulation 4(1), lists various factors which may be considered as indicating that registration of a domain name is an abusive registrations:
- 4.2.4.1 The Registrant has registered the domain name to block intentionally the registration of a name or mark in which the Complainant has rights;
 - 4.2.4.2 The Registrant has registered the domain name to disrupt unfairly the business of the Complainant;
 - 4.2.4.3 The Registrant has registered the domain name to prevent the Complainant from exercising its rights; and/or
 - 4.2.4.4 The Registrant is using, or has registered, the domain name in a way that leads people or business to believe that the domain name is registered to, operated or authorised by, or otherwise connected with the Complainant.

4.2.5 The Registrant uses the domain name to attract internet users to his own website and does so for commercial gain, by creating confusion with the Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of its website.

4.2.6 The domain name has thus been used in a manner that takes unfair advantage of, or is unfairly detrimental to the Complainant's rights.

5. Decision

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

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JANUSZ LUTEREK
SAIIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za