



Decision

ZA2017-0274

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

ADJUDICATOR DECISION

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| CASE NUMBER: | ZA2017-0274 |
| DECISION DATE: | 22 September 2017 |
| DOMAIN NAME | dialdirect-southafrica.co.za |
| THE DOMAIN NAME REGISTRANT: | Charles Stirling |
| REGISTRANT'S LEGAL COUNSEL: | None |
| THE COMPLAINANT: | Dial Direct Insurance Limited |
| COMPLAINANT'S LEGAL COUNSEL: | Moore Attorneys (Tyrone Walker) |
| 2 nd LEVEL ADMINISTRATOR: | ZA Central Registry (CO.ZA) |

1) Procedural History

- a. The Dispute was filed with the South African Institute of Intellectual Property Law (the "SAI IPL") on **6 July 2017**. On **6 July 2017** the SAI IPL transmitted by email to the ZA Central Registry (ZACR) a request for the registry to suspend the domain name(s) at issue, and on **7 July 2017** ZACR confirmed that the domain name had indeed been suspended. [In response to a notification by the SAI IPL that the Dispute was administratively deficient, the Complainant filed an amendment to the dispute on [date amendment first received]. The SAI IPL 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 SAI IPL's Supplementary Procedure.
- b. In accordance with the Regulations, the SAI IPL formally notified the Registrant of the commencement of the Dispute on **12 July 2017**. In accordance with the Regulations the due date for the Registrant's Response was **10 August 2017**. [The Registrant did not submit any response, and accordingly, the SAI IPL notified the Registrant of its default on **14 August 2017**.
- c. The SAI IPL appointed **Reinard Michau SC** as the Adjudicator in this matter on **25 August 2017**. The Adjudicator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the SAI IPL to ensure compliance with the Regulations and Supplementary Procedure.

2) Factual background

- a. The domain was registered by Charles Stirling on 14 August 2014.
- b. The Complainant is DIAL DIRECT INSURANCE LTD, a company duly incorporated according to the Company Laws of the South Africa conducting business at Auto & General Park, 1 Telesure Lane, Riverglen, Dairnfern.
- c. The Complainant is a direct insurance company with a variety of short-term insurance products relating to motor vehicles, watercraft, household, buildings and the like.
- d. The Complainant is registered with the Financial Services Board and has been trading as DIAL DIRECT INSURANCE since 22 August 1995.
- e. The Complainant has used the website www.dialdirect.co.za for many years and for a considerable period of time before the domain name which is the subject of this Complaint was registered and used.
- f. The Complainant has various trade marks registered in classes 9, 35, 36, 37, 38 and 39 for the trade mark DIAL DIRECT.
- g. Given the allegations in the Complaint and the attachments it is clear that the Complainant is a considerable organisation that has made extensive use of the trade mark DIAL DIRECT, including in advertising. I have little doubt that its trade mark DIAL DIRECT is extremely well-known in South Africa.
- h. The Registrant has registered the domain name dialdirect-southafrica.co.za. A copy of its website utilising this domain name is attached to the papers. It advertises certain services which are identical (or at the very least similar) to the services and products provided by the Complainant.

3) Parties' Contentions

a. Complainant

- i. Given the aforesaid uncontested facts (the Registrant not having filed a response) the Complainant contends that the Registrant is in contravention of, *inter alia*, Regulation 4(1)(b) which provides that “*Circumstances indicating that the Registrant is using, or has registered, the domain name in a way that leads people or businesses to believe that the domain name is registered to, operated, or authorised by, or otherwise connected with the Complainant*”.
- ii. The Complainant contends that the domain name in the hands of the Registrant is an abusive registration in that its registration was done intentionally to block the Complainant from registering dialdirect-southafrica.co.za, to disrupt unfairly the business of the Complainant, to lead people to believe that it is connected with the Complainant, to take unfair advantage or be unfairly detrimental to the Complainant’s rights and that it is registered for commercial gain by creating confusion.

b. Registrant

- i. The Registrant did not respond to the merits of the complaint.

4) Discussions and Findings

Given the statutory and common law rights of the Complainant in the trade mark DIAL DIRECT, I have little doubt that the Registrant’s use and registration would cause the public to believe that it is connected in some way to the Complainant. The “*differences*” are almost indiscernible.

a. Complainant’s Rights

Given the aforesaid, the domain name has been registered contrary to the Complainant’s rights.

b. Abusive Registration

Given my aforesaid factual findings, I consider the domain name registration also to be an abusive registration.

c. Offensive Registration

Not applicable.

5) Decision

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

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R MICHAU SC
SAIIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za