

Decision

ZA2011-0091

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

ADJUDICATOR DECISION

CASE NUMBER:	ZA2011-0091
DECISION DATE:	15 December 2011
DOMAIN NAME	nyama-catering.co.za
THE DOMAIN NAME REGISTRANT:	Bucknet Internet
REGISTRANT'S LEGAL COUNSEL:	N/A
THE COMPLAINANT:	Nyama Catering Limited
COMPLAINANT'S LEGAL COUNSEL:	Eversheds – Charles You
2 nd LEVEL ADMINISTRATOR:	UniForum SA (CO.ZA)

1 Procedural History

- a) The dispute was filed with the South African Institute of Intellectual Property on **24 October 2011**. On **26 October 2011** the SAIPL requested Uniform SA to suspend the domain name at issue, and on **31 October 2011**, Uniform SA confirmed that the domain name had been suspended. The SAIPL verified that the dispute satisfied the formal requirements of the .za alternative dispute resolution regulations (the Regulations), and the SAIPL supplementary procedure.
- b) In accordance with the Regulations, the SAIPL formally notified the registrant of the commencement of the dispute on **1 November 2011**. In accordance with the Regulations, the due date for the registrant's response was **29 November 2011**. The registrant failed to respond until after it had already been advised that an adjudicator would be appointed to decide this matter.
- c) The SAIPL appointed **Vanessa Lawrance** as the adjudicator in this matter on **1 December 2011**. The adjudicator has submitted the statement of acceptance and Declarations of Impartiality and Independence, as required by the SAIPL to ensure compliance with the Regulations and Supplementary Procedure.

2 Factual Background

- a) The domain name nyama-catering.co.za is registered in the name of Bucknet Internet CC. The Complainant believes that the Registrant holds the domain name on behalf of Francois Wessels, in his capacity as member of Nyama Catering CC. No evidence in this regard has been provided.
- b) The Complainant has no registered rights in the trade mark NYAMA CATERING. It claims to have used the trade mark through a licensee in Gauteng, but no evidence in this regard is provided other than the unsubstantiated allegation that the "Complainant enjoys a substantial and

extensive reputation and goodwill in its name and logo”.

- c) The Registrant’s response in this matter was a brief statement that it is an ISP, who took over hosting of the domain name when the previous host closed down in 2007. The Registrant allegedly has “told both parties involved that we will hand over the domain to whoever wins the copyright battle”.

3 Parties’ Contentions

3.1 Complainant

- a) The complainant believes that the Registrant is holding the domain name on behalf of Francois Wessels in his capacity as a member of Nyama Catering CC, but no evidence in this regard has been provided
- b) It appears that Nyama Catering CC was the former licensee of the Complainant, but that the licence agreement was cancelled in May 2011.
- c) The Complainant then proceeds to make its case against Francois Wessels and/or Nyama Catering CC. The Adjudicator finds all these arguments irrelevant as there is no evidence that Francois Wessels and/or Nyama Catering CC is the Registrant of the domain name in question.

3.2 Registrant

- a) The Registrant is Bucknet Internet, an ISP that, on its own admission, holds the domain name nyama-catering.co.za until finalisation of a dispute between the “parties involved”.
- b) No indication is given of who the parties are that are involved or any authority to hold the domain name. It is however clear that the Registrant does not intend making use of the domain name nyama-

catering.co.za in its own right.

4 Discussion and Findings

4.1 Rights

- a) The Complainant does not have any registered rights in NYAMA CATERING. It alleges that it has made sufficient use of the NYAMA CATERUNG mark through its licensee to have acquired common law rights therein. Although no substantiation of this allegation was provided, the Registrant did not deny the allegation.

4.2 Abusive Registration

- a) The Registrant, on its own version has no intention of using the domain name nyama-catering.co.za for its own account. It is merely holding this domain name pending the resolution of a copyright dispute between some unnamed parties.
- b) The Adjudicator is somewhat confused as to what effect the outcome of a copyright dispute will have on a decision regarding the ownership of the domain name, as it is highly unlikely that copyright exists in the term "Nyana Catering".
- c) If the Complainant is one of the parties to the alleged "copyright dispute", it is the Adjudicator's view that the Registrant should have alerted the other party to the alleged dispute of the complaint lodged, so that the other party could properly respond to the complaint. It is unclear whether or not this was done.
- d) I turn to Uniform SA's terms and conditions for domains delegated in the .co.za domain space and, in particular, paragraph 5 thereof. In this paragraph, the Applicant "irrevocably represents, warrants and agrees that" inter alia, its statements in its application are accurate and complete, it has the right to use and register the domain name,

and it has a bona fide intention to use the domain name on a regular basis on the internet” (the Adjudicator’s emphasis).

- e) It is clear that the Registrant does not have the right to use and register the domain name, nor does it have the bona fide intention to use the domain name on a regular basis or at all.
- f) Accordingly, as the domain name appears to have been held, at least since 2007, in contravention with Uniforum SA’s terms and conditions.
- g) In light thereof that the Complainant is the only party to the dispute that the adjudicator has been called upon to decide that has alleged that it has rights in the mark NYAMA CATERING, and in light thereof that the Registrant has not disputed this claim, the Adjudicator finds that the registration of the domain name nyama-catering.co.za by the Registrant is abusive.

5. Decision

- a) For the foregoing reasons, in accordance with Regulation 9, the Adjudicator orders that the domain nyama-catering.co.za be transferred to the Complainant.

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VANESSA LAWRENCE
SAIIPL SENIOR ADJUDICATOR
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