

Decision

[ZA2018-0313]

.ZA ALTERNATE DISPUTE RESOLUTION
REGULATIONS (GG29405)

ADJUDICATOR'S SUMMARY DECISION

CASE NUMBER:	ZA2018-0313
DECISION DATE:	28/05/2018
DOMAIN NAME	chatroulette.co.za
THE DOMAIN NAME REGISTRANT:	Your.co.za Subscriber Services
REGISTRANT'S LEGAL COUNSEL:	N/A
THE COMPLAINANT:	Mr Andrey Ternovskiy
COMPLAINANT'S LEGAL COUNSEL:	CSC Digital Brand Services - Natalie Leroy
2 nd LEVEL ADMINISTRATOR:	ZA Central Registry

1. The Parties

Complainant:

ANDREY TERNOVSKIY
c/o Lexsynergy Limited
Woodmead Business Park
140 Western Service Road
Woodmead, Johannesburg
2191
South Africa

Registrant:

YOUR.CO.ZA SUBSCRIBER SERVICES
Po Box 41907
Rossburgh
Durban, KZN
4001
South Africa

2. The Domain Name: **CHATROULETTE.CO.ZA**

3. Notification of Complaint

I am satisfied that the Registrant did not submit a response to the dispute in terms of regulation 18(1) and that the Registrant has been notified of the dispute in accordance with regulation 18(4)(a) read with regulation 15(1).

Yes No

4. Rights

The Complainant has, to my reasonable satisfaction, shown rights in a name or mark which is identical or similar to the domain name.

Yes No

5. Abusive Registration

The Complainant has, to my reasonable satisfaction, shown that the domain name is an abusive registration in the hands of the Registrant.

Yes No

6. Other factors

I am satisfied that there are no other factors or circumstances present that would render the decision in this matter unfair.

Yes No

7. Comments (Optional)

- a) The Complainant did not adduce any evidence of rights, whether registered or unregistered, in South Africa. The Complainant did adduce evidence of foreign trade mark registrations for its CHATROULETTE mark as well as evidence that its CHATROULETTE service is well-known outside of South Africa. Adjudicators in this forum hold divergent views as to whether foreign trade mark rights qualify as “rights” in terms of the Regulations. See the cases cited by the learned author Prof. Eddie Hurter in “An evaluation of the concept of 'rights' as applied in domain name dispute resolution adjudications in the '.ZA' domain: Comments and suggestions” 2015 SA Merc LJ 418 at 422. The definition of “rights” in the Regulations is broad enough to cover foreign rights. There are good policy reasons for the definition to extend to foreign rights, specifically to avoid the .ZA namespace becoming a haven for cyber squatters. For the reasons given in the foregoing article, I am in respectful agreement with Prof. Hurter that foreign rights qualify as “rights” in this forum. I note that Prof. Tana Pistorius takes the same view in “Cyberbusters versus Cybersquatters: Round II in the ZADNA Ring” 2009 SA Merc LJ 661 at 671.
- b) Despite not being raised by the Complainant, the offending domain name is identical to the Complainant’s mark, thus the burden of proof shifts to the Registrant in terms of Regulation 5(c). As the Registrant did not submit a

response, the matter falls to be decided against the Registrant on this basis alone.

8. Decision

The offending domain name <chatroulette.co.za> is an abusive registration and must be transferred to the Complainant.

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JEREMY SPERES
SAIIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za