

ADJUDICATOR'S SUMMARY DECISION

CASE NUMBER:	ZA2020-0414
DECISION DATE:	22 January 2021
DOMAIN NAME	MOOSA.CO.ZA
THE DOMAIN NAME REGISTRANT:	Zain Dhooma
REGISTRANT'S LEGAL COUNSEL:	None
THE COMPLAINANT:	Dr Mohammed Irshad Moosa
COMPLAINANT'S LEGAL COUNSEL:	None
2 nd LEVEL ADMINISTRATOR:	ZACR

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1. The Parties

Complainant:

Dr Mohammed Irshad Moosa
29 Mayfield Avenue
Rondebosch, 7700
Cape Town

Registrant:

Zain Dhooma
36 Meerut Road
Westville, 3630
Durban

2. The Domain Name: MOOSA.CO.ZA

3. Notification of Complaint (09 December 2020)

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)

The Complaint is dismissed for the following reasons:

- a) The entire substance of the Complaint (excluding brief references to annexures) consists of only two brief paragraphs, with almost no supporting documentary evidence, in which only the following is stated (paraphrased): the Domain Name has been registered in the name of the Complainant for 20 years; the Complainant has kept his subscription current; the Complainant does not know why the Domain Name is now registered in the name of the Registrant, but that has adversely affected the Complainant's medical practice and business;
- b) The Complainant does not detail the rights upon which the Complaint is based, as required by Regulation 16(2)(h). It would however appear that the Complainant relies upon rights flowing from usage / common law rights. The only evidence of use of any relevant mark presented by the Complainant is a single, undated, cancelled patient medical certificate headed "Dr M I Moosa", reflecting a contact email address "doc@moosa.co.za". No further information or evidence is provided showing the extent of such use. None of the types of evidence required to demonstrate the reputation and goodwill necessary to substantiate common law rights are provided. See SAIPL Case No. [ZA2007-0009](#) <oxycell.co.za> at paragraph 4.2.7, and WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview"), at [paragraph 1.3](#). There is thus no evidence in the record supporting any claim to common law rights by the Complainant, nor any other type of right recognised by the Regulations;
- c) Adjudicators are permitted to undertake limited factual research into matters of public record, especially if this is in the interests of justice. See the decision in SAIPL Case No. [ZA2015-0193 at para](#) 4.2.9. Recognising that the Complainant

is unrepresented, the Adjudicator has conducted cursory searches of the public internet for the header of the Complainant's medical certificate, "*Dr M I Moosa*", and the Complainant's full name, "*Dr Mohammed Irshad Moosa*". The results indicate that the Complainant would appear to have traded as a medical practitioner in Cape Town for some time prior to registration of the Domain Name under those names. The Adjudicator is thus prepared to accept that the Complainant had a reputation and goodwill, and accordingly common law rights, in those names prior to registration of the Domain Name, which rights appear to be geographically limited to Cape Town and its surrounds;

- d) The Adjudicator has searched the Internet Archive entries for the Domain Name, which show no evidence of use of the Domain Name by the Complainant nor the Registrant. There is no evidence in the record or resulting from the Adjudicator's independent research showing that the Complainant has ever traded under MOOSA on its own, let alone is known by the mark MOOSA alone, or that that mark alone has a secondary meaning associated with the Complainant in the minds of the public and is subject to common law rights in the hands of the Complainant. Any previous use the Complainant may have made of the Domain Name when he was the Domain Name's registrant (discussed below) appears to have been use only as part of an email address and not use as a trade mark or brand, as would be required to establish a reputation, secondary meaning and common law rights. Use of the Domain Name by the Complainant as aforesaid always appears to have been under the trade marks DR M I MOOSA or DR MOHAMMED IRSHAD MOOSA, which are the marks that would have attracted repute, if any. Regardless, there is no evidence that such use as part of an email address has resulted in any secondary meaning associating MOOSA alone, or the Domain Name, with the Complainant in the minds of the public, as opposed to its more general significance as a fairly common personal name or surname (discussed below). In fact, a Google search limited to South African websites for "moosa.co.za" reveals websites relating to unrelated third parties having the surname Moosa, including local comedian Riaad Moosa. None of the results relate to the Complainant;
- e) There is therefore no evidence that the Complainant has any rights to a mark that is identical to the Domain Name for the purposes of application of the reverse onus set out in Regulation 5(c);

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- f) Under the section of the Complaint headed “*Domain Name in the Hands of the Registrant is an Abusive Registration*”, the Complainant merely states “NOT APPLICABLE”. No information or evidence is provided elsewhere in the Complaint supporting a claim that the Domain Name is abusive in the hands of the Registrant. Given that abusiveness is the essence of a determination under the Regulations, this defect is a serious one;
- g) The Adjudicator has independently established that, as at the drafting of this decision, the Domain Name simply resolves to a parked page exhibiting click-through advertisements. No mention is made of the Complainant, any competing business nor anything that could reasonably be taken as referring to the Complainant, or taking advantage of or being detrimental to the Complainant’s rights. The Domain Name is not offered for sale on the website to which it resolves nor has the Registrant offered it for sale to the Complainant at any point. The consensus view of WIPO UDRP Panellists is that the use of click-through advertisements is not per-se an indicator of bad faith, unless such advertisements compete with or capitalise on the reputation and goodwill of the complainant’s mark or otherwise mislead users (WIPO Overview at [paragraph 2.9](#)). There is no evidence that this is the case here;
- h) There is no evidence, either in the record or flowing from the Adjudicator’s own independent research of publically available online sources, that any of the factors indicating abusiveness listed in Regulation 4(1) pertain, nor has the Complainant even claimed as much, as observed above. There is likewise no other evidence that the domain is abusive in the definitional sense used in the Regulations, i.e. no evidence that it otherwise takes unfair advantage of or is unfairly detrimental to the Complainant’s rights in the marks DR M I MOOSA or DR MOHAMMED IRSHAD MOOSA;
- i) The Adjudicator takes judicial notice of the fact that “Moosa” is a fairly prevalent personal name and surname in South Africa, particularly within the Islamic community. It is thus quite conceivable that the Registrant registered the Domain Name for its value as a personal name or surname and not to take advantage of or harm the Complainant’s rights. There is no evidence suggesting that the latter is more likely than the former, on balance of probabilities, bearing in mind that the onus rests on the Complainant. Most of the click-through advertisements observed by the Adjudicator appearing on the website to which the Domain Name

resolves relate to Islamic charities, which is consistent with the Domain Name's significance as a personal name and surname within the Islamic community. The consensus view amongst WIPO UDRP Panellists is that use of a domain name to host click-through advertisements is permissible where the domain name consists of an actual dictionary word and is used to host click-through advertisements genuinely related to the dictionary meaning of the word and not to trade off the complainant's trade mark (see WIPO Overview at [paragraph 2.9](#));

- j) Given its value as a prevalent personal name and surname, the Domain Name lends itself to many possible benign uses that will not necessarily take advantage of or be detrimental to the Complainant's rights and which will not necessarily suggest any connection to the Complainant. There is no evidence suggesting that the Registrant (with an address in Durban) was aware of the Complainant (whose practice is in Cape Town) at the time of registering the Domain Name;
- k) It is trite that common surnames and personal names are treated in a similar way to descriptive or generic terms, both in domain name and trade mark law (see WIPO Case No. [D2008-0272](#) <chartier.com>). The bar for establishing relevant rights in such terms is a high one (see SAIPL Case No. [ZA2011-0092](#) <nyama-spitbraai.co.za>. In comparing such terms, consumers will be attuned to differentiating between the terms with reference to small differences (see SAIPL Case No. [2016-0243](#) <worldsportsbet.co.za>). The Complainant has not met the high bar in respect of MOOSA alone. The differences between the Complainant's marks DR M I MOOSA and DR MOHAMMED IRSHAD MOOSA on the one hand, and the relevant part of the Domain Name consisting exclusively of MOOSA on the other, are stark and easily recognisable, such that there is little likelihood of confusion, especially given the nature of MOOSA as a common personal name and surname. The Adjudicator notes that many WIPO UDRP Panels have held that the registration and use of domain names consisting of common surnames does not contravene the UDRP Policy unless there is evidence of targeting of the complainant. There is no such evidence in this case. See WIPO Case No. [Case No. D2000-1786](#) <pucci.com>; WIPO Case No. [D2008-0272](#) <chartier.com>; and [WIPO Case No. D2014-0744](#) <ritchey.com>;
- l) The Complainant has supplied, as Annexure 3, what he refers to as the "*domain history*". The source of this document is not provided. Nevertheless, given that it is supplied under oath and would appear to accord with the Adjudicator's own

consultation of publically accessible historical WHOIS records, the Adjudicator is prepared to accept that it accurately reflects the historical changes made to the Domain Name for the periods reflected therein;

At the entry dated 28 August 2020 (the day before registration of the Domain Name by the Registrant), that document indicates a status change request to "Domain Delete", with requester "uniforum" – the ZA Central Registry. The Domain Name's status is listed as "clientHold". The following is additionally indicated: "Action: Removed" and "Message: Statement count greater than 1";

"clientHold" status informs the registry not to activate the domain name, i.e. it won't resolve. It is uncommon and usually enacted during legal disputes, non-payment, or when a domain name is subject to deletion. See ICANN's description of the status code here: <https://www.icann.org/resources/pages/epp-status-codes-2014-06-16-en/#clienthold>;

The ZA Central Registry's Accounts Schedule (<https://coza.net.za/schedule.shtml>) details the process of deletion of domain names where accounts are unpaid. Reference is made to "Statements" (as per the abovementioned status change request) being "summaries of invoices...sent out on a monthly basis for domains that do not have a paid date";

According to the ZA Central Registry's historical Accounts Schedule for 2020 (<https://coza.net.za/schedule-archive-2020.shtml>), the deletion date for unpaid domain names in August 2020 was 28 August 2020, exactly the date of the abovementioned status change request in the Complainant's domain history document, and the day before registration of the Domain Name by the Registrant;

The Complainant attaches, as Annexure 4, what purports to be proof of payment of the 2020 renewal fee on 13 July 2020. The Adjudicator notes that the 2020 expiry date of the Domain Name, per the Complainant's own domain history document, was 30 May 2020. Thus, it would appear that the Complainant paid the 2020 renewal fee after the expiry date of the Domain Name in 2020;

All of this indicates that the Domain Name was deleted by the registry due to non-payment of renewal fees. There is no evidence suggesting that the Registrant had anything to do with that;

- m) This case is distinguishable from SAIPL Case No. [ZA2017-0260](#) <darling.co.za>, also involving registration of a lapsed domain name previously owned by the complainant, which was a “borderline case” and decided on the basis of the reverse onus under Regulation 5(c) discussed above. In that case, the complainant owned a registered trade mark identical to the domain name, which trade mark the complainant had used on its own in trade for many years. Additionally, the registrant had offered the domain name for sale to the complainant, and was engaged in “drop-catching” of expired domain names. On the contrary, in this case, the Complainant appears to only enjoy geographically limited common law rights to names that are somewhat different to the Domain Name. There is no evidence of any offer of sale, “drop-catching” nor any use of the Domain Name that could reasonably be taken as being abusive of the Complainant’s rights, and the reverse onus does not apply; and
- n) The Adjudicator recognises that adjudicators in this forum have held that the nature of “abusiveness” as contemplated by the Regulations does not require a positive intention to abuse the complainant’s rights, but that abuse is the effect of the use or registration (see SAIPL [Case No. ZA2017-0276](#) <trackers.co.za>). The Adjudicator notes that there is no consensus on this amongst .uk DRS Experts (see paragraph 2.4 of the [.uk DRS Experts’ Overview](#)). Nevertheless, the Adjudicator need not decide the point given that, as shown above, there is no evidence indicating any intention on the Registrant’s part to abuse the Complainant’s rights, nor any indicating that the use to which the Domain Name has been put, or its registration, will have the effect of abusing the Complainant’s rights. This is particularly so given that there is no evidence suggesting that the only relevant part of the Domain Name – MOOSA – has acquired any reputation or secondary meaning associated with the Complainant. Additionally, the Domain Name, constituting a fairly common personal name or surname, is not likely to be interpreted by users as having any link to the Complainant, without additional conduct suggesting such a link, for which there is no evidence.

8. Decision

The Complaint is dismissed.

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