

Decision

[ZA2011-0099]

.ZA ALTERNATE DISPUTE RESOLUTION
REGULATIONS (GG29405)

ADJUDICATOR DECISION

CASE NUMBER:	ZA2011-0099
DECISION DATE:	22 February 2012
DOMAIN NAME:	vawaterfront.co.za
THE DOMAIN NAME REGISTRANT:	Jean Hughes
REGISTRANT'S LEGAL COUNSEL:	None
THE COMPLAINANT:	Lexshell 44 General Trading (Pty) Ltd t/a V&A Waterfront
COMPLAINANT'S LEGAL COUNSEL:	DLA Cliffe Dekker Hofmeyr
2 nd LEVEL ADMINISTRATOR:	UniForum SA

1. Procedural history

- 1.1 The domain in issue is <vawaterfront.co.za>, and it was registered on 20 October 2002.
- 1.2 The Complainant is Lexshell 44 General Trading (Pty) Ltd, and the Registrant is Jean Hughes, of Westville, Kwazulu-Natal.
- 1.3 During June 2011 the Complainant became aware of the registration and its attorneys, Cliffe Dekker Hofmeyr Inc. sent a demand. According to the Registrant, she¹ ignored the letter, as well as a reminder sent on 26 July 2011.
- 1.4 This dispute was thereafter filed, with the South African Institute of Intellectual Property Law (“SAIIPL”), on **25 November 2011**. On 01 December 2011 the SAIPL transmitted by email to UniForum SA a request for the registry to suspend the domain name, and on the same date UniForum SA confirmed the suspension.
- 1.5 In accordance with the Regulations, the SAIPL formally notified the Registrant of the commencement of the Dispute on **5 December 2011**. The due date for the Registrant’s Response was **3 January 2012**.

¹ The Adjudicator assumes ‘Jean’ is her name and apologises if it is his.

² This was recorded in the WHOIS email subject line at the time of registration.

1.6 The Registrant submitted its Response on **3 January 2012**, and the SAIPL verified that the Response satisfied the formal requirements of the Regulations and the SAIPL's Supplementary Procedure. The SAIPL forwarded a copy of the Response to the Complainant who submitted a Reply on **10 January 2012**. The Registrant later submitted further representations, with the Adjudicator's leave, and the Complainant replied thereto.

1.7 The SAIPL appointed **Adv Owen Salmon** as the Adjudicator in this matter on **23 January 2012**. The Adjudicator has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the SAIPL to ensure compliance with the Regulations and Supplementary Procedure.

2. Factual Background

2.1 The Complainant alleges that it owns the well-known "V&A Waterfront" in Cape Town; that it is the registered proprietor of entries in the Trade Marks Register for the mark VICTORIA & ALFRED WATERFRONT & DEVICE and for the mark V&A WATERFRONT CAPE TOWN & DEVICE, all dating from 1999; and that it is the holding company for the V&A group of companies, namely V&A Waterfront (Pty) Ltd, V&A Waterfront Holdings (Pty) Ltd,

Victoria & Alfred Waterfront (Pty) Ltd, V&A Waterfront Properties (Pty) Ltd and V&A Waterfront Marina (Pty) Ltd.

2.2 These allegations are not the subject of any dispute by the Registrant, although it is not clear what is meant by the assertion of 'ownership' of the V&A Waterfront. For present purposes, however, nothing turns on the required level of precision in this regard.

2.3 The Domain name does not lead to its own website but to the Registrant's website www.accommodation.co.za. According to the Registrant, the said domain is a 'Category Domain/Category Page Domain', linked to her primary domain www.accommodation.co.za. The Registrant contends that it is not a 'competing website' with the Complainant's website, and that arranging several or multiple domains to redirect or resolve to a main domain with a developed website is a growing marketing trend, a growing marketing strategy. Incorporating domains to play the role of 'Category Pages', and being part and parcel of a primary Portal Advertising Site, is fully encouraged by all in the Internet Industry, she contends, so that using multiple keyword domains pointing to a developed main website is a legal, legitimate marketing strategy. An example the Registrant gives is another domain she has registered which links immediately to www.accommodation.co.za. This is www.hilton.co.za - Hilton, as she

points out, is a town in Kwazulu-Natal. It is also the name of an internationally famous hotel group.

2.4 The V&A Waterfront was established more than 20 years ago. It does not need introduction nor evidence to substantiate either its existence or its fame. The Complainant spends over R1,5 million per annum in the advertising of the V&A Waterfront, and it is South Africa's most visited destination, attracting more tourists in South Africa than any other. It has been voted as the top tourist destination in South Africa on a number of occasions, and on average over 20 million visitors visits the V&A Waterfront annually. It is not disputed that the Complainant's tenants offer a number of different services at the V&A Waterfront, including indoor shopping and entertainment venues, restaurants and hotel accommodation. It is disputed, however, by the Registrant that these services compete with the services she offers.

3 The Complainant's Contentions

3.1 The Complainant alleges that it has rights in the V&A WATERFRONT trade mark, and that the domain <vawaterfront.co.za> is identical, or alternatively confusingly similar, to this trade mark. The contentions advanced from this platform are comprehensive, and the Adjudicator means no disservice in the summation that follows.

- 3.2 It is not possible to register a domain name incorporating the “ampersand” symbol (&) and the domain name <vawaterfront.co.za> is likely to be pronounced and read as “V&A Waterfront”.
- 3.3 The Registrant does not currently make any fair or legitimate active use of the domain name and there is no indication that she will do so in future.
- 3.4 The linking of a website to a competing website cannot be regarded to vest legitimate rights in the infringing domain name and qualifies as non-use of such a website – reference is made to the WIPO panel decisions in <sunfest.com> and <sunfest.net> UDRP D2000 – 0631; <libro.com>UDRP D2000 – 0186; and to NAF/FA95471 (netlearning.com).
- 3.5 The Registrant registered the domain name in October 2002 with the knowledge that it was a “great name” for the V&A Waterfront.² The Registrant clearly had knowledge of the Complainant at the time of registering the Domain Name, and a number of trade mark searches have confirmed that the Registrant is not the owner of any trademark registration or intellectual property rights for the terms “VA WATERFRONT” or “V&A WATERFRONT”.

² This was recorded in the WHOIS email subject line at the time of registration.

- 3.6 The Registrant has not been known by the Domain Name and has not acquired similar or identical trade mark rights; the Domain Name is not the legal name of the Registrant nor, to the knowledge of the Complainant, of any entity with which the Registrant is lawfully associated.
- 3.7 There appears to be no legitimate, logical reason for the Registrant to register or use the phrase VA WATERFRONT – it is not a dictionary word, or a word common in trade, or a commonly used acronym.
- 3.8 Use of a domain that is identical to a trade mark that applies to another's goods or services is not *bona fide* use if the domain name serves as "bait" to attract customers to the Registrant's site, rather than merely as a descriptor of the Registrant's products. Using the domain as a bait to the Registrant's site is abusive *vis a vis* the Complainant's legitimate (and senior) interests in its chosen trading name and website name. Mere use of the disputed domain names to attract customers, for commercial gain, to the Registrant's website by creating consumer confusion with the Complainant's trade marks would not establish rights or legitimate interests in the domain name on the part of Respondent. Reference is made to WIPO/D2000-0057; (adobeacrobat.com and acrobatreader.com); and to NAF/FA97667 (biolean.net and biolean.org).

- 3.9 Given the established reputation of the Complainant's V&A Waterfront operations, the Registrant would clearly not be able to operate a business under that name. *Prima facie*, to do so would be to pass off, or to breach section 34 of the Trade Marks Act 194/1993. Nevertheless, contends the Complainant, the Registrant is using or has registered the disputed domain in a way that leads people to believe that the domain name is registered to, operated to or authorized by, or otherwise connected with the Complainant. There is also no indication, or disclaimer, on the website that would remove the presumption that the domain name is registered, operated to or authorized by, or otherwise connected with the Complainant.
- 3.10 The Complainant has no control over the use of any website linked to this domain and there is a real risk of further harm being caused to its well-known trade marks.
- 3.11 The disputed domain name was registered, primarily, intentionally to block registration of a name in which the Complainant has rights. The Registrant had actual knowledge that the Complainant had a better claim to ownership in and to the domain name, as it used the domain name to link to a website which refers to the Complainant and its trade mark. Thus the domain name was registered and has been used in a manner that takes unfair advantage of, or is unfairly detrimental to the Complainant's rights.

3.12 The Complainant relies on the decision in fifa.co.za 2007-0007 wherein the Adjudicator quoted from DRS 00658 Chivas Brothers Ltd v David William Plenderleith:-

“Where a Respondent registered a domain name

- 1) which is identical to a name in respect of that which the Complainant has rights;
- 2) where that name is exclusively referable to the complainant;
- 3) where there is no obvious justification for the Respondent having adopted that name for the domain name;
- 4) where the Respondent has come forward with no explanation for having selected the domain name, it will ordinarily be reasonable for an expert to infer first that the Respondent registered the domain name for a purpose and secondly that the purpose was abusive.”

3.13 According to the Complainant, all of these factors are present, in that the Domain Name is identical (or at least confusingly similar) to a mark in which the Complainant has rights; the name V&A WATERFRONT refers exclusively to the Complainant; there is no obvious justification for the Registrant to have chosen the name; and, there is no other legitimate explanation for selecting the Domain Name.

3.14 The Complainant contends that, accordingly, the name is abusive as contemplated by the Regulations.

4 The Registrant's Contentions

- 4.1 The Complainant's stance proceeds from a different premise. Again, the contentions raised by the Registrant are comprehensive and detailed, and it is assumed that the following represents a worthy summary thereof.
- 4.2 Yes, the Registrant concedes, the domain name <vawaterfront.co.za> refers to the V&A Waterfront in Cape Town. She does not raise any real dispute as to whether the companies identified by the Complainant actually have the status referred to, or whether the Complainant even owns the V&A Waterfront or not. The Complainant's attitude is that it matters not.
- 4.3 This is because, the Registrant contends, the term "V&A Waterfront" belongs to the people of South Africa. It is a South African destination, a geographical place, a geographical indicator, it is an 'area within the municipality', a 'vicinity of the municipality' and even the development can be considered to be a 'City-within-a-City'. The V&A Waterfront is a well-known South African landmark and the pride of Cape Town.
- 4.4 Moreover, the Registrant contends, the website is not a competing website; the business of the Complainant is totally different. The Registrant provides an advertising option for all venues in South

Africa, in much the same way as Getaway Magazine does, other travel magazines, and Newspapers, other websites, pamphlets, leaflets, brochures, flyers – all have category headings namely: “V&A Waterfront”. The Complainant develops, rents, sells, and promotes realty/property sites in the Municipal public location known as The Victoria and Alfred Waterfront, or the V & A Waterfront, whereas she is promoting accommodation venues throughout the whole of South Africa.

4.5 The name <vawaterfront.co.za> is an adopted word. It is a homemade word. It is like ‘Outsurance’, or ‘Interpreneurs’, or ‘Nike’. It is a one-word domain name indicating the location of a well known landmark, a public destination which has been printed on maps all over the world. Indeed, alleges the Registrant, this has been the case since the development/merger of the Victoria basin and the Alfred basin in 1860 - long before the Complainant decided it suddenly had “trademark rights”.

4.6 It is not the subject matter for trade mark registration because it will offend the ‘Geographical Origin Prohibition’. There is no evidence that the Complainant’s company name or trade marks - which indicate a public domain or geographical destination - have acquired a secondary meaning that will afford trade mark rights to the Complainant. Trade marks do not give monopolies to ideas, nor

for geographical indicators, but serve to 'distinguish products' of a similar nature. Nowhere has it been shown that the expression "V&A Waterfront" will distinguish a website of the Complainant's from a website of numerous others, also promoting the geographical destination. According to the Registrant, indeed, any entry into the Trade Mark Register was done in error by the then Apartheid Government.

4.7 Finally, it is argued, the domain in dispute was registered specifically for the purpose of promoting a public destination, one of numerous other domains registered by Ms Hughes, also to act as 'category domains' or 'category pages', and redirect and promote destinations all over South Africa, not only the V&A in Cape Town, but all venues throughout South Africa, and neighbouring states. Indeed, she asserts the domain name was arranged so to redirect "from the get-go" since October 2002.

5 Discussions and Findings

5.1 In terms of Section 1 of the Regulations, an abusive registration means a domain name which either –

5.1.1 Was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took

unfair advantage of or was unfairly detrimental to the Complainant's rights; or

5.1.2 Has been used in a manner that takes unfair advantage of, or is unfairly detrimental to the Complainant's rights.

5.2 An indication is given in the Regulations as to what could be considered an abusive registration. In terms of Section 4(1), such factors include:-

- “(a) Circumstances indicating that the registrant has registered or otherwise acquired the domain name primarily to –
 - (i) Sell, rent or otherwise transfer the domain name to a complainant or to a competitor of the complainant, or any third party, for valuable consideration in excess of the registrant's reasonable out-of-pocket expenses directly associated with acquiring or using the domain name;
 - (ii) Block intentionally the registration of a name or mark in which the complainant has rights;
 - (iii) Disrupt unfairly the business of the complainant; or
 - (iv) Prevent the complainant from exercising his, her or its rights;
- (b) 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 authorized by, or otherwise connected with the complainant;

- (c) evidence, in combination with other circumstances indicating that the domain name in dispute is an abusive registration, that the registrant is engaged in a pattern of making abusive registrations;
- (d) false or incomplete contact details provided by the registrant in the Whois database; or
- (e) the circumstances that the domain name was registered as a result of a relationship between the complainant and the registrant, and the complainant has –
 - (i) been using the domain name registration exclusively; and
 - (ii) paid for the registration or renewal of the domain name registration.”

5.3 An indication is also given as to what would not be an abusive registration. In terms of Section 5, factors which may indicate this include:-

- “(a) before being aware of the complainant’s cause for complaint, the registrant has –
 - (i) used or made demonstrable preparations to use the domain name in connection with a good faith offering of goods or services;
 - (ii) been commonly known by the name or legitimately connected with a mark

- which is identical or similar to the domain name; or
- (iii) made legitimate non-commercial or fair use of the domain name;
- (b) the domain name is used generically or in a descriptive manner and the registrant is making fair use of it;
- (c) that the registrant has demonstrated fair use, which use may include websites operated solely in tribute to or fair criticism of a person or business: Provided that the burden of proof shifts to the registrant to show that the domain name is not an abusive registration if the domain name (not including the first and second level suffixes) is identical to the mark in which the complainant asserts rights, without any addition”

5.4 In terms of Section 9, one of two outcomes is possible in the case of a complaint that the domain is an abusive registration: refusal of the dispute, or transfer of the disputed name.

5.5 To succeed in this complaint the Complainant has to prove,³ on a balance of probabilities, the following:-

- It has rights in respect of a name or mark which is identical or similar to the domain name; and

³ Section 3(1)(a) of the Regulations.

- The domain name, in the hands of the Respondent, is an abusive registration as defined.

5.6 As indicated, the proviso to Section 5 provides that:-

“The burden of proof shifts to the Registrant to show that the domain name is not an abusive registration if the domain name (not including the first and second level suffixes) is identical to the mark in which the Complainant asserts its rights, without any addition.”⁴

Accordingly, the first question is whether the domain name <vawaterfront.co.za> is *identical* to a name or mark in which the Complainant asserts it has rights. As it is, the Complainant does not assert rights in the mark “VAWATERFRONT”, but avers that the absent word “and” (and the symbol ‘&’, as this cannot be incorporated in a domain name) is of no consequence, so that for all intents and purposes, the domain name is identical or similar to “V&A Waterfront”. No contentions appear from the Complaint, however, as to why the

⁴ The section is clear in its reference to the “burden of proof”, i.e. the onus. cf. DRS 02201 Viking Office Products Inc. v Wenda Sparey para. 7.5, 7.6: Whereas the fact that the Complainant has rights in the trade mark that is identical to the domain name does not of itself give rise to an assumption of an abusive registration, “*the registration of an identical domain name, particularly if unadorned, may raise a presumption that the registration is abusive, because it is impossible to infer that it was chosen for any reason other than to impersonate the complainant.*” See also British Telecommunications Plc & Others v The One In A Million Limited & Others [1998] FSR 265.

domain is “identical”, but because it makes a difference to the onus, it is as well to address the point.

5.7 The answer is not necessarily simple. In Century City,⁵ Harms DP stated the following:-

“The next issue is whether the marks ‘Century City’ and ‘Century City Apartments’ are, in the wording of s 34(1)(a), ‘identical’. I think not. As the European Court of Justice indicated,

‘the criterion of identity of the sign and the trademark must be interpreted strictly. The very definition of identity implies that the two elements compared should be the same in all respects.’

(LTJ Diffusion SA v Sadas Vertbaudet SA [2003] ETMR 83 (European Trade Mark Reports) para 50.) This is, however, subject to the proviso that minute and wholly insignificant differences are not taken into account (Reed Executive Plc v Reed Business Information Ltd [2004] EWCA Civ 159 ([2004] RPC 40) para 29). In other words, the *de minimis* principle applies.”

On this basis, the absence of the word ‘and’ is likely to be *de minimis*.

5.8 However, the Supreme Court of Appeal was not concerned with domain names, where one character difference in an address bar,

⁵ Century City Apartments Property Services CC and Another v Century City Property Owner’s Association 2010 (3) SA 1 (SCA), at paragraph [12]. This decision, in general, is relied upon by the Registrant.

entered, can make a difference in result. For this reason the Adjudicator is not prepared to find that <vawaterfront> is identical to “V&A Waterfront”, although it is no doubt similar within the meaning of the Regulations. It follows that the onus remains with the Complainant. As it happens, nothing turns on this finding.

5.9 Next, is the question as to whether the Complainant has ‘rights’ in the mark “V & A Waterfront”. It is not necessary for these purposes to quantify, or qualify, where the line is to be drawn, as to when “rights” can be said to exist on the part of a Complainant or when they do not. As was stated by the majority panel in www.seido.co.za ZA2009-0030 (Appeal Decision) at paragraph 5.7:-

“The extent or strength of the “right”, as defined in the Regulations, required to be shown by a Complainant to have *locus standi* conferred on it on a balance of probabilities under Regulation 3(1)(a) is not clear but we have been guided by earlier decisions on this point. (See WIPO decisions surfcult.com [2002-0381] and dinkybomb.com [D2004-320] and SAIPL decisions suncityvacation.co.za [ZA2008-0023] and bikeandleisuretrader.co.za [ZA2008-0018]. Our view is that the threshold in this regard should be fairly low and we find that the Complainant has, through the License Agreement, established sufficient right to cross this hurdle.”

5.10 As has been recorded by the Nominet Advisory,⁶ the main point of the test is to make sure that the person who complains is someone with a proper interest in the complaint. The notion of “rights” for the purposes of Regulation 3(1)(a) is not trammelled by trade mark jurisprudence - by definition,⁷ rights include *“intellectual property rights, commercial, cultural, linguistic, religious and personal rights protected under South African law, but is not limited thereto”*. An indication of the quality (or quantification) of rights is indicated by, for example, WIPO decisions to the effect that the location of a registered trade mark is irrelevant when finding “rights” in a mark for the purposes of a complaint.⁸

5.11 Having regard to the low threshold requirement in the establishment of a “right”, the Adjudicator is of the view that the Complaint succeeds in showing, through an accumulation of unchallenged facts (as opposed to the argument raised in their regard, which is a different consideration), that it has the requisite “rights” for the purposes of requesting relief.

5.12 The question therefore to be decided is whether the domain name:-

⁶ See the Nominet Advisory at www.nominet.org.uk/disputes/DRS/rights.

⁷ Regulation 1.

⁸ See, in general, the WIPO Advisory at www.wipo.int/amc/en/domains/search/overview.

- was registered or otherwise acquired in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's rights; or
- has been used in a manner that takes unfair advantage of, or is unfairly detrimental to the Complainant's rights.

5.13 According to Nominet decisions⁹ there are two potential abuses:-

- registration with abusive intent; and
- abusive use.

In the Adjudicator's view, moreover, the nature of "abusiveness" as contemplated by the Regulations does not require a positive intention to abuse the Complainant's rights, but that abuse was the effect of the use or registration.

5.14 As mentioned, the Registrant relies on the geographic connotation to the mark "V & A Waterfront", and her right – along with everyone else in South Africa – to use it. The problem with this argument is that it overlooks the consequences of the registration: indeed, no-one else (including the Complainant) may so use the name, for Ms Hughes has appropriated it for her domain.

⁹ See, for example, Aldershot Car Spares, supra, para. 6 p. 5.

5.15 Allied to this, in the Adjudicator's view, is the query to be placed over the contention that the term is used simply descriptively. In the world of advertising revenue generated by Google rankings, and so forth, it is so that descriptive names are recommended for websites, so that where they incorporate key-concept phraseology, the surfers who inhabit cyberspace are more likely to hit such sites than others. The problem here is that whilst (to take a few homely examples) <find-a-psychologist> or <build-my-own-house> are (*prima facie*, at least) purely descriptive names, the difference is that such names are, by design, so descriptive; "Ratanga Junction" is also 'descriptive' of a geographic locality but it is the name of an entertainment venue owned by someone – as is "Gold Reef City" and "Sun City", and these have, decidedly, brand significance.

5.16 This tends to indicate, in the Adjudicator's view, that the Registrant's contentions do not completely bear scrutiny. However, there is an added concern.

5.17 The Registrant's web business relevant to the domain in question is the provision of information about accommodation in South Africa – the domain diverts immediately to the Registrant's website www.accommodation.co.za. So <vawaterfront.co.za> is a bait, in a way, not to take web-browsing (or dedicated searcher) members of the public to the website for the Victoria & Alfred Waterfront, or to tell

them anything about that tourist attraction, but to bring them to the Registrant's web-based accommodation bureau.

5.18 This concern is exacerbated, however, because not only does the domain <vawaterfront> do this, but so do over 500 other domains. As pointed out by the Complainant:-

*"The Registrant has registered over 500 domain names, all of which divert users to its www.accommodation.co.za website. Under the link "Advertise" on the Registrant's website, the Registrant states that **"We have over 500 generic key names currently pointing to our main site: www.Accommodation.co.za which in turn, will direct huge 'type-in' traffic to your 'ads' ..."** The Registrant states further that **"When you join us, ... you are automatically linked to all of these names listed below, giving you an 'immediate' web presence with huge exposure."***

5.19 Indeed, the Registrant's website asserts (on its "Advertise" section) in connection with "Our Names List":-

"The list below is very long, ... however it is long in your favour. To fully appreciate that value of joining us, briefly scroll down/peruse through the list of links/names below and understand that all these names will arrive at our site, ... and present visitors/tourists/business delegates to your ads! ... if you're on-board that is!"

5.20 The Adjudicator has 'visited' some of the listed names/sites. Many are inactive or 'under construction'; and some divert directly to the Registrant's website www.accommodation.co.za. Of those that do, in the Adjudicator's experience following his short trial, are included <samaps.co.za>, and <sangomas.co.za>, and these are good examples to illustrate the Adjudicator's concern.

5.21 A person searching for the website about sangomas in relation to South Africa (where else?) would not be taken to any site about these traditional healers, but find himself at www.accommodation.co.za, and which has nothing to do with sangomas. The same occurred with, and applies to, <samaps.co.za>. This is, in the Adjudicator's view, *prima facie* misleading - yet, there is an additional dimension.

5.22 The domain <ArtGalleryAfrica.com>, for example, which appears on the Registrant's list, diverts not to www.accommodation.co.za, but to <GlobalDomainSales.com>, of which the proprietor is the current Registrant. There, one finds hundreds of domains for sale, including many on the list referred to above - and, perhaps not unnotably, <worldcupsoccersa.co.za>.

5.23 The domain <vawaterfront> does not appear on these lists, but as the Complainant asserts, it has no control over what might happen. As a

former Chief Justice has remarked, albeit in the context of a trade mark dispute:

“Nothing is static in business. In the circumstances Miele’s lack of ability to control how Euro Electrical conducts its business under the Miele trade mark is, in my view, a real source of prejudice.”¹⁰

5.24 In short, the Registrant uses all these domains to attract paying advertisers to her site (www.accommodation.co.za) on the basis that the site attracts traffic (and, therefore, viewers of the advertisements) because “type-in” references of, say, <sangomas.co.za> will automatically divert to that site – which it does. And this it also does with www.vawaterfront.co.za.

5.25 Whether this practice is in accordance with generally accepted internet-based business policy does not require assessment. The Registrant clearly trades in domains, for purposes for which domain registrations, *prima facie*, are not designed or intended, and uses them in what appear to be misleading respects. In the Adjudicator’s view, insofar as the Complainant’s rights are concerned, this is a source of prejudice. Accordingly, there is abuse, as contemplated by the Regulations.

¹⁰ Miele et Cie GmbH & Co. v Euro Electrical (Pty) Ltd 1988 (2) SA 583 (A) at 601 H.

6 Decision

6.1 For the foregoing reasons the Adjudicator orders that the domain name <vawaterfront.co.za> be transferred to the Complainant.

.....
ADV OWEN SALMON
SAIIPL SENIOR ADJUDICATOR
www.DomainDisputes.co.za