

THE AFRICAN NATIONAL CONGRESS LOSES ITS DOMAIN DISPUTE: TIPS ON HOW NOT TO LOSE YOURS

Category: Commercial Law,Media and OTT,Technology Law
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The African National Congress ("**ANC**") has lost a domain dispute it lodged against a former service provider – Unwembi Communications ("**Unwembi**").

In what should have been a claim with good prospects of success, the 107 year old movement with a very strong and well known brand failed to prove its case.

The matter involved three ANC employees who were tasked with administering its domain – anc.org.za. The employees left the ANC in 1997 and formed Unwembi. Unwembi provided domain renewal and other IT services to the ANC. The parties later fell out resulting in Unwembi shutting down the ANC's website located at anc.org.za.

The ANC and Unwembi filed arguments before an Adjudicator appointed by the South African Institute of Intellectual Property Law. The Adjudicator said:

...a Complainant is required to prove, on a balance of probabilities, that:

1. *a) it has rights in respect of a name or a mark which is identical or similar to the domain name and, in the hands of the Registrant, the domain name is an abusive registration; or*
2. *b) the domain name, in the hands of the Registrant, is an offensive registration...*

In terms of earlier decisions, the threshold of proof of rights is "fairly low"...

She also said:

The Complainant has given no evidence of any rights that it has in "ANC". It merely made the bald allegation that "The African National Congress (ANC) was formed in 1912 as a liberation movement". No further evidence of its rights to the mark/name ANC was submitted.

Taking into account the paucity of evidence that the ANC presented, she was forced to dismiss its claim.

The ANC's case could have been handled better. If it had done so its prospects of success could have been much better. There is 107 years of evidence to show that the ANC *"has rights in respect of a name or a mark which is identical or similar to the domain name..."*, but none of this seems to have been presented.

In my experience, the more evidence you are able to show, the better your prospects of success. For examples of what proof needs to be presented at matters such as this, see the cases of [Endemol South Africa v Bin Jiang, Da Tang](#) argued before WIPO and [World Seido Karate Organisation v Said's Karate](#) argued before SAIPL, both of which were successfully presented by PPM Attorneys.

In closing, here are a few tips on how to avoid losing your domain in the first place:

- Be sure about who is contractually responsible for ensuring the protection of intellectual property such as your domains.
- Ensure that a reliable person is allocated the task of monitoring domain registration expiries and timely re-registration.
- Try to register variations of your domain. It helps if it incorporates your trade mark, for example anc.africa.
- Try to avoid a lapse in your domain's registration. The costs of trying to get it back could be high, especially if the person who "grabbed" the domain is elusive. In the bigbrotherafrica.com case, the person who "grabbed" the domain seemed to be based in the United States, then possibly Australia (using an Australia based Privacy Protect service) and was then, once WIPO lifted the privacy protection, shown to be in China.

So, make sure your contracts are in place, ensure that the domain registration is renewed on time and take rapid action against someone who "grabs" your domain.

For a copy of the SAIPL Adjudicator's ruling, [click here](#).