

ADMINISTRATIVE PANEL DECISION

Sun International (South Africa) Limited v. NA Klitzner, Sun City Waterworld
Case No. D2023-1181

1. The Parties

The Complainant is Sun International (South Africa) Limited, South Africa, represented by Adams & Adams Attorneys, South Africa.

The Respondent is NA Klitzner, Sun City Waterworld, South Africa.

2. The Domain Name and Registrar

The disputed domain name <suncitywaterworld.africa> (the “Domain Name”) is registered with DNS Africa Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 16, 2023. On March 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 31, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (REDACTED) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 3, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 4, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2023. The Center received an email communication from the Respondent on April 14, 2023. The Center notified the commencement of the Panel appointment process on April 26, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on May 2, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a South African resort hotel and casino chain and one of the leading casino operators in the southern hemisphere. The Complainant has a market capitalisation of approximately USD 1.4 billion and enjoys a 42.5 per cent share of the South African casino market. The Complainant has, since 1979, operated a casino and resort in South Africa's North West province under the brand SUN CITY which has become a major tourist attraction. The Complainant's resort incorporates a water park under the name "Sun City Waterworld".

The Complainant owns many trade mark registrations for SUN CITY in South Africa and numerous international territories, the most relevant of which are South African registration numbers 1978/05182-84 SUN CITY registered on December 14, 1979 in classes 39, 41, and 42 respectively. The Complainant's SUN CITY mark has been recognised as well-known by prior UDRP panels (see, e.g., *Sun International (Zambia) Limited v. Privacy Protection Service Inc d/b/a PrivacyProtect.org / Hamilton Mandizvidza, Hamand Ent*, WIPO Case No. [D2016-0105](#)).

The Domain Name was registered on November 16, 2022, and does not resolve to any website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its SUN CITY mark, that the Respondent has no rights or legitimate interests in it, and the Domain Name was registered and used in bad faith given that the Complainant's mark is well known in the Respondent's country, the composition of the Domain Name is indicative of prior knowledge of the Complainant given that the Complainant's resort includes a water park under the same name, and the Respondent thus had to have been aware of the Complainant's mark upon registering the Domain Name.

B. Respondent

The Respondent did not reply to the Complainant's contentions. In its email communication of April 14, 2023, the Respondent stated: "There is a error since Sun City Waterworld does not and never have owned the domain; suncitywaterworld.africa."

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant's SUN CITY mark is wholly contained within the Domain Name as its first element with the addition of the dictionary terms "water" and "world". Where the trade mark is recognisable within the disputed domain name, as in this case, the addition of other terms (including descriptive terms) does not prevent a finding of confusing similarity (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.8). The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant's SUN CITY mark was registered and well known long prior to registration of the Domain Name. The Domain Name is confusingly similar to the Complainant's mark and the Complainant has certified that the Domain Name is unauthorised by it.

The Respondent's communication of April 14, 2023, quoted above, does not aid the Respondent given that it does not substantively address any of the Complainant's contentions and does not reveal any basis for claiming rights or legitimate interests. The Respondent's name, "NA Klitzner, Sun City Waterworld", incorporates the Domain Name (albeit with spaces), however, there is no evidence in the record indicating that the Respondent is commonly known by that name, as required under paragraph 4(c)(ii) of the Policy, or that the Respondent has otherwise acquired rights or legitimate interests in the name, either through trade mark registrations, unregistered common law rights or otherwise.

Based on the available record, there is no evidence that any of the circumstances set out in paragraph 4(c) of the Policy, nor any others which might confer rights or legitimate interests upon the Respondent, pertain. The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out a *prima facie* case which the Respondent's informal communication is not sufficient to rebut ([WIPO Overview 3.0](#) at section 2.1).

C. Registered and Used in Bad Faith

UDRP panels have consistently found that registration of a domain name that is confusingly similar (particularly domain names incorporating the mark plus a descriptive term, as in this case as discussed below) to a famous or well-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#) at section 3.1.4).

UDRP panelists may take judicial notice of the repute of a trade mark within their personal knowledge where it cannot reasonably be contested (see section 4.8 of the [WIPO Overview 3.0](#); *Société des Produits Nestlé S.A. v. Sonia de Ferrero*, WIPO Case No. [D2016-1300](#)). The Panel, having been a resident of South Africa and, in particular, the city of Cape Town (the Respondent's city), for many years prior to registration of the Domain Name, takes judicial notice of the immense repute of the Complainant's SUN CITY mark in South Africa and Cape Town in particular.

The Domain Name incorporates a term – "waterworld" – that is descriptive of the Complainant's business. The Complainant's resort in fact incorporates a water park called "Sun City Waterworld", which is identical to the Domain Name. This combined with the repute of the Complainant's mark in the Respondent's country and city makes it inconceivable that the Respondent did not have the Complainant in mind when the Respondent registered the Domain Name. The Respondent's communication of April 14, 2023 provides no explanation that would imbue the Respondent's actions with good faith, and completely fails to rebut the clear and convincing evidence pointing to bad faith.

The fact that the inherently misleading Domain Name does not resolve to an active website does not prevent a finding of bad faith under the doctrine of passive holding; all the factors that panels typically consider under that doctrine favour the Complainant ([WIPO Overview 3.0](#) at section 3.3), except for the third factor of concealing of identity.

The Complainant has satisfied paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name, <suncitywaterworld.africa>, be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: May 16, 2023