

Decision

ZA2024-0492

.ZA ALTERNATE DISPUTE RESOLUTION REGULATIONS (GG29405)

ADJUDICATOR'S SUMMARY DECISION

CASE NUMBER:	ZA2024-0492
DECISION DATE:	11 March 2024
DOMAIN NAME	nuun.co.za
THE DOMAIN NAME REGISTRANT:	Black Frog Distribution (Pty) Ltd
REGISTRANT'S LEGAL COUNSEL:	n/a
THE COMPLAINANT:	Société des Produits Nestlé
COMPLAINANT'S LEGAL COUNSEL:	Adams & Adams
2 nd LEVEL ADMINISTRATOR:	ZARC

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Complainant:		
Société des Produits Nestlé Switzerland		
Registrant:		
Black Frog Distribution (Pty) Ltd Port Elizabeth South Africa	i	
2. The Domain Name: NUUN.CC	O.ZA	
3. Notification of Complaint (05	FEBRUAR	Y 2024)
_	gistrant has	omit a response to the dispute in terms of been notified of the dispute in accordance 5(1).
	[x] Yes	[] No
4. Rights		
The Complainant has, to my reasonable which is identical or similar to the complete to the com		isfaction, shown rights in a name or mark e.
	[x] Yes	[] No
5. Abusive Registration		
The Complainant has, to my reasonabusive registration in the hands o		faction, shown that the domain name is an rant.
	[x] Yes	[] No

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6. Other factors

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

[x] Yes [] No

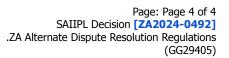
7. Comments (Optional)

The Respondent submitted a response that does not comply with the requirements of Regulation 18. However, in terms of the Adjudicator's general powers under Regulations 24(1) and 24(3), in the interests of giving both parties a fair opportunity to present their case, the Adjudicator admits the response as it contains averments that are relevant.

The Complainant undoubtedly enjoys common law rights in the NUUN mark in South Africa, which is identical to the disputed domain name. As such, the reverse onus in terms of Regulation 5(c) applies. The Respondent has failed to meet this onus.

Numerous decisions under the Regulations have found that it is, generally, abusive for a distributor to retain a domain name corresponding to the trade mark after termination of a distribution agreement and to demand payment beyond their out of pocket expenses for return of the domain name. See, for example, *The Sugarless Company Pty Ltd v Steven Green*, SAIIPL Case No. ZA2019-0375.

In this case the distribution agreement specifically records that all goodwill accrued to the Complainant's predecessor in title, and that all use of the trade mark should cease post termination of the distribution agreement. It was manifestly abusive for the Respondent to continue to hold the domain name, and demand payment of large sums for its return, where the Respondent knew that it no longer had any right to use the trade mark, knew that the Complainant owned the rights to the trade mark, and knew that holding the domain name would prevent the Complainant exercising its rights in South Africa and would also disrupt its business. Regulations 4(1)(a)(iii) and (iv) are eminently applicable.





8. Decision

For all the foregoing reasons, in accordance with Regulation 9, I order that the disputed domain name, <nuun.co.za>, be transferred to the Complainant.

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JEREMY SPERES

SAIIPL SENIOR ADJUDICATOR www.DomainDisputes.co.za