

**ADJUDICATOR’S SUMMARY DECISION**

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

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## 1. The Parties

### Complainant:

**Société des Produits Nestlé**  
Switzerland

### Registrant:

**Black Frog Distribution (Pty) Ltd**  
Port Elizabeth  
South Africa

## 2. The Domain Name: NUUN.CO.ZA

## 3. Notification of Complaint (05 FEBRUARY 2024)

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 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*, SAIPL 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.

.....  
**JEREMY SPERES**  
SAIPL SENIOR ADJUDICATOR  
[www.DomainDisputes.co.za](http://www.DomainDisputes.co.za)