

ADJUDICATOR'S SUMMARY DECISION

CASE NUMBER:	ZA2024-0521
DECISION DATE:	3 March 2025
DOMAIN NAME	suid-wes.co.za
THE DOMAIN NAME REGISTRANT:	Mr Joshua Armstrong
REGISTRANT'S LEGAL COUNSEL:	None
THE COMPLAINANT:	Agri Credit Solutions (Pty) Ltd
COMPLAINANT'S LEGAL COUNSEL:	Adams & Adams
2 nd LEVEL ADMINISTRATOR:	ZACR

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1 The Parties

Complainant:

Agri Credit Solutions (Pty) Limited

North West Province

South Africa

Registrant:

Joshua Armstrong

Auckland

New Zealand

2 The Domain Name: SUID-WES.CO.ZA

3 Notification of Complaint (10 JANUARY 2025)

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)

1. The Complainant relies on Regulation 3(1)(a) of the Alternative Dispute Resolution Regulations (“the Regulations”) promulgated in terms of the Electronic Communications and Transactions Act, 25 of 2002, in this Complaint.
2. In terms of Regulation 3(1)(a) of the Regulations, the Complainant “has rights in respect of a name or mark which is identical or similar to the domain name and, in the hands of the registrant the domain name is an abusive registration”.
3. The Complainant, in this regard, relies on its rights as proprietor of:
 - a. the registered trade marks SUIDWES LANDBOU / SUIDWES AGRICULTURE and the SUIDWES logo (“the Complainant’s registered rights”); and
 - b. common law rights in the aforementioned marks.
4. Insofar as it relates to the Complainant’s registered rights, the Adjudicators are satisfied that the Complainant has rights in respect of a mark which is similar to the domain name. The Adjudicators are further satisfied that the domain name in

the hands of the registrant constitutes an abusive registration.

5. Regarding the latter aspect, the Complainant submits that (in summary) that:
 - a. the disputed domain 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; and
 - b. the disputed domain has been used in a manner that takes unfair advantage of or is unfairly detrimental to the Complainant's rights.
6. The disputed domain <suid-wes.co.za> was registered by the Registrant on 1 September 2022. The earliest of the Complainant's registered rights will – in the absence of renewal – only lapse on 23 October 2025. The latest of its registered rights will – in the absence of renewal – lapse on 27 September 2026. The Complainant's registered rights were therefore valid and enforceable at such time.
7. Prior to its acquisition by the Registrant, the domain was owned by the Complainant's parent company, Suidwes Holdings. The domain, currently, is used to host content that constitutes a complete reproduction of the Complainant's erstwhile website hosted at the same domain. The Registrant has even retained all of the Complainant's contact details, including the Complainant's registration number and its copyright notice dated 2014 on the website. The Complainant has not authorised this use.
8. As such, the Adjudicators find that the use of the disputed domain name is infringing on the Complainant's rights. The Registrant's registration and use of the disputed domain name is causing, and will continue to cause, damage to the Complainant's reputation and it holds the potential to disrupt the Complainant's business, in addition to deceiving unsuspecting customers.
9. The Registrant's registration of the domain name also has the effect that the Complainant is barred from registering or using the identical domain name – see Barloworld Limited & Barloworld Africa (Pty) Ltd v David Godfrey [ZA2012-0120] and Multifix (Pty) Ltd v Leelan Srugaser [ZA2013-0132].
10. Considering the above, the Adjudicators are satisfied that the domain name constitutes an abusive registration as alleged by the Complainant.
11. It may however be noted that, to the extent that the Complainant has relied on

common law rights, the Adjudicators are not fully satisfied that the evidence relied upon is sufficient to establish such rights.

12. In this regard, the Complainant has provided extracts of its website as it appeared in 2016. It has provided a history of Senwes Limited, the corporate existence of which seemingly can be traced back to 1909. The Senwes Group, it is alleged, has a presence in seven out of the nine provinces of South Africa and it is a market leader in the agricultural sector. A business overview of the Senwes Group, dated 2021, is attached to the Complaint and the logo mark (depicted below) is contained therein.



13. The Complainant forms part of the Senwes Group's Financial Services & Advice "sector". The Complainant has set out the total revenue of the Senwes Group for the financial years in 2019, 2020, 2021, 2022 and 2023. While the amounts set out in this table clearly evince revenues exceeding R300 million in each of these years and is extensive, it is not discernible from the evidence that the revenue received relates to revenue generated as a result of the Senwes Group's use of the Complainant's common law marks or, in fact, the registered trade marks. It therefore does not assist in the determination of whether the Complainant has the requisite reputation required for purposes of the common law rights relied on.
14. The Complainant, i.e. Agricultural Credit Solutions (Pty) Ltd, further changed its name in 2020 from Suidwes Landbou (Edms.) Bpk. The Complainant alleges that it has used the latter name since its inception in 1990 until its name was changed in 2020.
15. In addition, the Complainant sent an email to the Registrant on 31 July 2024 wherein it notified the Registrant that "Suidwes Holdings no longer exists". It is therefore not certain to what extent (if any) the common law marks are used by the Complainant. This is not to say that a reputation in the common law marks did or does not exist. However, the Adjudicators cannot on these facts alone find that a substantial number of members of the public or the trade, i.e. a not negligible amount of the members of the public or trade, have associated the common law

marks relied on with the business, goods or services of the Complainant.

16. The evidence relied on therefore does not satisfactorily establish the Complainant's reputation as at 1 September 2022 or thereafter. Regardless, as the onus under these proceedings only require rights, the absence of sufficient common law rights are irrelevant, and the decision of the Adjudicators is therefore premised on rights being the registered rights of the Complainant and not the common law rights relied on.

8 Decision

Considering the above, the Adjudicators order, in terms of Regulation 9(1)(a), that the domain name <suid-wes.co.za> be transferred to the Complainant.

.....
CHRISTIAAN STEYN

SAIIPL SENIOR ADJUDICATOR

www.DomainDisputes.co.za

.....
FRANCOIS WOUTER LANDMAN

SAIIPL TRAINEE ADJUDICATOR

www.DomainDisputes.co.za