

Decision for dispute CAC-UDRP-103684

Case number	CAC-UDRP-103684
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Time of filing	2021-03-24 08:55:46
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Domain names	groupenuxe.com
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Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	Laboratoire Nuxe
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Complainant representative

Organization	Marks & Clerk France
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Respondent

Organization	King Cobra
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is owner of a large portfolio of trademarks including the term “NUXE” registered in several countries, such as:

- the international trademark NUXE (word) no. 1072247, registered since 14 February 2011, in classes 3,44;
- the international trademark NUXE (word) no. 1148899, registered since 20 September 2012, in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45;
- the European Union trademark NUXE (word) no. 008774531, filed on 22 December 2009, registered on 15 June 2010, in classes 3, 44;
- the European Union trademark NUXE (word) no. 013609599, filed on 26 December 2014, registered on 2 February 2016, in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45.

The Complainant also owns multiple domain names comprising the term “NUXE”, among which <nuxe.com> registered since 27 February 1998.

Furthermore, the Complainant has operated under the company and trade name LABORATOIRE NUXE since 1964.

The Complainant's rights are hereinafter referred to as the NUXE Trademark.

FACTUAL BACKGROUND

The Complainant is a well-known French corporation established in 1964, specialized in the manufacture and trade of cosmetics, personal care products and related services sold under the NUXE Trademark. Over the years, the Complainant has become a global group, present in nearly 60 countries. In France, the Complainant's products rank third among the brands sold in pharmacies and drugstores.

The domain name <nuxe.com> is used as the Complainant's main website through which it also operates its e-commerce site (in particular in the US where the Respondent resides).

The disputed domain name was registered on 17 February 2021 with privacy / proxy service and, at the moment of the filing of the Complaint, resolved to a parking page with pay-per-click (PPC) links related to the Complainant and its products, as well as to its competitors' products. The domain name has also MX records configured.

Upon the registrar verification requested by CAC, the Respondent was identified as King Cobra, residing in New York, United States.

The facts asserted by the Complainant are not contested by the Respondent.

PARTIES CONTENTIONS

Parties' Contentions

Complainant:

The Complainant contends that the disputed domain name is confusingly similar to the NUXE Trademark, since it fully reproduces such earlier mark combined with the non-distinctive term "GROUPE".

The Complainant also contends that the Respondent has no rights or legitimate interests to the disputed domain name. The disputed domain name resolves to a parking page with PPC links, some of which redirect to websites of the Complainant's competitors or retailers not authorised to sell the Complainant's genuine products. That is not a good faith or fair use of the domain name, without intent for commercial gain to mislead consumers or to tarnish the Complainant's mark.

The Complainant finally contends that the Respondent's bad faith is demonstrated by the registration of the disputed domain name confusingly similar to the NUXE Trademark and by the use of the same to resolve to a parking page, referring both to the Complainant and its products and to its competitors' products. This would prove the constructive knowledge on behalf of the Respondent of the Complainant's potential rights, as well as the intention of the Respondent to exploit the reputation of the Complainant and its rights for commercial gain. Moreover, the configuration of MX records for the domain name by the Respondent shows that the disputed domain name is likely used in phishing activities.

The Complainant, therefore, requests the transfer of the disputed domain name.

Respondent:

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be

inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used by the Respondent in bad faith.

I. THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARK

The Complainant has established that it has rights in registered trademarks consisting in the distinctive term "NUXE" since 2009.

The disputed domain name consists of the terms "GROUPE" (meaning "group" in French) and "NUXE" and the TLD ".COM". In UDRP cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognisable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of the first element (see 1.7 WIPO Overview 3.0). Panels also agree that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) and letters does not prevent a finding of confusing similarity under the first element (see 1.8 WIPO Overview 3.0).

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, since it incorporates the entirety of the NUXE Trademark and differs from such mark by merely adding the generic and descriptive term "GROUPE" and the TLD ".COM". The addition of such term neither affects the attractive power of such trademark, nor is sufficient to distinguish the disputed domain name from the Complainant's mark. The TLD is to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark, as it is a technical requirement of registration (see 1.11.1 WIPO Overview 3.0).

Hence, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's trademark.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAME

It is a consensus view of UDRP panels that the complainant shall establish a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the respondent (see 2.1 WIPO Overview 3.0: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.").

The disputed domain name was registered with privacy / proxy service. Upon CAC's registrar verification request, the Registrar disclosed the underlying registration data, identifying King Cobra (US) as registrant.

The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademark or to register the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

The disputed domain name resolves to a parking page with PPC links related to the Complainant and its products, as well as to its competitors' products. PPC links are a common way to monetise a domain name as part of an affiliate program which enables the registrant to earn a fee each time an Internet user clicks on the links of the parking page.

Applying UDRP paragraph 4(c), UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalise on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (see 2.9 WIPO Overview 3.0).

Therefore, the Panel finds that the use of the disputed domain name is clearly not a legitimate non-commercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests to the disputed domain name.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

III. BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

The Complainant has sufficiently demonstrated to be owner of the NUXE Trademark, registered prior to the registration of the disputed domain name and valid in the territory of the Respondent.

The Respondent used a privacy / proxy service when registering the disputed domain name. Although the use of such service is not in and of itself an indication of bad faith, the circumstances and the manner in which such service is used may however impact a panel's assessment of bad faith (see 3.6 WIPO Overview 3.0).

The disputed domain name is confusingly similar to Complainant's NUXE Trademark, since it incorporates the entirety of such mark and differs from the latter by merely adding the generic and descriptive term "GROUPE" (meaning "group" in French) and the TLD ".COM" which are insufficient to negate the confusing similarity of the disputed domain name to the Complainant's mark.

Given the good-will and reputation of the Complainant acquired over the years in the cosmetic industry, it is inconceivable that the Respondent could have registered the disputed domain name for a mere chance without actual knowledge of the Complainant and its mark and the intention to exploit such reputation for commercial gain by diverting traffic away from the Complainant's website. Even assuming that the Respondent had no knowledge of the Complainant's prior mark at the time of registration of the disputed domain name (which is quite unlikely), it omitted to verify that the disputed domain name would have infringed the Complainant's earlier rights or, even worse, it verified it and deliberately proceeded with the infringing registration and use.

The Complainant has submitted the results of a search carried out on Google search engine regarding the term "NUXE", all of them related to the Complainant. Should the Respondent have performed a similar search on the Internet before registering the disputed domain name, he would have easily learnt about the Complainant's activities and trademark registered and used worldwide.

At the moment of the filing of the Complaint, the disputed domain name resolved to a parking page with PPC links. While the sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith, in the present case, considering that the website associated to the disputed domain name contains PPC links related to the Complainant, its products and products competing with those of the Complainant, the Panel finds that, by registering and using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark.

Moreover, the Complainant has shown that the Respondent had configured MX records for the disputed domain name. It means that the disputed domain name is highly likely to be associated with fraudulent e-mail activities and, thus, part of a phishing scheme.

Finally, the Respondent has failed to submit a Response in the present administrative proceeding or to provide any evidence of actual or contemplated good faith use.

Considered all the afore-mentioned circumstances, the Panel determines that the disputed domain name has been registered and is being used in bad faith.

Therefore, the disputed domain name is to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **GROUPENUXE.COM**: Transferred

PANELLISTS

Name	Avv. Ivett Paulovics
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DATE OF PANEL DECISION 2021-04-16

Publish the Decision
