

Decision for dispute CAC-UDRP-103686

Case number CAC-UDRP-103686

Time of filing 2021-03-24 08:57:41

Domain names nuxebeauty.com

Case administrator

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

Complainant

Organization Laboratoire Nuxe

Complainant representative

Organization Marks & Clerk France

Respondent

Name Spencer Truong

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

According to the evidence submitted by Complainant, Complainant is the owner of the international trademark nr. 1072247 NUXE, registered on 14 February 2011.

FACTUAL BACKGROUND

According to the evidence submitted by Complainant, Complainant is a French company created in 1964 specialized in the manufacture and trade of cosmetics as well as personal care products and related services sold under the trademark NUXE.

The disputed domain name <nuxebeauty.com> was registered on 13 February 2021 and is held by Respondent.

According to the information provided by Complainant the disputed domain name does not resolve to an active website.

The trademark registration of Complainant has been issued prior to the registration of the disputed domain name. According to Complainant the disputed domain name is confusingly similar to Complainant's trademark as it reproduces the NUXE trademark in its whole. Indeed the trademark NUXE is identically reproduced without any alteration. Juxtaposed is the

word "beauty" which is the designation of the exact field of activity of Complainant.

Complainant submits that Respondent does not have any rights or legitimate interest in the disputed domain name. The disputed domain name reproduces both Complainant's trademark, name and its field of activity. So, Respondent clearly intended to infringe Complainant's earlier rights and to mislead the clients of Complainant.

Complainant contends that the disputed domain name is registered and is being used in bad faith. Indeed, Complainant has never been contacted by someone willing to register the disputed domain name nor has been given any authorization to anyone to make any use, or apply for registration of the disputed domain name. So, registration, of a domain name for "Nuxe" and the juxtaposition of the word beauty which is the exact field of activity of Complainant has never been authorized. There is also no fair use of the domain name at stake. According to Complainant Respondent has proceeded to registration in bad faith. Indeed, Respondent could not ignore the existence of the earlier rights and uses for "Nuxe". Even more, the registrant could not ignore that "Nuxe" was a denomination already owned and used in respect of cosmetics products and so in the field of beauty. Respondent clearly does not make fair use of the disputed domain name which was only registered to mislead/divert clients of Complainant. Registration was also made to create an IP address with the intent to proceed to phishing, commercial e-mailing or spamming activities. More than infringing Complainant's rights, Complainant submits that the creation of the disputed domain name attempts to infringe public order since random recipients may be contacted through this e-mail address for downloading files and so spreading malware or harming in various ways.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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 Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Complainant has, to the satisfaction of the Panel, shown 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

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

In the opinion of the Panel the disputed domain name is confusingly similar to Complainant's trademark. Many UDRP decisions have found that a disputed domain name is identical or confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark or the principal part thereof in its entirety. Complainant has established that it is the owner of a trademark registration for NUXE. The disputed domain name incorporates the entirety of the well-known NUXE trademark as its distinctive element. The addition of the descriptive word "beauty" in the disputed domain name is insufficient to avoid a finding of confusing similarity as the NUXE trademark remains the dominant component of the disputed domain name. The top-level domain "com" in the disputed domain name may be disregarded. The Panel notes that Complainant's registration of its trademark predates the creation date of the disputed domain name.

In the opinion of the Panel Complainant has made a prima facie case that Respondent lacks rights or legitimate interest in

the disputed domain name. Complainant has not licensed or otherwise permitted Respondent to use its trademark or to register the disputed domain name incorporating its mark. Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark of Complainant. Respondent is not commonly known by the disputed domain name nor has it acquired trademark rights. Complainant has no relationship with Respondent. Respondent did not submit any response.

Under these circumstances, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the disputed domain name has been registered and is being used in bad faith. Respondent knew or should have known that the disputed domain name included Complainant's well-known NUXE mark. The Panel notes that there is currently no active website at the disputed domain name. Such non-use of the disputed domain name does not prevent the Panel from finding registration and use in bad faith. The Panel further notes that the undeveloped use of the website at the disputed domain name which incorporates Complainant's trademark almost in its entirety indicates that Respondent possibly registered the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location, which constitutes registration and use in bad faith. The Panel also takes into account that the creation of an IP address could be considered an additional indication of bad faith as such address could be used for various illegal purposes.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NUXEBEAUTY.COM**: Transferred

PANELLISTS

Name	Dinant T.L. Oosterbaan
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DATE OF PANEL DECISION 2021-04-27

Publish the Decision
