

Decision for dispute CAC-UDRP-103827

Case number	CAC-UDRP-103827
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Time of filing	2021-05-25 09:14:03
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Domain names	nuxinfo.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	TbaacSoft
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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 (the "Domain Name").

IDENTIFICATION OF RIGHTS

The Complainant relies upon various registered trade marks that comprise or incorporate the term "NUXE". Specific marks identified in the Complaint are as follows:

- (i) French Trade Mark n° 1688882 for NUXE as a word mark in classes 3,5 and 25 and applied for on 27 July 1988;
- (ii) European Union trade mark registration n° 008774531 for NUXE as a word mark in classes 3 and 44 registered on 15 June 2010; and
- (iii) International trade mark registration n° 1072247 for NUXE as a word mark in classes 3 and 44, filed in 2011 and designating 59 countries including USA, Japan, South Korea, Russia.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant, Laboratoire Nuxe (hereafter "Nuxe") is a French company created in 1964 specialized in manufacture and trade of cosmetics as well as personal care products and related services sold under trade mark NUXE. It sells cosmetics all around the world and provide spa services in various countries.

The name Nuxe is included in the name of the Complainant and all its subsidiaries all around the world.

Nuxe is also the owner of several domain names under various extensions, such as, but not limited to, <nuxe.com> (created in 1998), <nuxe.fr>, <nuxe.eu>, <nuxe.ca>, <nuxe.us>, <nuxe.bio>, <nuxe.pro>, <nuxe.cn>, <nuxe.beauty> but also domain names comprising the term "nuxe" combined with another term, such as but not limited to: nuxespa, nuxebio, nuxe-bio, nuxe organic, nuxe-organic in the same extensions. It operates a website from at least the domain name <nuve.com>.

The Domain Name was registered on December 20, 2020. At one point in the Complaint the contention is that the Domain Name resolves to "a domain parking page", but elsewhere it is claimed that "[t]his domain name's page is active, but as the homepage of a website creation platform". The Complainant also contends that "[a]n IP address (185.151.28.67) has been created for the Domain Name."

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trade mark 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 Panel is prepared to assume that Complainant has, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii) of the Policy). However, there is no need for the Panel to make a determination on this issue in lights of its conclusions as to bad faith.

BAD FAITH

The Complainant has failed to demonstrate to the satisfaction of the Panel, that the 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

The Complaint has not been prepared with the care that it could have been.

The Complainant clearly has an extensive portfolio of trade marks and operates in multiple jurisdictions, but the extent of that business, is not otherwise described. As a consequence it is not at all clear how well known the "Nuxe" brand is around the world.

Also at time what actually is being alleged in the body of the Complaint is not clear, unless and until one consider the Annexes filed with the Complaint. So, for example, references to an ISP address having been created for the Domain Name (which will be true for any Domain Name in use) appears in fact to be an allegation that the Domain Name has been configured for use with an e-mail account. Similarly, the reference to a "website creation platform" appears to be a reference to a Wordpress generated page with a single comment "Hi, this is a comment". There is also one Annex to the Complaint which is not mentioned in the Complaint but the Panel assumes has been filed in support of a contention, without further explanation, that the Domain Name "could be purchased upon negotiation".

Last but not least, no attempt has been made to substantively amend the Complaint to take into account the disclosure of the underlying registrant of the Domain Name in response to the CAC's registrar request, and in particular the fact that the Registrar appeared to identify the registrant as an individual in Pakistan.

In order to satisfy the first element of the Policy it is usually sufficient for a complainant to show that the relevant mark is "recognizable with the disputed domain name"; as to which see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"). Usually, this is a relatively easy requirement for a complainant to satisfy. However, where, such as in this case the trade mark relied upon is particularly short and is not reproduced in full in the domain name, matters may not be so obvious. In this particular case, the Complainant's mark is NUXE and three of the letters of that mark appear in the Domain Name. Further, the Complainant makes the point that "Nuxe" would be pronounced in French as "Nux". The Panel, therefore, accepts that one possible reading (albeit not the only reading) of the Domain Name is as a misspelt, homophone version of the Complainant's mark combined with the word "info" and the ".com" TLD. Accordingly, the Panel accepts that paragraph 4(a)(i) of the Policy has been satisfied.

So far as a right or legitimate interests is concerned, there is no real explanation of why the Domain Name is being held, and the Panel accepts that none of the examples of such a right or legitimate interest to be found in the Policy obviously apply.

In this respect the Panel also accepts that there is no evidence before it of any use or intended use of the Domain Name in respect of which there might be a relevant right or interest.

Therefore, the Panel is prepared to assume that Complainant has shown the Respondent to have no right or legitimate interest in respect of the Domain Name (within the meaning of paragraph 4(a)(ii) of the Policy). However, there is no need for the Panel to make a determination on this issue in light of its conclusions as to bad faith.

On the issue of bad faith, what is remarkable about this case is that there is no real evidence that the Domain Name was registered or is being held because of its actual or potential associations with the Complainant. The content that briefly appeared on a web page operating from the Domain Name did not refer to the Complainant, nor is there any evidence to suggest that it has otherwise been used in some way connected to the Complainant.

The Complainant relies (as the Panel understands the Complaint) on the fact that the Domain Name has been configured for e-mail use. Contrary to what the Complainant appears to assert, that is not by itself evidence of bad faith. However, sometimes that can be a compelling piece of evidence pointing to bad faith, particularly where the Domain Name can only be, or at least is most likely to be, sensibly understood as referring to a trade mark holder. In such circumstances, a complainant may be able to persuasively contend that there is a high likelihood that the domain name will be used for phishing or some other scam in which e-mails fraudulently impersonating the rights holder are sent using the domain name. That was for example the position in the case of *Credit Industriel et Commercial S.A. v. Xing Zhou*, WIPO Case No. D2019-0654, relied upon by the Complainant, where the complaint was a bank and the domain name inherently suggested that the domain name was being used to provide "support" to customers. Other factors that might point in the same direction include where the domain name can only be, or at least is most likely to be, sensibly understood as including a misspelling of the complainant's mark.

In the present case, the Complainant does indeed contend that the Domain Name, should be understood as such a misspelling. The difficulty however, is that the Panel is unpersuaded on the evidence before it that the complainant has demonstrated that this is indeed the most natural and obvious reading of the Domain Name. The Panel accepts that the Domain Name would most likely be read as the words "Nux" and "info" in combination. But it is not at all clear that the three letters "Nux" would be so obviously understood as a reference to the Complainant's mark such that it can be inferred that it was with this reference in mind that the Domain Name was registered. In this respect, the Panel notes that "Nux" is a term that is also independently used by a number of other businesses unconnected with the Complainant.

The Complainant does provide evidence in the form of a Google search for "Nux Info" that returns a large number of search results associated with the Complainant. However, evidence of this sort is potentially problematic and has to be approached with care. The reason is that Google search results can heavily depend upon what version of a search engine is used, where the

person making the search is located and possibly that person's past internet activity (as to which see for example the comments as to location of the three person panel in Grupo Costamex, S.A. de C.V. (COSTAMEX), Operación y Supervisión de Hoteles, S.A. de C.V. (OPYSSA) v. Vertical Axis Inc. WIPO Case No. D2013-1829). In the present case it is clear from a careful examination of the relevant search results annexed to the Complaint that they were undertaken on the French version of Google. In contrast, searches conducted on Google by the Panel in the United Kingdom, at the time this decision was being prepared, returned no search results for the Complainant's business. Instead, the search results primarily related to amplifiers and other electrical equipment sold under the NUX brand, and products containing or information about strychnine (which is apparently sourced from the plant *Strychnos nux-vomica*). Therefore, the Panel is not prepared to accept the Complainant's evidence of search result in France to be evidence of any weight as to what the Respondent (who appears to be in Pakistan) would have seen had he conducted similar searches.

In the circumstances, the Panel concludes that the Complainant has failed to show on the balance of probabilities that the Domain Name was registered with knowledge of the Complainant's marks, let alone with the intention of seeking to take unfair advantage of those particular marks. It follows that the Complainant has failed to satisfy paragraph 4(a)(iii) of the Policy.

Consequently, the Complainant's complaint under the UDRP is rejected.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **NUXINFO.COM**: Remaining with the Respondent

PANELLISTS

Name	Matthew Harris
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DATE OF PANEL DECISION	2021-06-24
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Publish the Decision