

Decision for dispute CAC-UDRP-103830

Case number	CAC-UDRP-103830
Time of filing	2021-06-11 09:59:50
Domain names	nuxxbeauty.sexy, nuxxbeauty.shop

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

Name	Cynthia Cazares
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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 names.

IDENTIFICATION OF RIGHTS

Complainant provided evidence that Nuxe is the owner of rights on the term NUXE as trademarks, company name/trade names and domain names

FACTUAL BACKGROUND

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

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 trademark NUXE. For more information, please visit the website <http://nuxe.com>.

Nuxe is selling its cosmetics all around the world and provide spa services in various countries.

Nuxe became aware of the registration of the domain names <nuxxbeauty.com>, <nuxxbeauty.shop> and <nuxxbeauty.sexy> which occurred respectively on December 20, 2020, March 12, 2021 and May 5, 2021.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The respondent was registering a domain name, offering cosmetics and cosmetic related accessories on it and then closing the website for opening a new one and proceeding the same and then again with the “.sexy”.

Consequently, <nuxxbeauty.com> and <nuxxbeauty.shop> are today inactive but used to be active pages. And, <nuxxbeauty.sexy> has been put offline by Shopify thanks to our request, as described above.

The Complainant states that the domain names <nuxxbeauty.com>, <nuxxbeauty.shop> and <nuxxbeauty.sexy> reproduce the Nuxe's trademarks, domain names, company name and trade name “NUXE” in its whole. Indeed, the addition of the letter “X” instead of the letter “E” does not have any impact on the pronunciation of Nuxe, for which the “e” is silent, due to its French origins. Juxtaposed is the word “beauty” which is, more than not being distinctive, the description of the exact field of activity of the Complainant.

Registrations at issue were made fraudulently, in bad faith and with the intent to infringe Nuxe's earlier rights. Indeed, the fraudulent character of these registrations is characterised by various circumstances developed below:

- The three domain names <nuxxbeauty.com>, <nuxxbeauty.shop> and <nuxxbeauty.sexy> imitate the Complainant's name and reproduce its exact field of activity. We also have to say that in practice nuxxbeauty can be used with the two terms separated: Nuxx Beauty. Use of the separated terms for emphasizing the term “Nuxx” is clearly for making reference to Complainant's name “NUXE”. We then prospect that Respondent intends to infringe Complainant's earlier rights and to mislead/ divert Nuxe's clients.

According to the Complainant the disputed domain names use well-known practice of cybersquatting / typosquatting to divert Nuxe's client in case of typing error (nuxx vs. nuxe).

The fraudulent character of the registrations at stake is also intensified by the fact that IP addresses have been created. Purpose of the said registrations is thus phishing that is that Respondent intends or attempts to intent that to impersonate itself as a trustworthy entity (Laboratoire Nuxe) in order to obtain sensitive information from Complainant's clients. Laboratoire Nuxe has never been contacted by someone willing to register the domain names in issue nor has given any authorization to anyone to make any use, or apply for registration of the said domain names. So, registration, of a domain name for Nuxx and the juxtaposition of the word beauty which is the exact field of activity of Laboratoire Nuxe, has never been authorized.

The Complainant summarises its contentions: there is no legitimate reason for the Respondent to adopt the said domain names. The Respondent clearly does not make fair use of the domain names which were only registered to mislead/divert Laboratoire Nuxe's clients and to breach its reputation. Registrations were also made to create numerous IP addresses with the intent to proceed to phishing, commercial e-mailing or spamming activities. More than infringing Complainant's earlier rights, creations of the litigious domain names attempt to public order since random recipients may be contacted through these e-mail addresses for downloading files and so spreading malware or harming in various ways.

RESPONDENT:

No administratively compliant response has been submitted.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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

FIRST CONDITION

It is commonly accepted that the first condition functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name. In this comparison, the cc- or g- TLD is usually not taken into account.

The disputed domain names are composed of:

- the Complainant's trademark where the last letter "E" is replaced by a "X";
- a generic word referring directly to the Complainant's activity (beauty, cosmetics, etc.).

The Panel is of the opinion that the replacement of a letter (and also, in this specific case, the fact that this replacement does not change the phonetic pronunciation of the trademark), and/or the adjunction of generic terms do(es) not generally change the assessment as far as the first condition is concerned. (see also WIPO, Swiss Re, No. D2014-1873).

SECOND CONDITION

Panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, 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.

The Complainant claims, without being contradicted, that:

- The Complainant has not licensed or authorized the Respondent to register or use the disputed domain names;

- The Respondent has used the disputed domain names to open temporary websites, on which it offered for sale products similar to those manufactured by the Complainant. The short life of the sites is a way for the Respondent to try to escape the Complainant's surveillance.

The Respondent has chosen not to answer to the Complaint.

Based on the elements presented by Complainant, the Panels finds that the second condition is satisfied.

THIRD CONDITION

Safe for the replacement of a letter, the first part of the disputed domain names incorporates entirely the Complainant's trademark. The second part of the disputed domain names is a generic word referring directly to the Complainant's activity. The Respondent has acted this way on (at least) three occasions. In the absence of any credible explanation, such registrations appear as a direct reference to the Complainant's trademark. It is even more probable when the notoriety of the Complainant's trademark is taken into account. There is no apparent plausible reason for the Respondent to register the disputed domain names, except its probable intention of taking advantage of the distinctiveness of the Complainant's trademark. It is therefore prima facie highly probable that the Respondent registered and used the disputed domain names having the Complainant in mind, and acted in order to attract traffic by using the notoriety of the Complainant.

Also, the disputed domain names are prima facie not used for any bona fide offerings, temporary websites are a curious way to proceed. The Panel would have welcomed some explanations but the Respondent has chosen not to answer to the Complaint.

Based on the elements presented by Complainant, the Panel finds that the third condition is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **NUXXBEAUTY.SEXY**: Transferred
2. **NUXXBEAUTY.COM**: Transferred
3. **NUXXBEAUTY.SHOP**: Transferred

PANELLISTS

Name	Mr. Etienne Wéry
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DATE OF PANEL DECISION 2021-07-12

Publish the Decision