

Decision for dispute CAC-UDRP-104248

Case number CAC-UDRP-104248

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Domain names nuxeonline.com

Case administrator

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

Complainant

Organization Laboratoire Nuxe

Complainant representative

Organization Marks & Clerk France

Respondent

Name fan Yi

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.

FACTUAL BACKGROUND

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

Factual Background – Prior rights of 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 trademark NUXE (website <http://nuxe.com>).

Nuxe is the owner of several trademark registrations for this sign NUXE in various countries all around the world. The first application for a trademark comprising NUXE occurred in France in 1994 (under n° 94 518 763).

Since 1994, word mark NUXE has been registered all around the world for example, but not limited to, Nuxe is protected as European Union trademark registration n°8 774 531 filed in 2009, international trademark registration n° 1 072 247 filed in 2011 designating 59 countries including USA, Japan, South Korea, Russia. It has also been registered in China, Mexico, Brazil, Argentina and Canada (n° 1 515 150 dated 2011).

All these marks are registered at least in classes 3 and 44 for cosmetics and more generally personal care related goods and services as shown on the attached extracts of database from EUIPO, WIPO and Canadian Trademark Office.

For any purpose, it may serve, it is to be noted that Nuxe is also the Company name and trade name of the Complainant and included in the name of all its subsidiaries all around the world, including in China, country of the Registrant, for which the company name is Nuxe (Shanghai) Cosmetic Company Limited incorporated in 2014.

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.online> 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.

Registration of domain name <nuxeonline.com> infringes or at least breaches all the aforesaid rights of the Complainant on NUXE as it will be demonstrated below.

Through a careful watch of its rights, Nuxe became aware of the registration of the domain name <nuxeonline.com> which occurred on August 29, 2021. This domain name is registered by someone called “fan Yi” with the following address street “hunanshengxiangxiangshiwangchunmendongfenglu37ha”, City XiangXiangShi, Province HuNana, Postal Code 411400, Country China.

PARTIES CONTENTIONS

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.

I. LANGUAGE OF PROCEEDINGS REQUEST:

According to the Registrar Verification, the language of the registration agreement is Chinese. The Complainant requests the language of the proceedings to be English so it is fair to both parties.

The Complainant requests that the language of this administrative proceeding be English pursuant to UDRP Rule 11(a): Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. Complainant makes this request in light of the potential Chinese language Registration Agreement of the Disputed Domain Name involved at this Complaint.

Paragraph 10 of the UDRP Rules vests a Panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios were summarized into WIPO Jurisprudential Overview 3.0, 4.5.1. In this particular instance, the Complainant tried to request change of languages of proceedings in light of Chinese language Registration Agreement by showing that 1) disputed domain name <nuxeonline.com> are formed in English characters; 2) the disputed domain name directed websites with links to English pornographic materials; 3) conducting the proceeding in languages other than Chinese would entail significant additional costs for the Complainant and unnecessarily burden the Complainant.

In light of the scenarios and equity, the Panel is of the view that conducting the proceeding in English is unlikely to heavily burden the Respondent, and it is likely that the Respondent can understand the English language based on a preponderance of evidence test. Without further objection from the Respondent on the issue, the Panel will proceed to issue the decision in English.

PRINCIPAL REASONS FOR THE DECISION

A. THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR

The Complainant contends that the disputed domain name <nuxeonline.com> (hereinafter referred to as the “Disputed Domain Name”), is confusingly similar to the Complainant’s trademark “Nuxe”. The Complainant Laboratoire 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 its trademark NUXE. The trademark was registered in various countries all over the world. The disputed domain name which was registered on 19 August 2021 according to the WHOIS, fully incorporates the Complainant’s well-known trademark NUXE in combination with a term “online”. “online” is a fully generic and fully descriptive term, which could be used to describe the Complainant’s product sales channels or other related business activities. The addition of the gTLD “.com” does not add any distinctiveness to the disputed domain name. See as an example the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), paragraph 1.11. as well as the International Business Machines Corporation v. Sledge, Inc. / Frank Sledge WIPO Case No. D2014-0581 where the Panel stated the following:

“In addition, it is generally accepted that the addition of the top-level suffix in the domain name (e.g., “.com”) is to be disregarded under the confusing similarity test”.

The same reasoning should apply in the current case and the disputed domain name should be considered as confusingly similar to the trademark NUXE.

In this case, the disputed domain name is identical or confusingly similar to the Complainant’s trademark NUXE. The disputed domain name incorporates the Complainant’s trademark NUXE entirely. The generic top level domain “.com” does not affect the confusing similarity. The Panel therefore concludes that the disputed domain name is confusingly similar to a trademark in which the Complainants have rights within the meaning of paragraph 4(a)(i) of the Policy.

B. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DISPUTED DOMAIN NAME

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant and the Respondent have never had any previous relationships, nor has the Complainant ever granted the Respondent with any rights to use the NUXE trademark in any forms, including the disputed domain name.

The Complainant has not found that the Respondent is commonly known by the disputed domain name or that it has interest

over the disputed domain name. In addition, according to the Registrar Verification, the Respondent is an individual named “fan yi”, which is not related to the Complainant nor to the identifiable term “NUXE” in any form. When searched for “NUXE” and “online” in the Google and Baidu (leading search engine in China) search engines, the returned results pointed to the Complainant and its business activities. Laboratoire Nuxe has never been contacted by someone willing to register the domain name in issue nor has given any authorization to anyone to make any use, or apply for registration of the domain name <nuxeonline.com>.

For the foregoing reasons, it shall be concluded that the Respondent has no right nor legitimate interest in respect of the disputed domain name and has not been using the disputed domain name for any bona fide offering of goods or services.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

C. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

By trying to establish the bad faith element of paragraph 4(a) of the Policy, the Complainant has primarily attempted to rely on paragraph 4(b)(i) and 4(b)(iv) of the Policy.

i. THE DISPUTED DOMAIN NAME WAS REGISTERED IN BAD FAITH

It should be highlighted that most of Complainant’s trademark registrations predate the registration of the disputed domain name and the Respondent has never been authorized by the Complainant to register the disputed domain name. Considering the renown of the Complainant and its trademark NUXE (as confirmed by a Chinese court), and the overall composition of the disputed domain name, i.e. using the term “NUXE” in combination with a term “online”, which is closely related to the Complainant and its business activities and its potential sales channel, it follows that the use of the well-known trademark NUXE in the disputed domain name is a calculated attempt to improperly benefit from the Complainant’s rights and reputation.

Considering the facts that:

- The Respondent very likely knew about the Complainant and its trademark;
- The Complainant’s trademark NUXE is a well-known trademark worldwide and in China where the Respondent seems to reside;
- The Respondent has failed in presenting a credible evidence-backed rationale for registering the disputed domain name,

the Disputed Domain Name shall be deemed as registered in bad faith, which is supported by WIPO Overview 3.0, para. 3.1.1.:

“If on the other hand circumstances indicate that the respondent’s intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant’s trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the respondent’s likely knowledge of the complainant’s rights, (ii) the distinctiveness of the complainant’s mark, ... (vii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name,...”.

and para.3.1.4:

“Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-

known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”

ii. THE DISPUTED DOMAIN NAME IS BEING USED IN BAD FAITH

Firstly, as noted in the previous paragraphs, being confusingly similar to the Complainant’s Trademark NUXE, the disputed domain name is used to host and provide with pornographic contents. The Registrant is not making any legitimate active use of the disputed domain name, but only has “intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s website or location or of a product or service on the respondent’s website or location.”

Secondly, the Respondent, namely “fan Yi” which registered the domain name with the e-mail address wuzhenzhen147@gmail.com is already reported on the Internet to be a professional scammer. Indeed, other fraudulent domain names using that identical e-mail address have been identified in relation to scamming practice.

Lastly, the Complainant tried to reach the Respondent by a cease-and-desist letter. until the time the Complainant prepared this Complaint, it has not received response from the Respondent.

SUMMARY

- NUXE is a well-known trademark worldwide.
- Complainant’s trademarks registration predates the registration of the disputed domain name.
- Respondent has no right in the mark NUXE, bears no relationship to the Complainant, and is not commonly known by the disputed domain name – accordingly it has no legitimate interest in the disputed domain name.
- It is highly unlikely that Respondent was not aware of Complainant’s prior rights in the trademark NUXE at the time of registering the disputed domain name, given the Complainant’s worldwide renown.
- Respondent has been using the disputed domain name to host pornographic website.
- Respondent failed in responding to cease-and-desist letter sent by the Complainant.
- Respondent has been using privacy shield.
- Respondent has a pattern of involved in scamming activities related to domain names.

Consequently, the Respondent should be considered to have registered the disputed domain name confusingly similar to the Complainant’s well-known trademark NUXE. The Complainant has not found that the Respondent is of any legitimate right or interest in using the disputed domain name, but rather registered and has been using the Disputed Domain Name in bad faith.

Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the Complainants have failed to provide that disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. NUXEONLINE.COM: Transferred

PANELLISTS

Name	Carrie Shang
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DATE OF PANEL DECISION 2022-04-16

Publish the Decision
