Decision for dispute CAC-UDRP-101129

Case number	CAC-UDRP-101129
Time of filing	2015-12-21 10:58:19
Domain names	nexum.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Nexum AG

Complainant representative

Organization	Heuking Kühn Lüer Wojtek PartGmbB

Respondent

Name	DOMAIN SUPPORT

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name NEXUM.COM (the 'Domain Name').

IDENTIFICATION OF RIGHTS

Nexum AG (the 'Complainant') is the owner of a number of registered trade marks for NEXUM or which include NEXUM, including a trade mark for 'nexum' registered in Germany under number 30052038 in classes 09, 16, 35, 38, 41 and 42 ('the NEXUM mark') dated 7 May 2001.

FACTUAL BACKGROUND

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

The Complainant is a German based international digital communications consultancy. As part of its services the Complainant provides SEO services (Search Engine Optimisation). The Complainant acts for many internationally renowned brands.

The Complainant is the owner of a number of trade marks including the registered NEXUM mark dated 7 May 2001. In addition, it owns the domain name 'nexum.de', which is used to point to the Complainant's main website.

The Domain Name was registered by “DOMAIN SUPPORT” (the 'Respondent') on 19 May 2004, and has been used to resolve to a web page featuring links (including sponsored links) to third party web sites offering SEO services.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the Domain Name is identical and/or confusingly similar to the Complainant's trade marks ‘NEXUM’, which are registered in Germany and Great Britain.

Furthermore, the Complainant claims the Respondent does not have any rights or legitimate interest in the Domain Name as it:

- uses the Domain Name for commercial gain; and

- the Respondent does not use the trade mark NEXUM nor the Domain Name in connection with any offering of its own goods or services.

Finally, according to the Complainant the Domain Name has been registered and is being used in bad faith as:

-The Respondent is hiding behind the name ‘DOMAINSUPPORT’ to conceal its identity;

-The Domain Name is not being used for the Respondent’s own legitimate purposes;

-The Respondent’s use of the Domain Name aims to generate money-per-click for users who access the Domain Name and follow the links to access websites belonging to German competitors of the Complainant;

-The Respondent’s use targets the Complainant by linking to third party competitors for its own commercial gain; and

-The current use of the Domain Name constitutes domain parking.

The domain name is identical to the trade marks and company name/trade name of the Complainant (Paragraph 4(a) (i) UDRP). The ".com" aspect of the Domain Name can be disregarded.

At the time of registration of the Domain Name by the Respondent, the German trade marks of the Complainant were already registered and being used, intensively, and the Complainant was operating on the market under the trade mark as a consultancy and agency.

Even though the Respondent registered the Domain Name long ago, it is not using it for any legitimate purpose. Further, even though the Respondent is located in Hong Kong, its conduct is clearly targeting German customers and users as a big part of the website is in German. Also, the Respondent links the Domain Name with SEO and similar services companies. Thus, the Respondent must have known the Complainant, its trade mark and its business.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical 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 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 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.

The Complainant, being represented by Heuking Kühn Lüer Wojtek PartGmbB, filed its complaint in relation to the Domain Name with the CAC on 21 December 2015.

The CAC then formally commenced proceedings on 22 December 2015 and notified the Respondent accordingly.

The Respondent failed to submit a response within the time frame required in this complaint, or at all, and a Notification of Respondent’s Default was therefore issued by the CAC on 12 January 2016.

Having received a Statement of Acceptance and Declaration of Impartiality, the Czech Arbitration Court appointed Steve Palmer, of Palmer Biggs Intellectual Property solicitors, as the Panel in these UDRP proceedings on 14 January 2016.

PRINCIPAL REASONS FOR THE DECISION

IDENTICAL OR CONFUSINGLY SIMILAR - paragraph 4(a)(i) of the Policy

The disputed Domain Name 'nexum.com' consists of the Complainant's NEXUM mark combined with the '.com' suffix.

The '.com' suffix may be disregarded when it comes to considering whether a domain name is identical or confusingly similar to a trade mark in which the Complainant has rights.

As a result, the Panel concludes that the disputed Domain Name is identical to a trade mark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS - paragraph 4(a)(ii) of the Policy

The Respondent failed to file an administratively compliant (or any) response. In the circumstances the Panel finds from the facts put forward that:

The Respondent does not appear to have any trade marks associated with the NEXUM mark.

There is no evidence that the Respondent is commonly known by the NEXUM mark, and the Respondent does not have any consent from the Complainant to use the NEXUM mark.

There is no evidence to show the Respondent may have used the disputed Domain Name for any bona fide offering of goods or services of its own. The third party links on the Respondent's website attached to the Domain Name appear to the panel to compete in some way or other with the Complainant's services, particularly its SEO services. This is not a bona fide offering of goods and services under 4(c)(i) of the Policy and it is not a legitimate non-commercial or fair use under 4(c)(iii) of the Policy. See AM Int'l Group Inc. v Benjamin, FA 9442542 (Nat. Arb Forum May 11, 2007) finding that the respondent's use of a domain name to advertise services which competed with the complainant's business did not constitute a bona fide offering of goods and services under paragraph 4(c)(iii) of the Policy.

On the balance of probabilities, and in the absence of any evidence to the contrary (or any administratively compliant response at all) being put forward by the Respondent, the Panel finds that the Respondent does not have any rights or legitimate interests in the Domain Name within the meaning of paragraph 4(a)(ii)of the Policy.

REGISTERED AND USED IN BAD FAITH - paragraph 4(a)(iii) of the Policy

Paragraph 4(b) of the Policy sets out non-exclusive criteria which shall be evidence of the registration and use of a domain name in bad faith including circumstances where, by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain (click through income or otherwise), Internet users to its web site 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 its web site or location or of a product or service on its website or location.

On the balance of probabilities, and in the absence of any evidence to the contrary (or any administratively compliant response at all) being put forward by the Respondent, the Panel believes from the facts in this case that the Respondent had the Complainant's NEXUM mark in mind when registering and subsequently using the Domain Name. The evidence of the Respondent's website shows that the site contained commercial links to SEO related websites. See Pfizer Inc. v Suger 02002-0187 (WIPO Apr 24, 2002) finding the link between the complainant's mark and the content advertised on the respondent's website was obvious, and therefore the respondent must have known about the complainant's mark when it registered the disputed Domain Name.

The Panel therefore finds that the Respondent has attempted to attract and cause confusion amongst Internet users between the Complainant's NEXUM mark, and that the competing third party links on the website attached to the Domain Name are likely to be for commercial gain in that it is likely to be earning click-through income for the Respondent. See AOL LLC v AIM Profiles, FA 964479 (Nat Arb Forum May 20, 2007) finding registration and use of the disputed domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy because the respondent was commercially gaining from the likelihood of confusion between the complainant's mark and the competing instant messaging products and services advertised on the respondent's website attached to the disputed domain name.

As such, the Panel finds that the Domain Name is likely to have been registered intentionally to attempt to attract, for commercial gain, Internet users to the web site hosted at the Domain Name, by creating a likelihood of confusion with the Complainant's NEXUM trade mark (paragraph 4(b)(iv) of the Policy), and therefore the 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. **NEXUM.COM**: Transferred

PANELLISTS

Name	**Steve Palmer**

DATE OF PANEL DECISION 2016-01-28

Publish the Decision