

Decision for dispute CAC-UDRP-105630

Case number CAC-UDRP-105630

Time of filing 2023-07-17 11:32:15

Domain names frnuxe.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization LABORATOIRE NUXE

Complainant representative

Organization ATOUT PI LAPLACE

Respondent

Name Jessica van Mierlo

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

The Complainant owns several word trademarks for NUXE including:

- European Union trademark registration number 8774531, registered on 15 June 2010 in classes 3 and 44; and
- International trademark registration number 1072247, registered 14 February 2011 in classes 3 and 44.

FACTUAL BACKGROUND

The Complainant is a French company that manufactures and trades cosmetics, personal care products and related services around the world under trademark NUXE.

The Complainant owns EU and International trademarks for NUXE, and rights in the Nuxe company name and trade name. It also holds numerous domain names incorporating NUXE, such as <nuxe.com>, <nuxe.fr>, <nuxe.eu>, <nuxe.ca>, <nuxe.us>, <nuxe.bio>, <nuxe.pro>, and <nuxe.cn>.

The disputed domain name was registered on 1 May 2023 using a privacy service. The disputed domain name resolves to the Complainant's website, <https://fr.nuxe.com>.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant asserts that the disputed domain name is confusingly similar to its trademark NUXE. Adding the letters “fr” before NUXE emphasises the link with the Complainant, which is a French company.

The Complainant also asserts that the Respondent has no rights or legitimate interests in the disputed domain name and states:

- i. the Complainant is the sole owner of the NUXE marks all around the world and has not authorised the Respondent to use it or apply for registration of the disputed domain name. The juxtaposition of the country code “fr” (for France) and the trademark NUXE has not been authorised; and
- ii. the Respondent registered and used the disputed domain name intending to breach the Complainant’s rights and to mislead the consumers by impersonating the Complainant by redirecting consumers to the Complainant’s legitimate website, and by phishing or spamming activities via the creation of messaging servers with IP addresses.

The Complainant asserts that the Respondent registered and used the disputed domain name in bad faith and states:

- i. the disputed domain name wholly reproduces the Complainant’s trademark, NUXE and adds the letters “fr” (for France) before NUXE to pretend a link with the Complainant, a French company;
- ii. in France, the first results of a Google search for NUXE refers to Complainant’s website, <https://fr.nuxe.com>. The Respondent must have known of the Complainant’s trademarks and activities when registering and using the disputed domain name and registered it in bad faith;
- iii. the disputed domain name redirects to the Complainant’s legitimate website, <https://fr.nuxe.com>, which demonstrates the Respondent’s intention to mislead the Complainant’s clients by pretending to be the Complainant; and
- iv. the registration was made to in bad faith to create messaging servers with IP addresses for phishing, commercial emailing or spamming activities. See *Robertet SA v. Marie Claude Holler*, WIPO Case No. D2018-1878, and *Credit Industriel et Commercial S.A. v. Xing Zhou*, WIPO Case No. D2019-0654.

RESPONDENT:

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.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4 (a) of the Policy requires the Complainant to prove each of the following three elements:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and used in bad faith.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain name is comprised of the letters “fr”, the mark NUXE and the top-level domain “.com”. The dominant feature of the disputed domain name is the trademark NUXE. Adding the letters “fr” to NUXE is insufficient to avoid the conclusion that the disputed domain name is confusingly similar to the Complainant’s trademark.

It is generally accepted that the addition of the top-level suffix, such as “.com” is a standard registration requirement. It does not add any distinctiveness to a domain name and can be disregarded when assessing whether the disputed domain name is confusingly similar to the Complainant’s trademark.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark NUXE, and that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has provided evidence of its rights in the NUXE trademarks and has made out a prima facie case that the Respondent lacks rights or legitimate interest in the disputed domain name. The burden of proof now shifts to the Respondent to show that she has relevant rights.

The Respondent has not filed a Response, nor challenged any of the Complainant’s assertions. There is nothing to indicate that the Respondent is commonly known as the disputed domain name. The Respondent is not licenced to use the Complainant’s trademark in the disputed domain name, nor authorised to link the disputed domain name to the Complainant’s legitimate website. To pretend to be the Complainant by using the disputed domain name to link to the Complainant’s website is not a genuine offering of goods and services.

Considering these factors, the Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. REGISTERED AND USED IN BAD FAITH

The Complainant owns EU and International trademark registration for NUXE. The Respondent has used a privacy service to conceal her identity and has registered the disputed domain name incorporating the Complainant’s trademark and adding to it the geographical indicator “fr”. It is implausible that the Respondent would have been unaware of the Complainant’s trademark when registering the disputed domain name.

The Complainant has submitted evidence to show that the Respondent has used the disputed domain name to link to the Complainant’s legitimate website and has set up messaging servers with IP addresses. This represents a real risk of a fraudulent scheme to deceive the Complainant’s clients into believing they are dealing with the Complainant.

The Respondent has failed to submit a Response and has not provided any evidence of any actual or contemplated good-faith use. It is impossible to conceive of any plausible actual or contemplated use of the disputed domain name by the Respondent that would not infringe the Complainant’s rights.

Taking these factors into account, the Panel concludes that the disputed domain name was both registered and is being used in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **frnuxe.com**: Transferred

PANELLISTS

Name **Veronica Bailey**

DATE OF PANEL DECISION 2023-08-22

Publish the Decision
