Decision for dispute CAC-UDRP-106079

Case number	CAC-UDRP-106079
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Domain names	nuxee.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	LABORATOIRE NUXE

Complainant representative

Organization	ATOUT PI LAPLACE

Respondent

Organization	Domains for Sale

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 a large portfolio of trade marks consisting of the name NUXE, including French national trade mark NUXE, registration number 94518763, first registered on 2 Mai 1994 in international classes 3, 5 and 25; European Union trade mark NUXE, registration number 8774531, first registered on 22 December 2009 in international classes 3 and 44; and international trade mark NUXE, registration number 1072247, first registered on 14 February 2011 in international classes 3 and 44. The Complainant's trade mark registrations predate the registration of the disputed domain name.

Furthermore, the Complainant also owns numerous domain names which consist of and incorporate the name NUXE, including <nuxe.com>, registered on 27 February 1998; and <nuxe.fr>, registered on 25 June 2008, which are connected to the Complainant's official website through which it informs Internet users and customers about its products and services.

FACTUAL BACKGROUND

The Complainant, Laboratoire Nuxe, is a French company created in 1964 and specialised in the manufacture and trade of cosmetics as well as personal care products and related services sold under trade mark NUXE. The Complainant also provides spa services in various countries. The Complainant is active globally and presented in nearly 60 countries around the world. The NUXE brand is well known and enjoys reputation in the cosmetics industry, as confirmed by a number of administrative and judicial decisions. The Complainant's products include Huile Prodigieuse, Huile Prodigieuse Or, and Nuxe Sun. 30 years after its creation,

Huile Prodigieuse is still the best-selling oil in pharmacies in France (both in value and volume) and it is the most popular beauty dry oil in seven countries.

The disputed domain name <nuxee.com> was registered on 29 April 2014 and resolves to a parking page with commercial links, including to cosmetics products of other brands not associated with the Complainant.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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 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 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

With regard to the first UDRP element, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade marks NUXE. Indeed, the disputed domain name incorporates the Complainant's trade marks in their entirety, save that the disputed domain name adds the letter “e” to the Complainant’s trade marks. The Panel considers the present case to be a plain case of "typosquatting", i.e., the disputed domain name contains an obvious and intentional misspelling of the Complainant's trade marks, which is not sufficient to alter the overall impression of the designation as being connected to the Complainant’s trade marks. Minor alterations to the Complainant's trade marks do not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trade marks and associated domain names. The Panel follows in this respect the view established by numerous other decisions that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is to be considered to be confusingly similar to the relevant trade mark (see, for example, CAC Case No. 103124, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico <boehringeringelheimpetrreebates.com>; CAC Case No. 101990, JCDECAUX SA v. Emma Purnell <jcdeceux.com>; CAC Case No. 101892, JCDECAUX SA v. Lab-Clean Inc <jcdacaux.com>; WIPO Case No. D2005-0941, Bayerische Motoren Werke AG, Sauber Motorsport AG v. Petaluma Auto Works <bmwsauberf1.com>; WIPO Case No. D2015-1679, LinkedIn Corporation v. Daphne Reynolds <linkedlnjobs.com>; CAC Case No. 103960, SCHNEIDER ELECTRIC SE v. michele Swanson <schnaider-electric.com> (“the obvious misspelling of the Complainant’s trademark SCHNAIDER ELECTRIC instead of SCHNEIDER ELECTRIC is a clear evidence of "typosquatting“); and CAC Case No. 103166, BOURSORAMA SA v. Cloud DNS Ltd <recover-bousorama.link> ("A domain name that contains sufficiently recognizable aspects of the relevant mark and uses a common name, obvious or intentional misspelling of that mark is considered by UDRP panels to be similar to the relevant mark for the purposes of the first element (see paragraph 1.9 WIPO Overview 3.0)").

With regard to the second UDRP element, there is no evidence before the Panel to suggest that the Respondent has made any use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services.

Neither is there any indication that the Respondent is making legitimate non-commercial or fair use of the disputed domain name. The Panel follows in this regard the view established by numerous other decisions that use of a domain to host a parked page comprising pay-per-click commercial links does not represent a bona fide offering of goods or services where such links compete with or capitalise on the reputation and goodwill of the complainant's trade mark, or otherwise mislead Internet users (see, for example, Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend <vancesecurity.com>, <vancesecurity.net>, <vancesecurity.org> (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees); and WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe <mayflowermovers.com> ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.")). The Panel further finds that the Respondent is not affiliated with or related to the Complainant in any way and is neither licensed nor otherwise authorised to make any use of the Complainant's trade marks or to apply for or use the disputed domain name. Additionally, the Whois information for the disputed domain name does not suggest that the Respondent is commonly known by the disputed domain name <nuxee.com>. Past panels have held that a respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name, as is equally not the case here (see, for example, Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii)."). Finally, as noted above, the disputed domain name is a typosquatted version of the Complainant's trade mark; the Panel follows the view expressed in other decisions that typosquatting can evidence that a respondent lacks rights and legitimate interests in the domain name (see, for example, Forum Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group < thehackettgroups.com> ("The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy ¶ 4(a)(ii)."). Against this background, and absent any response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

With regard to the third UDRP element, it is reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be confusingly similar to the Complainant's trade marks, and that the Respondent registered the disputed domain name in full knowledge of the Complainant's trade marks. Indeed, if the Respondent had carried out a Google search for the term "Nuxee", the search results would have yielded immediate results related to the Complainant, its website, and its connected business and services. Indeed, it is likely that the disputed domain name would not have been registered if it were not for the Complainant's trade marks (see, for example, WIPO Case No D2004-0673 Ferrari Spa v. American Entertainment Group Inc <ferrariowner.com>). Furthermore, the website related to the disputed domain name resolves to a parking page with pay-per-click links. Based on the decisions of other panels in similar cases, the Panel regards this as an attempt by the Respondent to attract Internet users for commercial gain to its own website based on the Complainant's trade marks, and as further evidence of bad faith (see, for example, WIPO Case No D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC <studiocanalcollection.com> ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve […] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.")). The Panel considers that the disputed domain name was intentionally designed to be confusingly similar with the Complainant's trademark. Previous Panels have seen such actions as evidence of bad faith, which is a view the Panel in these proceedings shares (see, for example, Forum Case No. FA 877979, Microsoft Corporation v. Domain Registration Philippines <microssoft.com> ("In addition, Respondent's misspelling of Complainant's MICROSOFT mark in the <microssoft.com> domain name indicates that Respondent is typosquatting, which is a further indication of bad faith registration and use pursuant to Policy ¶ 4(a)(iii)."). Finally, while the Panel notes that the website accessed through the disputed domain name also states that "The domain nuxee.com may be for sale by its owner!". While an offer to sell the disputed domain name is not necessarily in itself evidence of bad faith, the Panel has already concluded that the Respondent lacks any right or legitimate interest in the domain name, and the facts (i) that the disputed domain name is confusingly similar to and fully incorporates the Complainant's well-known trade marks; (ii) the case is an example of typosquatting; and (iii) the disputed domain name is being used to profit from and take advantage of the Complainant's trade marks by diverting traffic to products of Complainant's competitors, are sufficient from the Panel's perspective to make a finding of bad faith. Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore also accepts that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **nuxee.com**: Transferred

PANELLISTS

Name	Gregor Kleinknecht LLM MCIArb

DATE OF PANEL DECISION 2024-01-25

Publish the Decision