

Decision for dispute CAC-UDRP-106416

Case number **CAC-UDRP-106416**

Time of filing **2024-04-09 10:09:29**

Domain names **wwwnuxe.com**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **LABORATOIRE NUXE**

Complainant representative

Organization **ATOUT PI LAPLACE**

Respondent

Organization **lihai hui**

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 is the registered owner of many trademark registrations for the term “NUXE” worldwide, e.g. European Union trademark registration no. 8774531 NUXE registered on 15/6/2010 for goods and services in classes 3 and 44.

FACTUAL BACKGROUND

It results from the Complainant's undisputed allegations that it 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.

The Complainant further contends its trademark NUXE to be distinctive and well-known.

Furthermore, the Complainant owns and uses the domain name < nuxe.com > (registered on February 27, 1998) to connect to its official website.

The disputed domain name was registered on March 8, 2024. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolves to a webpage which displays many commercial links in Chinese language that redirect to other webpages displaying gambling content.

PARTIES CONTENTIONS

The Complainant's contentions are summarized above.

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

1. Pursuant to paragraph 4(a)(i) of the Policy, the complainant must establish rights in a trademark or service mark, and that the disputed domain name is identical or confusingly similar to a trademark in which the complainant has rights.

It results from the evidence provided, that the Complainant is the registered owner of various trademarks worldwide for the term "NUXE", e.g. European Union trademark registration no. 8774531 NUXE registered on 15/6/2010 for goods and services in classes 3 and 44.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") at section 1.7).

Although the addition of other terms here, "www", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy, WIPO Overview 3.0, section 1.8. In fact, here the preceding "www" is clearly intended to emulate the prefix "www." (with a period punctuation mark) of an authentic Internet address and does not diminish the confusing similarity, see *adidas-Salomon AG v. Domain Location*, WIPO Case No. D2003-0490.

Finally, the generic Top-Level Domain ("gTLD") ".com" of the disputed domain name is typically disregarded under the first element confusing similarity test (see WIPO Overview 3.0 at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainants have rights.

2. Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name.

In the Panel's view, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the Complainant's trademark *e.g.* by registering the disputed domain name. Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the disputed domain name contains the Complainant's trademark NUXE, and that more likely than not, this trademark is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. The Panel finds it most likely that the Respondent registered the disputed domain name with the intention to take advantage of the Complainant's reputation by registering a domain name containing the Complainant's trademark with the intent to mislead Internet users.

It is acknowledged that once the panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see WIPO Overview 3.0 at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

3. According to paragraph 4(a)(iii) of the Policy, the Complainant must, lastly, establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in its paragraph 4(b) may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. One of these circumstances is that the respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand. The Complainant's trademarks have existed for many years. Therefore, this Panel has no doubt that the Respondent positively knew the Complainant and its trademarks when it registered the disputed domain name. Registration of the disputed domain name by the Respondent in awareness of the NUXE mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

Finally, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith (see WIPO Overview 3.0 at section 3.2.1):

- (i) the nature of the disputed domain name (i.e., a domain name incorporating the Complainant's mark plus "www", intended to emulate the prefix "www." of an authentic Internet address);
- (ii) the content of the website to which the disputed domain name directs (i.e., displaying gambling content);
- (iii) a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name;
- (iv) the respondent's concealing its identity;

The Panel finds that the Complainant has therefore satisfied 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. **wwwnuxe.com**: Transferred

PANELLISTS

Name Dr. Federica Togo

DATE OF PANEL DECISION 2024-05-17

Publish the Decision