Decision for dispute CAC-UDRP-106651

Case number	CAC-UDRP-106651
Time of filing	2024-07-03 09:56:55
Domain names	nuxe-fr.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	LABORATOIRE NUXE

Complainant representative

Organization	ATOUT PI LAPLACE

Respondent

Organization	Martine Cosmetics

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 has a very extensive international portfolio of registered marks, indeed the spreadsheet in evidence ran to 14 pages. It says its first application for a trademark with the word element NUXE was a Logo Mark registered in France in 1994 as no. 94 518 763. Other French national marks followed and a word mark was registered in 2009 as no.3659865. Since then, the word mark NUXE has been registered all around the world. The Complainant relies for example on the following:

1. EUTM registration no. 8774531 filed in 2009;
2. International Registration no. 1072247 filed in 2011 designating 59 countries.

All of these marks are registered in classes 3 and 44 at least for cosmetics and related goods and services.

NUXE is a well-known or famous mark and there are findings to that effect by the Commercial Court of Paris, the EUIPO, and others.

The Complainant is also the owner of several domain names including but not limited to nuxe.com (created in 1998), nuxe.fr, nuxe.eu, nuxe.ca, nuxe.us, nuxe.cn and many others. All resolve to the client's website at https://www.nuxe.com/.

FACTUAL BACKGROUND

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 trademark NUXE.

The registration of the disputed domain name took place on 20 June 2024. The Respondent/Registrant's name/organisation were anonymized through a privacy protection service. The domain resolved to a shopify page marked with the sign "OPENING SOON".

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.

The Complainant says that NUXE is a highly distinctive trade mark and is a made-up word and a play on and inspired by the terms Nature and Luxury (Luxe in French). It says the disputed domain name, is confusingly similar to this highly distinctive trade mark, and it fully incorporates it and/or is it. The addition of the two characters "fr" compounds the confusion as the country code for France – just emphasizes the link with the complainant, a French company. The hyphen between NUXE and FR is irrelevant for similarity as is the suffix ".com." As a consequence, the disputed domain name is confusingly similar to a name and mark in which the Complainant has Rights.

The Complainant says the Respondent has no legitimate rights or interests in the disputed domain name. The webpage for nuxe-fr.com resolves to a shopify page marked with the sign "OPENING SOON". This is a step further than passive non-use.

As to Bad Faith, the Complainant says the disputed domain name was registered to confuse and mislead NUXE's clients and potential clients, to obtain a financial advantage, mostly likely by using the disputed domain name for phishing purposes and to prevent or block the Complainant from using it and for cybersquatting. The Complainant notes that the MX or messaging servers have been configured with one IP Address. Evidence of this was provided.

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

Under paragraph 4(a) of the UDRP, the Policy, a complainant can only succeed in administrative proceedings if the panel finds:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) the respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

A complainant must prove that each of these three elements are present.

There is no question that the Complainant has rights in the name and word mark. The Panel finds it is a well- known mark, or a mark with a reputation. The suffix is to be disregarded for the first limb so we are comparing NUXE and <nuxe-fr.>. When the whole mark is used this is often impersonation. The .fr, suggests that it is the French country site of the Complainant. While strictly irrelevant, the choice of .com may compound the confusion under the third limb of the Policy and suggest that the domain is the official domain. The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

As to the second limb, a complainant is only required to make out a prima facie case that a respondent lacks rights or legitimate interests and then the burden shifts to the respondent to show it has rights or legitimate interests in the domain name. If it fails to do so, the complainant is deemed to have satisfied the limb in paragraph 4(a) (ii). See WIPO Case No. D2003-0455, Croatia Airlines d. d. v. Modern Empire Internet Ltd. The Complainant has discharged its burden on this limb. 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. See the 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>.

The Respondent is not known by the names in the WHOIS. There is no descriptive or fair or legitimate use on the face of the matter. Here, there is little current use at all. While passive holding is fact sensitive, the factors in the other limbs are highly relevant. This is not strictly a passive holding case but it is analogous to those cases. There is little use but that use looks commercial. There is not enough of it to determine whether there could be a bona fide offering. For example, as a reseller or distributor or for speech purposes. We cannot determine whether the Respondent may in future make a bona fide offering of goods as a reseller and has a legitimate right or interest in doing so. Often, where there is no website, the purpose will be for e-mails. In such a case, the Panel is entitled to draw such inferences as are appropriate and they are that registration was not for a legitimate purpose or interest. The Respondent has been granted an opportunity to come forward and answer or present compelling arguments that he has rights or legitimate interests in the disputed domain name but has failed to do so.

The configuration of MX records suggests that the purpose was phishing or fraud. Such purposes include sending e-mail, phishing, identity theft, or malware distribution. WIPO Overview 3.0, section 3.4. See, e.g., DeLaval Holding AB v. Registration Private, Domains By Proxy LLL / Craig Kennedy, WIPO Case No. D2015-2135. The Complainant has discharged its burden on the second limb of the Policy.

As to bad faith, the WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows is apposite. This is sometimes known as the passive Bad Faith test. Where a famous mark is incorporated into a domain name without any legitimate reason or explanation, Bad Faith can often be inferred. The Respondent did not come forward to explain the reasons for the selection of the disputed domain name and why there is no Bad Faith. The Panel finds that the disputed domain name was registered and is used in Bad Faith.

The Complainant has made out its case and the Panel orders transfer.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **nuxe-fr.com**: Transferred

PANELLISTS

Name	**Victoria McEvedy**

DATE OF PANEL DECISION 2024-08-08

Publish the Decision