Decision for dispute CAC-UDRP-106668

Case number	CAC-UDRP-106668
Time of filing	2024-07-09 10:17:09
Domain names	nuxetest.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	LABORATOIRE NUXE

Complainant representative

Organization	ATOUT PI LAPLACE

Respondent

Organization	organiclistingtrackers

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 owner of several trademark registrations for this sign NUXE in various countries all around the world.

The first application for a trademark comprising NUXE occurred in France in 1994 (under n° 94 518 763).

Since that date, word mark NUXE has been registered all around the world and for example, as European Union trademark registration n°8 774 531 filed in 2009, international trademark registration n° 1 072 247 filed in 2011 designating 59 countries including USA (Related US Serial Numbers No. 79095482, 79325034), Japan, South Korea, Russia. It has also been registered in China, Mexico, Brazil, Argentina and Canada (n° 1 515 150 dated 2011).

All these marks are registered at least in classes 3 and 44 for cosmetics and more generally personal care related goods and services.

NUXE is a reputed trademark for cosmetics goods. The reputation of NUXE has been confirmed by the Commercial Court of Paris in a judgment in 2009, the European Union trademark office, Morrocan Office of IP, AFNIC (association tasked with managing the domain name registry in France), Chinese Courts.

NUXE is also part of the Company name and trade name of the Complainant and included in the name of all its subsidiaries all around the world.

The Complainant is also the owner of several domain names under various extensions, such as, but not limited to:

- <nuxe.com> (created in 1998), <nuxe.fr>, <nuxe.eu>, <nuxe.ca>, <nuxe.us>, <nuxe.cn>;
- <groupenuxe.com>, <nuxeshop.com>, <nuxespa.com>, <nuxepartners.com>, <nuxebeauty.com> and many others combining the mark NUXE with a generic term.

FACTUAL BACKGROUND

The Complainant 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.

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.

The Complainant contends in further detail the following.

Through a careful watch of its rights, the Complainant became aware of the registration of the disputed domain name nuxetest.com which occurred on 28 November 2023.

As for the disputed domain name, it is confusingly similar to the trademark, domain name, trade name and company name NUXE as it fully incorporates it. NUXE is placed at the beginning of the disputed domain name to directly catch the attention of the consumer.

The addition of the word “test” does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its rights on the distinctive denomination NUXE. Furthermore, the top level domain name “.com” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

The Complainant has never been contacted by someone willing to register the domain name in issue nor has given any authorization to anyone to make any use, or apply for registration of the disputed domain name.

The Respondent could not be unaware the existence of the earlier rights and use of the trademark NUXE. Typing the disputed domain name nuxetest.com in a web browser will show that all results relate to the Complainant and the trademark NUXE of the Complainant.

The disputed domain name is not in real actual use, the links resolving to social media are not active (link Instagram, pinterest, etc.) It only hosts a general sentence: “In Nuxetest find the ultimate deal you need, we have a huge options to choose without limits. Our community are growing faster, we have millions users that are like you who are savy and passionate about finding and sharing good deals. » Such a general sentence as it can be applied to anything, might reinforces in the consumer mind’s the link with the Complainant. Messaging servers have been created with at least one IP Address.

The Respondent does not make fair use of the disputed domain name which is seemingly registered and used in bad faith for either phishing purposes, to mislead consumers, to obtain a financial advantage of using the Complainants' trademark NUXE, to prevent the Complainant to use it, as cybersquatting or all of the aforesaid purposes.

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).

This is a case of adding a generic term - in this case "test" a to a well-known trademark and in respect of the well-established practice that the specific top level of a domain name such as “.com” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar, it is found that the disputed domain name is confusingly similar to Complainant´s well-known trademark NUXE.

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).

Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark NUXE and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name currently resolves to an inactive website. The Panel finds that it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law. The Panel finds that the mere registration of a domain name that is identical or confusingly similar to a well-known or widely-known trademark by an unaffiliated entity is sufficient to create a presumption of bad faith.

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

The three essential issues under the paragraph 4(a) of the Policy are whether:

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 with respect to the disputed domain name; and

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

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is partially incorporated in the disputed domain name.

The disputed domain name is therefore deemed confusingly similar.

b) The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain name. The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered.

The disputed domain name resolves to an inactive website. It is concluded that the mere registration of a domain name that is identical or confusingly similar to a well-known or widely-known trademark by an unaffiliated entity is sufficient to create a presumption of bad faith.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **nuxetest.com**: Transferred

PANELLISTS

Name	**Lars Karnoe**

DATE OF PANEL DECISION 2024-08-12

Publish the Decision