Decision for dispute CAC-UDRP-106669

Case number	CAC-UDRP-106669
Time of filing	2024-07-09 08:47:00
Domain names	nuxestore.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	LABORATOIRE NUXE

Complainant representative

Organization	ATOUT PI LAPLACE

Respondent

Organization	ArtWired, Inc.

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 bases its Complaint on several NUXE trademarks, among which:

- French trademark “NUXE”, no. 94518763, filed on 2 May 1994, for goods in classes 3, 5, 25;
- European Union trademark “NUXE”, no. 008774531, registered on 15 June 2010, for goods and services in classes 03, 44;
- International trademark registration “NUXE”, no. 1072247, registered on 14 February 2011, for goods and services in classes 03, 44.

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.

The Complainant owns several NUXE trademarks, among which, a few were cited above.

The denomination Nuxe is also part of the company name and trade name of the Complainant and is included in the name of all its subsidiaries all around the world.

In addition, the Complainant owns several domain names under various extensions, such as, <nuxe.com> (created in 1998), which corresponds also to the Complainant's website https://www.nuxe.com/, <nuxe.fr>, <nuxe.eu>, <nuxe.ca>, <nuxe.us>, <nuxe.cn>, <groupenuxe.com>, <nuxeshop.com>, <nuxespa.com>, <nuxepartners.com>, <nuxebeauty.com>.

The disputed domain name <nuxestore.com> was registered on 18 January 2021 and resolved at the time when the Complaint was filed to a website displaying the disputed domain name for sale.

PARTIES CONTENTIONS

The Complainant's contentions are the following:

The disputed domain name <nuxestore.com> is confusingly similar to the Complainant's earlier trademark NUXE, that the Respondent lacks rights or legitimate interests in the disputed domain name for a number of reasons and that the disputed domain name was registered and is being used in bad faith.

Based on the available evidence, the Respondent seems to have contacted the Complainant mentioning to transfer the disputed domain name to him and requesting to the Complainant to unlock the disputed domain name for transfer, requesting also the withdrawal of his UDRP complaint.

In addition, the Respondent has filed a Response within which he states, among others, that, ArtWired, Inc. is involved in domain investing and that his business of buying and selling domain names is legit. Further he mentions that, an uspto.gov lookup was performed and that they have noticed trademarks for the word "NUXE", but not for "nuxestore". He also alleged that, there are other companies than the Complainant that use the word "Nuxe", but for different goods and services and also several registered domain names that comprise the word “nuxe”. The Respondent further alleges that, the letters "Nuxe" could be an acronym or a brandable word for many goods/serices such as nuts, jewelry, honey, coffee, soaps, shoes, apparel, toys, etc. The Respondent asked for the transfer of the disputed domain name to the Complainant to be denied.

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

I. Confusing Similarity

The Panel agrees that the disputed domain name <nuxestore.com> is confusingly similar to the Complainant's earlier trademark NUXE. The disputed domain name incorporates entirely the Complainant’s earlier NUXE trademark and the addition of the generic term “store”, which is closely related to the business activities carried under the trademark NUXE, namely commercialization of the Complainant’s NUXE products, is not sufficient to escape the finding that the domain name is confusingly similar to the Complainant’s trademark and it does not change the overall impression of the designations as being connected to the trademark

NUXE.

Moreover, the extension ".com" is not to be taken into consideration when examining the similarity between the Complainant's trademarks and the disputed domain name (WIPO Case No. D2005-0016, Accor v. Noldc Inc.). The mere adjunction of a gTLD such as ".com" is irrelevant as it is well established that the generic Top Level Domain is insufficient to avoid a finding of confusing similarity (WIPO Case No. 2013-0820, L'Oréal v Tina Smith, WIPO Case No. D2008-0820 Titoni AG v Runxin Wang and WIPO Case No. D2009-0877, Alstom v. Itete Peru S.A.).

Therefore, the Panel is satisfied that the first condition under the Policy is met.

II. Lack of Respondent's rights or legitimate interests

The Complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of proof shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain name as such is not identified in the WHOIS database as the disputed domain name. Also, the Respondent does not seem to own any registered NUXE trademarks.

Based on the available evidence, at the time when the Complaint was filed, the disputed domain name resolved to a website displaying the disputed domain name for sale. Such use does not amount to a bona fide offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name.

The Respondent has filed a Response through which he did not demonstrate any rights or legitimate interests in the disputed domain name nor a bona fide offering of goods or services, or a legitimate noncommercial or fair use of the disputed domain name.

Thus, the Panel is satisfied that the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Panel takes the view that also the second requirement under the Policy is met.

III. Bad Faith

Based on the available evidence, the Complainant's trademark NUXE predate the registration date of the disputed domain name. Moreover, an online search in respect of the word "NUXE" shows references to the Complainant. Thus, the Respondent has chosen to register the disputed domain name in order to create a confusion with such trademark. Therefore, the Panel concludes that at the time of registration of the disputed domain name, the Respondent was well aware of the Complainant's earlier NUXE trademark and has intentionally registered one in order to create confusion with such trademark.

In the present case, the following factors should be considered:

(i) the disputed domain name resolved at the time when the Complaint was filed to a website displaying the disputed domain name for sale;

(ii) the Respondent does not seem to own any NUXE trademarks;

(iii) the Respondent registered the disputed domain name containing entirely the Complainant's earlier NUXE trademark with the addition of the generic term "store", which corresponds to the Complainant's business activity to sell his NUXE products;

(iv) through the filed Response, the Respondent has not submitted any evidence of actual or contemplated good faith use of the disputed domain name;

(v) the Respondent was never authorised to use a domain name similar to the Complainant's trademark;

(vi) there is no evidence in the file that there is any relationship or association, or connection between the Complainant with the Respondent.

In light of the foregoing, the Panel concludes that the Respondent has registered and has been using the disputed domain name in bad faith. Thus, also the third and last condition under the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **nuxestore.com**: Transferred

PANELLISTS

Name	Delia-Mihaela Belciu

DATE OF PANEL DECISION 2024-08-23

Publish the Decision