Decision for dispute CAC-UDRP-106729

Case number	CAC-UDRP-106729
Time of filing	2024-07-25 09:11:16
Domain names	nuxe-france.com

Case administrator

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

Complainant

Organization	LABORATOIRE NUXE

Complainant representative

Organization	ATOUT PI LAPLACE

Respondent

Organization	Nuxe

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 submitted an exhaustive list of its “NUXE” word and logo trademark registrations around the world containing 245 records. The Complainant provided further evidence that it is the registered owner of the following particular trademark registrations:

- European Union Trademark No. 8774531 for the word “NUXE”, application dated 22 December 2009;
- International trademark registration No. 1072247 for the word “NUXE”, registered since 14 February 2011, designating numerous countries including USA, Japan, South Korea, and Russia;
- Canadian trademark registration No. 1515150 for the word “NUXE”, application dated 14 February 2011;
- United States trademark registration No. 4123619 for the word “NUXE”, registered since 10 April 2012;
- United States trademark registration No. 6756451 for the word “NUXE”, registered since 14 June 2022.

These trademarks are registered at least in classes 3 and 44 for cosmetics and personal care related goods and services.

FACTUAL BACKGROUND

The Complainant is a French company created in 1964 specializing in the manufacture and trade of cosmetics and personal care products under the trademark “NUXE”, which is also a part of the Complainant’s company name and trade name.

The Complainant owns numerous domain names incorporating its “NUXE” trademark, including <nuxe.com> (created already in 1998); <nuxe.fr>; <nuxe.eu>; <nuxe.ca>; <nuxe.us>; and <nuxe.cn>.

The disputed domain name was registered on 3 July 2024. It resolves to a Shopify page with the mention "THE STORE IS UNAVAILABLE".

The Registrar confirmed that the Respondent is the current registrant of the disputed domain name, and that the language of the registration agreement is English.

The Respondent has not filed a Response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

A. The disputed domain name is confusingly similar to the Complainant's “NUXE” trademark. It fully incorporates the mark, with the addition of the word "France", which does not prevent the likelihood of confusion and actually refers to the Complainant's country of origin.

B. The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not authorized the Respondent to use its trademark.

C. The disputed domain name was registered and is being used in bad faith. The Respondent must have been aware of the Complainant's well-known trademark when registering the disputed domain name. The use of a privacy service, the creation of MX servers, and the inactive website suggest potential phishing or other fraudulent intentions. In addition, the Respondent provided incorrect contact details and, given the similarities with case CAC-UDRP-106651, there also seems to be a pattern of infringing behaviour.

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

This is a proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and the CAC Supplemental Rules.

Paragraph 15 of the Rules provides that the Panel shall decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

According to Paragraph 4(a) of the Policy, a complainant must prove each of the following:

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

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

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

Identical or confusingly similar domain name

The Complainant has demonstrated that it owns several registered trademarks for the word “NUXE”, which were registered long before the registration of the disputed domain name. These trademark registrations confer on the Complainant sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case.

The disputed domain name incorporates the Complainant's “NUXE” trademark in its entirety, with the addition of the geographical term "france" and the generic Top-Level Domain ".com". It is well established that the addition of a geographical term to a trademark in a domain name does not prevent a finding of confusing similarity. In this case, the addition of "france" may even increase the likelihood of confusion, as it refers to the Complainant's country of origin. The generic Top-Level Domain ".com" is disregarded in the assessment of confusing similarity, as it is a technical requirement of domain name registration.

The Panel therefore finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

Lack of rights or legitimate interests

The Respondent has not filed a Response and has not provided any information that would demonstrate rights or legitimate interests in the disputed domain name.

Consequently, the Complainant has made a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not authorized by the Complainant, is not commonly known by the domain name, and has not used the disputed domain name in connection with any bona fide offering of goods or services.

The evidence shows that the disputed domain name resolves to an inactive Shopify page. Such use does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name.

The Panel therefore finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Registration and use of the disputed domain name in bad faith

The Complainant's “NUXE” trademark has been in use since 1964 and has acquired considerable reputation in the field of cosmetics and personal care products. Given the distinctiveness and reputation of the Complainant's trademark, confirmed by decisions of various courts and authorities, it is reasonable to infer that the Respondent was aware of the Complainant's rights when registering the disputed domain name in 2024.

The following factors support a finding of bad faith registration and use:

- The Respondent has used a privacy service to conceal its identity, which is often associated with fraudulent intentions;
- MX servers have been set up for the disputed domain name, which could potentially be used for phishing or other fraudulent activities;
- The disputed domain name resolves to an inactive Shopify page, suggesting potential preparation for unauthorized use of the Complainant's trademark;
- The Respondent appears to have provided false contact information, impersonating the Complainant;
- The disputed domain name was registered on the same day as the commencement of another UDRP proceeding against a similar domain name <nuxe-fr.com>, with both respective domain names using the same IP address for MX servers.

These circumstances, taken together, indicate that the Respondent has registered and is using the disputed domain name in bad faith, likely with the intention to take unfair advantage of the Complainant's trademark rights.

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

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met and makes the following decision.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Vojtěch Chloupek**

DATE OF PANEL DECISION 2024-09-06

Publish the Decision