

Decision for dispute CAC-UDRP-106903

Case number	CAC-UDRP-106903
Time of filing	2024-09-30 08:37:46
Domain names	fr-nuxe.org, nuxefrance.com, promo-nuxe.com

Case administrator

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

Organization	Laboratoire NUXE
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Complainant representative

Organization	ATOOUT PI LAPLACE
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Respondent

Name	Nuxe France
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous trademark registrations, and inter alia of the following:

- European Union Trademark registration no. 008774531 for NUXE (word) in classes 3 and 44, registered on June 15, 2010;
- International trademark registration no. 1072247 for NUXE (word) in classes 3 and 44, registered on February 14, 2011;
- United States trademark registration no. 4123619 for NUXE (word) in classes 3 and 44, registered on April 10, 2012.

The Complainant is also the owner of several domain names under various extensions, such as, <nuxe.com>, <nuxe.fr>, <nuxe.eu>, <nuxe.ca>, <nuxe.us> and <nuxe.cn>.

FACTUAL BACKGROUND

The Complainant, Laboratoire Nuxe, is a French company created in 1964, and specialized in the manufacturing and trading of cosmetics as well as personal care products and related services sold under the NUXE trademark.

The disputed domain names are not redirected to active pages.

The disputed domain names were registered between July 19, 2024 and July 22, 2024.

PARTIES CONTENTIONS

The Complainant contends that the disputed domain names are confusingly similar to the NUXE trademarks, that the Respondent has no rights or legitimate interests in respect of the disputed domain names, and that the disputed domain names have been registered and are being used in bad faith.

Specifically, the Complainant submits:

1) That the Complainant's NUXE trademark is reproduced in full without any alteration. That the NUXE trademark is the only distinctive term of the contested domain names, meaning that consumers will easily conclude that the domain names and their contents deal with NUXE trademarks and goods.

Neither the addition of hyphens nor the addition of descriptive terms "promo" in <promo-nuxe.com>, "france" in <nuxefrance.com> and "fr" (country code for France) in fr-nuxe.org are likely to prevent a likelihood of confusion between the disputed domain names and the earlier distinctive denomination NUXE.

On the contrary, the addition of the non-distinctive/descriptive terms PROMO, FRANCE, FR is likely to increase confusion with the Complainant and its NUXE trademarks.

2) That the Respondent does not have any rights or legitimate interest in the disputed domain names. The Respondent has no rights in relation to the NUXE element that forms the domain name strings that are the subject of this complaint. The Complainant further asserts that the NUXE trademark is a made-up word devised by the Complainant.

There is no believable or realistic reason for registration or use of the disputed domain names other than to take advantage of the Complainant's rights. The only reason the Respondent could have for registering these domain names is to prevent the Complainant from registering them and/or to attempt to sell them either to the Complainant or to a competitor at a profit. This does not constitute a legitimate interest in the domain names.

The Respondent is not making any legitimate or fair use of the disputed domain names.

The Respondent's passive holding of the disputed domain names shows that they are not used in relation to a bona fide offering of goods and services.

The Respondent is not commonly known by the name NUXE.

3) That the disputed domain names have been registered and used in bad faith. The Complainant submits that the registration of the disputed domain names that are the subject matter of this complaint are a classic example of bad faith registration in accordance with paragraph 4(b) of the Uniform Domain Name Dispute Resolution Policy.

The Registrant could not have been unaware of the existence of the Complainant and its rights to the NUXE trademark.

NUXE is in fact a reputed trademark for cosmetics. The longstanding reputation of NUXE has been confirmed by the Commercial Court of Paris in a 2009 judgment, by the European Union trademark office, by the Moroccan Office of IP, by AFNIC (the association tasked with managing the domain name registry in France), and by a Chinese Court. These decisions on the reputation of NUXE are annexed to the complaint.

Actual knowledge of the Complainant's NUXE trademark, denomination, domain names and activities at the time of registration of the disputed domain names must be considered as inference of bad faith.

Indeed, it cannot be a coincidence that the term NUXE, which was wholly invented by the Complainant, is reproduced in full in the disputed domain names with the association of non-distinctive terms (but still related to NUXE goods and to the company) without the intent of the registrant either to obtain a financial advantage through using the NUXE trademark or to prevent its legitimate owner (i.e. the Complainant) from registering those domain names.

The Respondent's name and organisations were anonymized through a privacy protection service. It then appeared (after the Registrar's disclosure of the Registrant's details) that the Respondent's organization is listed as Nuxe France. This is a clear attempt to impersonate the Complainant and increase confusion.

No administratively compliant Response has been filed.

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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

Discussion and Findings

In order for the Complainant to obtain a transfer of the disputed domain names, paragraph 4(a) of the Policy requires that the Complainant must demonstrate to the Panel that:

- (i) The disputed domain names are 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 disputed domain names; and
- (iii) The disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Panel agrees with the Complainant's assertion that the addition in the disputed domain names of hyphens and/or the terms: "promo", "fr" and "france" does not prevent the NUXE trademark from being recognizable in the disputed domain names.

Pursuant to section 1.8 of the Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") which states: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

B. Rights or Legitimate Interests

This Panel finds that the Complainant has made a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain names. The Respondent has no connection to or affiliation with the Complainant, and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademark. The Respondent does not appear to engage in any legitimate non commercial or fair use of the disputed domain names, nor any use in connection with a bona fide offering of goods or services. In addition, the Respondent does not appear to be commonly known by the disputed domain names or by similar names. The Respondent's name per the Whois record (as disclosed following the Registrar's verification) for the disputed domain name is "Nuxe France", and it is potentially relevant because of paragraph 4(c)(ii) of the Policy. However, for the reasons discussed in relation to bad faith below, it is likely that the Respondent adopted this name and registered the disputed domain name in order to benefit from confusion with the Complainant, which cannot give rise to rights or legitimate interests. Moreover, the Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain names.

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

C. Registered and Used in Bad Faith

The Complainant gives sound bases for its contention that the disputed domain names were registered and have been used in bad faith.

Firstly, owing to the distinctiveness of the Complainant's trademark and reputation in the Complainant's field, it is reasonable to infer that the Respondent registered the disputed domain names with full knowledge of the Complainant's trademarks, and so the Panel finds on the balance of probabilities that the Respondent was aware of the Complainant's trademarks when registering the disputed domain names.

Furthermore, the Panel considers that the composition of the disputed domain names, which all contain the Complainant's trademark NUXE in its entirety combined with various terms, reflects the purposeful composition of domain names to create a direct, misleading inference of the Complainant, and this fact further supports a finding of bad faith.

Secondly, the Panel accepts the Complainant's unchallenged assertion that the Respondent registered the disputed domain names with the aim of creating a likelihood of confusion with the Complainant's trademark.

Thirdly, the fact that Respondent's purported organization name, Nuxe France, was anonymized through a privacy protection service, combined with the passive holding of the disputed domain names and the distinctiveness of the NUXE trademark, appears to be an attempt to impersonate the Complainant and increase confusion.

Fourthly, the Respondent has not responded to nor denied any of the assertions made by the Complainant in this proceeding.

Accordingly, the Panel finds that the Complainant has 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. **fr-nuxe.org**: Transferred
2. **nuxefrance.com**: Transferred
3. **promo-nuxe.com**: Transferred

PANELLISTS

Name	Fabrizio Bedarida
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DATE OF PANEL DECISION **2024-10-27**

Publish the Decision
