Decision for dispute CAC-UDRP-106900

Case number	CAC-UDRP-106900
Time of filing	2024-09-30 08:38:11
Domain names	nuxe-sale.top, nuxe-fr.top

Case administrator

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

Complainant

Organization	LABORATOIRE NUXE

Complainant representative

Organization	ATOUT PI LAPLACE

Respondent

Organization	NIL

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 has evidenced to be the owner of numerous trademark registrations relating to its company name and brand NUXE, including:

- word mark NUXE, United States Patent and Trademark Office (USPTO), registration No.: 4,123,619, registration date: April 10, 2012, status: active;

- word mark NUXE, European Union Intellectual Property Office (EUIPO), registration No.: 008774531, registration date: June 15, 2010, status: active.

Also, the Complainant has substantiated to own several domain names relating to its NUXE trademark, inter alia, since 1998 the domain name <nuxe.com> which resolves to the Complainant's official website at "www.nuxe.com", promoting the Complainant's cosmetics and personal care products worldwide.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain names should be

transferred to it.

No administratively compliant Response has been filed.

RIGHTS

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

First, the Panel has accepted this single Complaint relating to two disputed domain names given that they were registered by the same Respondent in a close temporal connection, namely on September 2, 2024, and September 11, 2024, respectively, and through the same Registrar (paragraph 3(c) of the Rules).

Second, the Panel finds that the disputed domain names are confusingly similar to the Complainant's NUXE trademark, as they both incorporate such trademark in its entirety, followed by the country code for France "fr" or the descriptive term "sale", respectively. Numerous UDRP panels have recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark. Moreover, it has also been held in many UDRP decisions and has meanwhile become a consensus view among UDRP panels that the mere addition of geographic, descriptive or other terms (such as e.g. the country code for France "fr" or the descriptive term "sale") is not capable to dispel the confusing similarity arising from such entire incorporation of the Complainant's NUXE trademark in the disputed domain names.

Therefore, the Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

Third, the Complainant contends, and the Respondent has not objected to these contentions, that the Respondent has neither made use of, or demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services, nor is the Respondent commonly known under the disputed domain names, nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain names without intent for commercial gain.

The Respondent has not been authorized to use the Complainant's NUXE trademark, either as a domain name or in any other way. Also, there is no reason to believe that the Respondent's name somehow corresponds with the disputed domain names and the Respondent does not appear to have any trademark rights associated with the (invented and fanciful) term "nuxe" on its own. Finally, the Complainant has demonstrated that, at some point before the filing of the Complaint, both disputed domain names resolved to websites which were set up in a similar way, prominently displaying the Complainant's official NUXE logo, while allegedly offering Complainant's NUXE cosmetics and personal care products for online sale without any authorization by the Complainant to do so. In case that those goods were counterfeit, as asserted (but not proven) by the Complainant, such making use of the disputed domain names, obviously in a fraudulent manner, qualified neither as a bona fide nor as a legitimate noncommercial of fair use under the UDRP. But even in the (rather unlikely) case that those goods were original goods of the Complainant, such making use of the disputed domain names again neither qualified as bona fide nor as legitimate noncommercial or fair within the meaning of the Policy, not even so under the so-called "Oki Data" principles which would have required the Respondent e.g. to disclose the non-existing relation with the Complainant, which the Respondent obviously and quite to the contrary did not.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names, and

that, therefore, the Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

Finally, the Panel holds that the disputed domain names were registered and are being used by the Respondent in bad faith.

It is obvious from the circumstances to this case that the Respondent was well aware of the Complainant's rights in the NUXE trademark when registering the disputed domain names, and that they both are directly targeting the Complainant and its NUXE trademark. Moreover, resolving the disputed domain names to live websites prominently displaying the Complainant's official NUXE logo, while allegedly offering Complainant's NUXE cosmetics and personal care products (or even counterfeit versions of those products) for online sale without any authorization by the Complainant to do so, leaves no doubts that the Respondent, by registering and making use of the disputed domain names, had the intention to somehow unjustifiably profit from the undisputed worldwide reputation attached to the Complainant's NUXE trademark, and, thus, the Respondent intentionally attempted to attract, for commercial gain, Internet users to its own websites by creating a likelihood of confusion with the Complainant's NUXE trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's websites. Such circumstances are evidence of registration and use of the disputed domain names in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

The Complainant further provided evidence that the disputed domain names were suspended by the Registrar after this UDRP proceeding was initiated. Therefore, the Panel did not assess the current use of the disputed domain names, but the use prior to suspension.

Therefore, the Complainant has also satisfied the third element under the Policy as set forth by paragraph 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **nuxe-sale.top**: Transferred
2. **nuxe-fr.top**: Transferred

PANELLISTS

Name	**Stephanie Hartung**

DATE OF PANEL DECISION 2024-10-28

Publish the Decision