Decision for dispute CAC-UDRP-106940

Case number	CAC-UDRP-106940
Time of filing	2024-10-15 09:40:10
Domain names	telegroom-nuxe.top

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	LABORATOIRE NUXE

Complainant representative

Organization	ATOUT PI LAPLACE

Respondent

Organization	Robert Washington

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 has evidenced to be the owner of numerous trademark registrations throughout the world related to its company name and brand NUXE, including but not limited to:

- device mark NUXE, French registration n°94 518 763 of 2 May1994 duly renewed since
- word mark NUXE, United States Patent and Trademark Office (USPTO), registration No.: 4,123,619 of 10 April 2012 duly renewed since;
- word mark NUXE, European Union Intellectual Property Office (EUIPO), registration No.: 008774531 of 15 June 2010 duly renewed since

Claiming inter alia goods and services in classes 3 or 5 or 44.

Also, the Complainant has substantiated to own several domain names related to trademark NUXE, 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. But also domain names <nuxe.fr>, <nuxe.eu>, <nuxe.ca>, <nuxe.us>, <nuxe.cn> and others combining the trademark NUXE with generic terms such as shop, beauty, etc.

FACTUAL BACKGROUND

Laboratoire Nuxe (hereafter “Nuxe”) 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 (website http://nuxe.com).

Nuxe 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 1994, word mark NUXE has been registered all around the world for example, but not limited to, Nuxe is protected as European Union trademark registration n°8 774 531 filed in 2009, international trademark registration n° 1 072 247 filed in 2011 designating approximately 60 countries including USA, 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, 5 or 44 for cosmetics and more generally personal care related goods and services as shown on the attached extracts of database from EUIPO, WIPO and Canadian Trademark Office.

The disputed domain name <TELEGROOM-NUXE.TOP> was registered on 12 September 2024 by the Respondent (as confirmed by the Registrar).

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domains names should be transferred to it. The Complainant makes a number of legal arguments and also supplies a set of annexes providing evidence of its activities and of the Respondent's use of the disputed domain name.

No administratively compliant Response has been filed by either Respondents. It ought to be indicated that the Centre sent of the complaint but nor the advice of delivery thereof was returned to the Czech Arbitration Court. The notice of the Commencement of the administrative proceeding was therefore only sent by e-mail. Yet, the e-mail notice sent to postmaster@telegroom-nuxe.top was returned back undelivered as the e-mail address had permanent fatal errors. The e-mail notices were also sent to nncciiill77@gmail.com, but the CAC never received any proof of delivery or notification of undelivery. No further e-mail addresses could be found on the disputed sites.

The Respondents never accessed the online platform.

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

1. THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR

The Complainant contends that the disputed domain name <telegroom-nuxe.top> (hereinafter referred to as the “Disputed Domain Name”), is confusingly similar to the Complaint’s trademark “Nuxe”. The Complainant Laboratoire Nuxe 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 its trademark NUXE. The trademark was registered in various countries all over the world. The disputed domain name which was registered on 12 September 2024 according to the WHOIS, fully incorporates the Complainant’s trademark NUXE in combination with a term “telegroom”. The Complainant argues that "telegroom" has no signification which could be agreed per se. Yet, the consumer may see the idea of a remote (tele) groom referring to a happy time of a wedding where the groom make sur of the wellbeing of the future wedded person. the potential fancifulness of this term it would not lead affect the existing risk of confusion. The addition of the gTLD “.top” does not add any distinctiveness to the disputed domain name. See as an example the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), paragraph 1.11. as well as the International Business Machines Corporation v. Sledge, Inc. / Frank Sledge WIPO Case No. D2014-0581 where the Panel stated the following:

“In addition, it is generally accepted that the addition of the top-level suffix in the domain name (e.g., “.com”) is to be disregarded under the confusing similarity test”.

The same reasoning should apply in the current case and the disputed domain name should be considered as confusingly similar to the trademark NUXE.

In this case, the disputed domain name is identical or confusingly similar to the Complainant’s trademark NUXE. The disputed domain name incorporates the Complainant’s trademark NUXE entirely. The generic top level domain “.top” does not affect the confusing similarity. The Panel therefore concludes that the disputed domain name is confusingly similar to a trademark in which the Complainants have rights within the meaning of paragraph 4(a)(i) of the Policy.

2.. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DISPUTED DOMAIN NAME

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant and the Respondent have never had any previous relationships, nor has the Complainant ever granted the Respondent with any rights to use the NUXE trademark in any forms, including the disputed domain name.

The Complainant has not found that the Respondent is commonly known by the disputed domain name or that it has interest over the disputed domain name. In addition, according to the Registrar Verification, the Respondent is an individual named “Robert Washington”, which is not related to the Complainant nor to the identifiable term “NUXE” in any form.

For the foregoing reasons, it shall be concluded that the Respondent has no right nor legitimate interest in respect of the disputed domain name and has not been using the disputed domain name for any bona fide offering of goods or services.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

3. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

By trying to establish the bad faith element of paragraph 4(a) of the Policy, the Complainant has primarily attempted to rely on paragraph 4(b)(i) and 4(b)(iv) of the Policy.

a. THE DISPUTED DOMAIN NAME WAS REGISTERED IN BAD FAITH

It should be highlighted that most of Complainant’s trademark registrations predate the registration of the disputed domain name and the Respondent has never been authorized by the Complainant to register the disputed domain name. Considering the renown of the Complainant and its trademark NUXE, and the overall composition of the disputed domain name, i.e. using the term “NUXE” in combination with a term “telegroom”, which is closely related to the Complainant and its business activities and its potential sales channel, it follows that the use of the well-known trademark NUXE in the disputed domain name is a calculated attempt to improperly benefit from the Complainant’s rights and reputation.

Considering the facts that:

- The Respondent very likely knew about the Complainant and its trademark;

- The Complainant’s trademark NUXE is a well-known trademark worldwide;

- The Respondent has failed in presenting a credible evidence-backed rationale for registering the disputed domain name;

the Disputed Domain Name shall be deemed as registered in bad faith, which is supported by WIPO Overview 3.0, para. 3.1.1. .

“If on the other hand circumstances indicate that the respondent’s intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant’s trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the respondent’s likely knowledge of the complainant’s rights, (ii) the distinctiveness of the complainant’s mark, … (vii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name,…”.

and para.3.1.4:

“Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”

b. THE DISPUTED DOMAIN NAME IS BEING USED IN BAD FAITH

As noted in the previous paragraphs, being confusingly similar to the Complainant’s Trademark NUXE, the disputed domain name is blocked by various web browser and in particular Firefox(tm) and Google Chrome (tm). The Registrant is not making any legitimate active use of the disputed domain name, but only has “intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s website or location or of a product or service on the respondent’s website or location.”

The Panel will disregard the arguments filed by the Complainant in relation to a possible link with other arbitration proceedings, at the time of the filing of the present case, in process, considering that the conclusions drawn are not supported by any evidence. Yet, this does not affect the conclusions of the domain name used in bad faith.

The Panel concludes that the Respondent has registered and is using the disputed domain names in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement under 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. **telegroom-nuxe.top**: Transferred

PANELLISTS

Name	**David-Irving Tayer**

DATE OF PANEL DECISION 2024-11-20

Publish the Decision