

Decision for dispute CAC-UDRP-106984

Case number	CAC-UDRP-106984
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Time of filing	2024-10-24 09:48:09
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Domain names	nuxefr.top
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Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	LABORATOIRE NUXE
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Complainant representative

Organization	ATOUT PI LAPLACE
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Respondent

Name	Kathleen Perkins
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of a number of trademarks comprising NUXE and first registered in France in 1994 under registration n° 94 518 763.

Since then, the word mark NUXE has been registered all around the world and for example, as:

- European Union trademark registration n° 8 774 531 filed in 2009;
- International trademark registration n° 1 072 247 filed in 2011 and designating 59 countries including USA (Related US Serial Numbers No. 79095482, 79325034), Japan, South Korea, Russia;
- It has also been registered in China, Mexico, Brazil, Argentina and Canada under registration n° 1 515 150 dated 2011.

All these marks are registered at least in classes 3 and 44 for cosmetics and more generally for personal care related goods and services as indicated in the evidence provided by the Complainant.

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. Apart from being the registered proprietor of the above trademarks, the

word Nuxe is also part of the Company name and trade name of the Complainant and included in the name of all its subsidiaries all around the world. The Complainant is also the owner of several domain names under various extensions, such as, but not limited to <nuxe.com> (created in 1998), <nuxe.fr>, <nuxe.eu>, <nuxe.ca>, <nuxe.us>, <nuxe.cn>, <groupenuxe.com>, <nuxeshop.com>, <nuxespa.com>, <nuxepartners.com> and <nuxebeauty.com>, some of them consisting of NUXE and others of a combination of the word NUXE and a generic term.

The disputed domain name <nuxefr.top> was registered on 13 October 2024.

The Respondent's names/organisations were anonymized through a privacy protection service. The only available information is that Registrant is located in Arizona, USA.

The disputed domain name was reported on 21 October 2024, to the Registrar Namesilo for reasons of abuse by the Complainant's representatives. On the same date, the report was accepted and the Registrar confirmed that it has suspended the disputed domain name.

Finally, the disputed domain name <NUXEFR.TOP> appears to be registered by the same person or related persons as the registrants of the domain names <nuxe-fr.top> and <nuxe-sale.top>, also subject of UDRP proceedings before the Czech Arbitration Court (CAC-UDRP-106900).

The arguments in favour of this assumption are the striking similarities of the structures of the domain names and the fact that the websites for the domain names <nuxe-fr.top> and <nuxe-sale.top> were, before their suspensions, the exact same ones as that for the disputed domain name <nuxefr.top>.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name 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 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

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is 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 name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

RIGHTS

The Complainant has established rights in the name NUXE. The disputed domain name <nuxefr.top> is confusingly similar to the Complainant's trademark. This finding is based on the settled practice in evaluating the existence of a likelihood of confusion of:

- a) disregarding the top-level suffix in the domain names (i.e. ".top") in the comparison; and
- b) finding that the simple addition of a generic or in this case geographic term or abbreviation such as "fr" (for "France") would not be considered sufficient to distinguish a domain name from a trademark, especially when the website published under the disputed domain name directly refers to the country the Complainant is located in. This makes the geographic abbreviation "eg" purely descriptive of the location in which the NUXE products are to be offered.

The disputed domain name is therefore found to be confusingly similar to the earlier rights in the name NUXE and the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is on the Complainant. However, once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant and the Respondent have never had any previous relationship, nor has the Complainant ever granted the Respondent any rights to use the NUXE trademark in any form, including in the disputed domain name. A bona fide offering or good faith use of the disputed domain name cannot be detected. There is no available evidence that the Respondent engages in, or has engaged in any activity or work, i.e., legitimate or fair use of the disputed domain name, that demonstrates a legitimate interest in the disputed domain name, so that there is nothing that could be interpreted as rights or legitimate interests of the Respondent.

The Panel therefore concludes that the Respondent did not refute the Complainant's prima facie case and has not established any rights or legitimate interest in the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel finds that the Complainant has established that the disputed domain name was registered and is being used by the Respondent in bad faith.

The name NUXE is distinctive and well known in numerous countries through extensive advertising measures as well as actual market presence. The name NUXE is a reputed trademark for cosmetics goods the reputation of which has been confirmed repeatedly inter alia by the Commercial Court of Paris in a judgment dated 2009, the European Union Intellectual Property Office, the Intellectual Property Office of Morocco, AFNIC and Chinese Courts. A most basic Google search in respect of the letter combination NUXE would have yielded obvious references to the Complainant. There is no evidence at all of any actual or contemplated good-faith use of the disputed domain name.

The term NUXE was reproduced not only in the disputed domain name with the association of non-distinctive terms, the trademark NUXE was also reproduced on the website of the disputed domain name and NUXE goods were offered for sale on the website. The Respondent was therefore clearly impersonating the Complainant.

The Respondent has used the disputed domain name to copy the Complainant's website. Clearly, the goal was to create confusion in the minds of the users. Therefore, this registration can only be viewed as an attempt to exploit the goodwill vested in the trademark by attracting Internet users and confusing them to the extent that they would believe that a website connected to the disputed domain name offers the services of an entity that is affiliated to the Complainant. The Respondent registered the disputed domain name to take advantage of the Complainant's well-known trademark.

Finally, the Complainant has shown that the Respondent also operated identical websites under the domain names <nuxe-fr.top> and <nuxe-sale.top>. These domain names are also the subject of UDRP proceedings before the Czech Arbitration Court (CAC-UDRP 106900) in which the panel also held in the Complainant's favor.

The Panel therefore concludes that the Respondent has registered and is using the disputed domain name 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. **nuxefr.top**: Transferred

PANELLISTS

Name	Udo Pflleghar
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DATE OF PANEL DECISION	2024-11-27
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Publish the Decision