Decision for dispute CAC-UDRP-107087

Case number	CAC-UDRP-107087
Time of filing	2024-11-27 09:46:01
Domain names	lenuxe.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Laboratoire Nuxe

Complainant representative

Organization	ATOUTPI LAPLACE

Respondent

Organization	my store

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 (the "Domain Name").

IDENTIFICATION OF RIGHTS

The Complainant relies upon a number of registered trade mark that include or incorporate the term "NUXE". They include:

(i) European Union trade mark registration n°8 774 531 in classes 3 and 44, filed on 12 December 2009 and proceeding to registration on 15 June 2010; and

(ii) International trade mark registration n° 1 072 247 in classes 3 and 44 filed on 14 February 2011 and proceeding to registration in over 50 territories.

FACTUAL BACKGROUND

FACTS ALLEGED BY YTHE COMPLAINANT AND NOT DISPUTED BY THE RESPONDENT

The Complainant, Laboratoire Nuxe (hereafter “Nuxe”) is a French company created in 1964 that specialises in manufacture and trade of cosmetics as well as personal care products and related services sold under trade mark NUXE. It sells cosmetics all around the world and provides spa services in various countries.

The name Nuxe is included in the name of the Complainant and all its subsidiaries all around the world.

Nuxe 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>, and <nuxe.cn>, and also domain names comprising the term “nuxe” combined with another term, such as <nuxeshop.com>, <nuxespa.com>, <nuxepartners.com> and <nuxebeauty.co>. It operates a website from at least the domain name <nuve.com>.

The Domain Name was registered on 27 October 2024. It has been used since registration for a website that purports to sell Batana Oil as a hair growth and scalp treatment product under the name "Lenuxe".

The Respondent was identified by the Registrar as "My Store Admin, My Store". "My Store Admin, My Store" was named as the respondent in Sodexo v. My Store Admin, My Store WIPO Case No. D2024-3831 in respect of the domain name <sodexho-fr.com>. That respondent did not participate in the proceedings and the panelist ordered the transfer of the domain name to the complainant.

PARTIES CONTENTIONS

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

The Complainant has demonstrated rights in registered trade marks for the term "NUXE". The Domain Name can be read as this term combined with "le", the French word for "the" and the ".com" gTLD. Accordingly, the Complainant’s trade mark is clearly recognisable the Domain Name. This is sufficient for a finding of confusing similarity under the Policy (see sections 1.7 of the WIPO Overview 3.0). The Complainant has, therefore, satisfied the requirements of paragraph 4(a)(i) of the Policy.

There are aspects of the Complaint that are somewhat difficult to follow. For example, the Complainant repeats the contention that the registration was made fraudulently, but what is meant by this is not really explained. Further, there is a reference to the breaching of the Complainant's rights, which appears to be an allegation of trade mark infringement. But that is not quite what needs to be shown under the Policy.

Nevertheless, it seems reasonably clear that the Complainant appears to be contending that at the date of registration of the Domain Name, the Respondent was likely to be aware of the Complainant's business and marks, and that the Domain Name was registered with the intention to take unfair advantage of those rights. The Panel accepts on the balance of probabilities and in the

absence of argument or evidence to the contrary, that this is correct. In this respect the Panel accepts that the Complainant's business and "NUXE" mark benefits from a considerable reputation in multiple jurisdictions. Further, the Panel accepts that the Respondent is using the Domain Name to sell products in a business sector where the Complainant operates. It is therefore inherently likely that the Respondent was aware of the Complainant's business when the "Lenuxe" name was chosen. Further, the Domain Name itself with is combination of the French word "le" and the "NUXE" mark (which the Complainant contends is a "wholly invented" term), appears to involve a deliberate reference to the Complainant's business and marks. The Panel, therefore, accepts that the most likely explanation of the Respondent's activities is that the Respondent has deliberately chosen the name "Lenuxe" in order to gain advantage from the resulting association with the Complainant's mark and business and that there is also a risk that internet users with be misled into believing that business is that of the Complainant or authorised by the Complainant, when it has not been.

There is no legitimate right or interest in registering and using a domain name for such a purpose and the Panel is of the view that this provides positive evidence that no such right or interest exists. The Panel also notes the Complainant's contention that the Respondent has used the "TM" sign next to the term "Leneuve" to indicate that it is being used as a trade mark but that the trade mark watching services used by the Complainant have not identified any person or entity seeking to register that term as a trade mark.

Further, the registering and using of the Domain Name to take advantage of the reputation of another's mark in such a manner involves registration and use in bad faith. In this case the Respondent's activities also fall within the example of circumstances indicating bad faith registration and use set out in paragraph 4(b)(iv) of the Policy.

The Complainant has, therefore, satisfied the requirements of paragraphs 4(a)(ii) and (iii) of the Policy.

The Panel is unpersuaded by the Complainants' contentions that initially, the contact details for the Domain Name were redacted for privacy and that this is another indicator of bad faith. The use of false or redacted contact details can often indicate a bad faith intent. However, there is nothing before the Panel that suggests that the reason why the Respondent's contact details were not initially publicly available in this particular case, was anything other than as a consequence of the Registrar's implementation of ICANN's Temporary Specification for gTLD Registration Data and/or ICANN's Registration Data Policy. Nevertheless, given the Panel's conclusions as to lack of rights or legitimate interests, and registration and use in bad faith, set out above, this is of no consequence in this case.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lenuxe.com**: Transferred

PANELLISTS

Name	**Matthew Harris**

DATE OF PANEL DECISION 2024-12-29

Publish the Decision