

Decision for dispute CAC-UDRP-107146

Case number	CAC-UDRP-107146
Time of filing	2024-12-11 09:09:46
Domain names	nuxe-paris.com, nuxeboutique.com, nuxe-boutique.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	AUDE guillermard (ATOUTPI LAPLACE)
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Respondents

Organization	james black james black homes ltd (james black homes ltd)
Name	james black nuxe boutique
Organization	john baley My Store Vincent's Yard (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 names.

IDENTIFICATION OF RIGHTS

The Complainant states that it is the owner, among others, of the following trademark registrations:

- EUTM "NUXE" No. 8774531 registered on 15 July 2010 for classes 3, 44;
- international trademark registration "NUXE" No. 1072247 registered on 14 February 2011 for classes 3, 44;
- national (Canada) trademark registration "NUXE" No. 1515150 registered on 12 February 2014 for classes 3, 44;
- international trademark registration "NUXE PARIS" No. 684940 registered on 24 December 1997 for classes 3, 25, 42;
- national (France) trademark registration "NUXE PARIS" No. 97687052 registered on 10 July 1997 for classes 3, 5, 16, 25, 28, 42, 45;
- national (USA) trademark "NUXE PARIS" No. 2447296 registered on 1 May 2001 for classes 3, 25;
- national (Canada) trademark "NUXE PARIS" No. 0865921 registered on 5 November 2003 for classes 3, 5, 16, 21.

The Complainant proved its ownership of the aforementioned trademark registrations by the submitted extract from the WIPO Madrid, EUIPO, TMview and INPI databases.

FACTUAL BACKGROUND

The Complainant is a French company established in 1964 specialized in manufacture and trade of cosmetics as well as personal care products and related services promoted and sold under trademark “NUXE”. The Complainant is thus the owner of rights on the term “NUXE” as trademarks, company name/trade names and domain names. The Complainant is selling its cosmetics all around the world and provide spa services in various countries. Trademark “NUXE PARIS” and its device is affixed on all communications means (websites whatever the language), on social networks as well as on all the cosmetic goods themselves.

There are multiple disputed domain names: <nuxe-paris.com>, <nuxeboutique.com>, <nuxe-boutique.com> (hereinafter “disputed domain names”) and multiple Respondents. The first two disputed domain names, <nuxe-paris.com> and <nuxeboutique.com>, were registered on 6 and 7 November 2024, the third disputed domain name <nuxe-boutique.com> was registered on 23 October 2024. According to the Registrar, the Respondents are ‘James Black’ (<nuxe-paris.com>, <nuxeboutique.com>) and ‘John Baley’ (<nuxe-boutique.com>). The Respondent’s provided addresses are being at the UK.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

RESPONDENT:

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 UDRP).

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 UDRP).

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 UDRP).

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

I. Preliminary Procedural Issue: Request for Consolidation of the Complaint

There is a preliminary procedural issue in this case that must be addressed first, whether the Complainant is entitled to bring a consolidated complaint against multiple Respondents or whether it is necessary for the Complainant to bring individual complaints.

1. GENERAL PRINCIPLES FOR CONSOLIDATION

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter “The WIPO Overview 3.0”) in Paragraph 4.11.2 states: “Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.

Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants’ identity(ies) including pseudonyms, (ii) the registrants’ contact information including e-mail address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behavior, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s).“

2. APPLICATION OF THE PRINCIPLES TO THIS COMPLAINT

In the present case, the Complainant filed a complaint regarding three disputed domain names against two Respondents. For the purpose of further consideration, the following table shows each of the Respondents, the number of the disputed domain names owned by them, the name of the registrar, and the date of registration.

Respondent	Domain Names	Name of the Registrar	Dates of Registration
James Black	<nuxe-paris.com> <nuxeboutique.com>	Tucows Inc.	6 November 2024 7 November 2024
John Baley	<nuxe-boutique.com>	Namecheap	23 October 2024

The Complainant believes that the disputed domain names are under common control of the same person or entity.

All the Respondents are aiming at the Complainant’s “NUXE” trademark and associated relevant market. The disputed domain names of all the Respondents have similar name patterns (by addition of the general terms “paris” and “boutique”) and were registered at the similar time. All the Respondents are seated in the UK. According to the Whois information, all the Respondents do have privacy protection service, therefore, they cannot be identified under the disputed domain names (evidenced by the submitted Whois information). All the disputed domain names resolve to the similar-looking websites (e-shops hosted by Shopify), offering the Complainant’s products (evidenced by the submitted *screenshots of the websites*). No administrative Response was submitted by any of the Respondents.

Under such circumstances, it can be presumed that all of the disputed domain names are controlled by the same entity/individual.

The Panel determines that this complaint consists of multiple Respondents that should, for the reasons discussed above, be permitted to be dealt with in a single complaint for the purpose of the present proceedings under the UDRP. Overall, this is clearly a case fitting within the “common control” category in which it would be equitable and fair to permit consolidation.

II. Decision on the Case

In the present case, the Respondents have not submitted any Response and consequently have not contested any of the contentions made by the Complainant. Therefore, the Panel proceeds to decide only on the basis of the Complainant’s factual statements and the documentary evidence provided in support of them [Paragraph 5(f) of The Rules].

1. CONFUSING SIMILARITY

The Panel finds that the disputed domain names are confusingly similar to the Complainant’s trademarks.

The WIPO Overview 3.0 in Paragraph 1.2.1 states: “Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case”.

The WIPO Overview 3.0 in Paragraph 1.7 states: “[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.”

The WIPO Overview 3.0 in Paragraph 1.8 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.”

In the present case, the Complainant has established that it owns numerous international, EU and national trademark registrations consisting of the “NUXE” or “NUXE PARIS” verbal element, protected for the classes in connection with cosmetics and personal care products (proved by the submitted extract from the WIPO Madrid, EUIPO, TM view and INPI databases).

The Complainant declared that “NUXE” is a creative word composed of the terms “Nature” and “Luxury” (Luxe in French).

The disputed domain names <nuxe-paris.com>, <nuxeboutique.com>, <nuxe-boutique.com> contain the Complainant’s trademark “NUXE” in its entirety. The addition of the general term “boutique” and geographical term “paris” do not prevent the finding of confusing similarity. Nor does the addition or absence of a hyphen. Moreover, the addition of the term “paris” supports the confusing similarity to the Complainant’s trademark “NUXE PARIS”.

Therefore, the disputed domain names are considered to be confusingly similar to the relevant trademark.

The “.com” element of the disputed domain names does not affect the finding of confusing similarity.

As a result, the Panel finds that the Complainant has satisfied Paragraph 4(a)(i) of the UDRP.

2. THE RESPONDENT’S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAMES

The Panel finds that the Respondents lack rights or legitimate interests in the disputed domain names.

According to Paragraph 4(a)(ii) of the UDRP, the complainant shall make a case that the respondent lacks rights and legitimate interests in the disputed domain name. If the complainant fulfils this demand the burden of proof shifts to the respondent and so the respondent shall demonstrate rights or legitimate interests in the disputed domain name. If the respondent fails to prove its rights or legitimate interests, it is assumed that the complainant satisfied the element of Paragraph 4(a)(ii) of the UDRP (see CAC Case No. 102430, Lesaffre et Compagnie v. Tims Dozman). Moreover, past panels were of the view that it is difficult or sometimes impossible to prove negative facts, i.e., absence of rights or legitimate interest on the part of the respondent. In this respect, past panels referred to the WIPO Case No. D2000-1769, Neusiedler Aktiengesellschaft v. Vinayak Kulkarni. Within the meaning of Paragraph 4(a)(ii) of the Policy, once the complainant has made something credible (prima facie evidence), the burden of proof shifts to the respondent to show that he has rights or legitimate interests in the domain name at issue by providing concrete evidence.

The WIPO Overview 3.0 in Paragraph 2.5.1 states: “Generally speaking, UDRP panels have found that domain names identical to a complainant’s trademark carry a high risk of implied affiliation.”

In the present case, the Complainant claims that it is the sole owner of rights on the denomination “NUXE”, denomination which is creative and created by it. “NUXE” trademarks of the Complainant are under a worldwide watch. Thus, if “NUXE PARIS” or “NUXE BOUTIQUE” were filed as a trademark anywhere in the world and for any goods and services, it would have been disclosed in the watch and opposed straightaway. The Complainant has never been contacted by someone willing to register the domain names in issue nor has given any authorization to anyone to make any use or apply for registration of the domain names <nuxe-paris.com>, <nuxeboutique.com>, <nuxe-boutique.com>.

The Complainant states that the Respondents have no legitimate interest in the reservation and the use of the disputed domain names which were made with the clear intent to breach the Complainant’s rights.

Moreover, <nuxeboutique.com> owned by James Black is illegally using an organisation name “NUXE BOUTIQUE” reproducing the Complainant’s trademark.

To the satisfaction of the Panel, the Complainant made a prima facie case that there is no connection between the Complainant and the Respondents and that the Respondents do not have authorization in the disputed domain names from the Complainant.

The Respondents did not file any Response to the Complaint. Thus, they failed to demonstrate rights or legitimate interests in the disputed domain names.

Therefore, the Panel finds that the Complainant has satisfied the requirement under Paragraph 4(a)(ii) of the UDRP.

3. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAMES IN BAD FAITH

The Panel finds that the Respondents registered and used the disputed domain names in bad faith.

The WIPO Overview 3.0 in Paragraph 3.1.4 states: “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. Panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain,

Internet users to its website by creating a likelihood of confusion with the complainant's mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, (iv) redirecting the domain name to a different respondent-owned website, even where such website contains a disclaimer, (v) redirecting the domain name to the complainant's (or a competitor's) website, and (vi) absence of any conceivable good faith use. Similarly, panels have found that a respondent redirecting a domain name to the complainant's website can establish bad faith insofar as the respondent retains control over the redirection thus creating a real or implied ongoing threat to the complainant."

In the WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC, panel stated: "In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith."

In the present case, the Complainant has established that it owns numerous international, EUTM and national trademark registrations consisting of the "NUXE" and "NUXE PARIS" verbal element, protected for classes in connection with cosmetics and personal care products, with the priority right since 2010 ("NUXE")/1997 ("NUXE PARIS") (evidenced by the submitted extract from the WIPO Madrid, EUIPO, TMview and INPI database).

The disputed domain names contain the Complainant's trademark in its entirety.

From the materials submitted by the Complainant (showing decision of trademark and domain name authorities), it is clear that the Complainant and its "NUXE" trademark has a certain reputation worldwide.

A simple Google search for "nuxe-boutique", "nuxeboutique" and "nuxe-paris" leads Internet users primarily to the Complainant's website and websites connected to the Complainant's products and services (proved by the furnished screenshots of a Google search).

Therefore, the disputed domain names are confusingly similar to the highly distinctive and widely recognized earlier trademark of the Complainant.

It is undisputed that the Respondents were aware of the Complainant's trademarks and its reputation before the registration of the disputed domain names on October/November 2024.

As was proved by the provided screenshots of the websites, all three websites consist of similar-looking e-shops offering the Complainant's products and using the Complainant's trademarks. There is no clue that would lead Internet users to understand that the disputed domain names are not affiliated with the Complainant in any way. The Respondents are intentionally creating confusion in order to obtain their own commercial gain.

None of the Respondent is recognized as the disputed domain name, nor can be identified in the Whois information.

Moreover, the Complainant provided evidence that messaging server has been created with one IP Address for both the domain names <nuxe-paris.com> and <nuxeboutique.com> (evidenced by the submitted extract from MXToolbox). Therefore, the disputed domain names might be used for e-mail, possibly phishing purposes.

Thus, it might be concluded that the Respondents did not register and are not using the disputed domain names in good faith.

Following the above-mentioned, the Panel finds that the Complainant has satisfied conditions pursuant to Paragraph 4(a)(iii) of the UDRP.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **nuxe-paris.com**: Transferred
2. **nuxeboutique.com**: Transferred
3. **nuxe-boutique.com**: Transferred

PANELLISTS

Name	Radim Charvát
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2025-01-14

DATE OF PANEL DECISION 2025 01 17

Publish the Decision
