

ADMINISTRATIVE PANEL DECISION

La Société Nexity v. Privacy service provided by Withheld for Privacy ehf /
john doe
Case No. D2022-2021

1. The Parties

The Complainant is La Société Nexity, France, represented internally.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / john doe, France.

2. The Domain Name and Registrar

The disputed domain name <nexity-finance.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 3, 2022. On June 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name and four other domain names. On June 3, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 10, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on June 22, 2022 concerning the Domain Name only.

The Registrar also indicated that the language of the Registration Agreement was English. The Complaint was filed in French. The Center sent an email communication to the Complainant on August 15, 2022, inviting the Complainant to provide sufficient evidence of an agreement between the Parties for French to be the language of proceeding, a Complaint translated into English, or a request for French to be the language of proceedings. The Complainant translated the amended Complaint into English on August 17, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 14, 2022.

The Complainant filed another amended Complaint on September 19, 2022. On September 22, 2022, the Center indicated that due to an administrative oversight, it appears that the Written Notice of the Complaint and the Notification of Complaint, together with the Complaint and annexes, were not sent to the Respondent's mailing address and email. The Center granted the Respondent a five day period (*e.g.*, through September 27, 2022) in which to indicate whether it wishes to participate to this proceeding. On September 28, 2022, the Center confirmed that it will proceed to Panel Appointment.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on October 6, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a French company specialized in real estate and related services.

The Complainant is the owner of several trade marks for NEXITY including the following:

- French Trade mark No. 3007815, NEXITY, registered on February 16, 2000.

The Complainant is also the owner of the domain name <nexity.fr>.

The Domain Name was registered on September 27, 2021. At the time of the filing, the Domain Name was inactive. The Domain Name currently resolves to a Registrar parking page with pay-per-click ("PPC") links targeting the Complainant's sector.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the NEXITY trade mark in which the Complainant has rights.

The Complainant asserts that the Respondent must be considered as not having any right to use domain names containing the NEXITY trade mark and that the Respondent is engaging in an unfair commercial practice by using the Domain Name.

The Complainant contends that the Respondent uses the Domain Name to offer fraudulent investments to individuals.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy

have been met, namely:

(i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

In the case of default by a party, as is the case here, paragraph 14(b) of the Rules makes it clear that if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Identical or Confusingly Similar

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in NEXITY, which is reproduced in its entirety in the Domain Name.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the trade mark NEXITY in which the Complainant has rights.

At the second level, the Domain Name incorporates the Complainant's NEXITY trade mark in its entirety with the addition of a hyphen "-" and the dictionary term "finance". The terms added to the Domain Name do not prevent a finding of confusing similarity between the Complainant's trade mark and the Domain Name.

Then there is the addition of the generic Top-Level-Domain ("gTLD") ".com". As is generally accepted, the addition of a gTLD such as ".com" is merely a technical registration requirement and as such is typically disregarded under the first element of confusing similarity test.

Thus, the Panel finds that the Domain Name is confusingly similar to a trade mark or service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely:

Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or

(iii) [the respondent] is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

Numerous previous panels have found under the UDRP that once the complainant makes a *prima facie* showing that the respondent does not have rights or legitimate interests in the domain name, the burden of

production shifts to the respondent to rebut the showing by providing evidence of its rights or interests in the domain name.

The Complainant has stated that the Respondent must be considered as not having any right to use domain names containing its NEXITY trade mark. There is no indication that the Respondent is commonly known by the Domain Name.

The Complainant has made a claim that the Respondent is engaging in unfair commercial practices by using the Domain Name although the Complainant has produced no evidence to support such claims.

As part of the Panel's general powers under the Rules, the Panel has undertaken limited factual research into matters of public record as the Panel considered such information useful to assessing the case merits and reaching a decision under the second element. The Panel has verified the current pointing of the Domain Name and noted that it directs to a Registrar parking page with PPC links targeting the Complainant's sector. Applying UDRP paragraph 4(c), previous panels under the Policy have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. See Section 2.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Furthermore, the nature of the Domain Name, comprising the Complainant's trade mark in its entirety in combination with additional terms, carries a risk of implied affiliation. See Section 2.5.1 of the [WIPO Overview 3.0](#).

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

- (i) circumstances indicating that [the respondent has] registered or acquired [a disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name; or
- (ii) [the respondent has] registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online 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 Domain Name reproduces the exact NEXITY trade mark of the Complainant and this cannot be a coincidence given the overall circumstances of the present case including: (i) the reputation of the Complainant's NEXITY trade mark in France where the Respondent is based, (ii) the fact that the Domain Name was registered relatively recently and many years after the registration of the trade mark NEXITY and, (iii) the targeted choice of dictionary term added to the trade mark NEXITY in the Domain Name.

Thus, the Panel finds that, on the balance of probabilities, the Domain Name was registered in bad faith.

As for use of the Domain Name in bad faith, the Complainant claims that the Domain Name is used fraudulently although the Complainant has not produced any evidence to support such claims.

As part of the Panel's general powers under the Rules, the Panel has undertaken limited factual research into matters of public record as the Panel considered such information useful to assessing the case merits and reaching a decision under the third element. The Panel has verified the current pointing of the Domain Name and noted that it directs to a Registrar parking page with PPC links targeting the Complainant's sector including for instance a link with the title "Investissement Immobilier". Even where such targeted PPC links are automatically generated, as may be the case here, previous panels under the Policy have found that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name and the fact that such links are generated by a third party such as a registrar would not by itself prevent a finding of bad faith. See Section 3.5 of the [WIPO Overview 3.0](#).

The fact that the Respondent chose not to object to the Complainant's assertions can only reinforce the Panel's view that the Domain Name is used in bad faith.

While conclusory statements unsupported by evidence will normally be insufficient to prove a party's case, panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case including where no other plausible conclusion is apparent, as is the case here. See Section 4.2 of the [WIPO Overview 3.0](#).

Thus, the Panel finds that the Domain Name has been registered and is also being used in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <nexity-finance.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: October 21, 2022