

ADMINISTRATIVE PANEL DECISION

Natixis v. Maurice Cohen

Case No. D2023-3658

1. The Parties

The Complainant is Natixis, France, represented by MIIP MADE IN IP, France.

The Respondent is Maurice Cohen, France.

2. The Domain Name and Registrar

The disputed domain name <natiixisbank.com> (the “Disputed Domain Name”) is registered with Register SPA (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 31, 2023. On August 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 1, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent (Redacted For Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 5, 2023, 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 September 7, 2023.

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 September 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 28, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified the Respondent’s default on October 3, 2023.

On October 10, 2023, the Respondent sent an email communication to the Center. The Center acknowledged receipt and on October 11, 2023, sent a possible settlement email communication to the Parties. On October 11, 2023, the Complainant sent an email to the Center confirming that it did not wish to request a suspension of the proceeding for settlement discussions. Accordingly, the Center informed the Parties of its commencement of Panel appointment process on October 30, 2023.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on November 14, 2023. 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 multinational services company specialized in asset and wealth management, corporate and investment banking, insurance and payment.

The Complainant is the owner of several registered trademarks incorporating the term NATIXIS (the "NATIXIS Trademarks") including:

- the French wordmark NATIXIS, No. 3416315, registered on March 14, 2006, for products and services in classes 9, 16, 35, 36 and 38;
- the European Union wordmark NATIXIS No. 5129176, registered on June 21, 2007, for products and services in classes 9, 16, 35, 36 and 38; and
- the International figurative mark NATIXIS No. 1071008, registered on April 21, 2010, for products and services in classes 9, 16, 35, 36 and 38.

The Complainant is also the owner of the following domain names registered between 2005 and 2016 incorporating the NATIXIS Trademarks: <natixis.com>, <natixis.fr> and <natixi.xyz>.

The Disputed Domain Name was registered on August 23, 2023, and resolves to a parking page. MX records have also been set with the Disputed Domain Name.

5. Parties' Contentions

A. Complainant

First, the Complainant asserts that the Disputed Domain Name is identical and highly similar to its NATIXIS Trademarks since it incorporates them in their entirety with a simple misspelling and the addition of the term "bank" which is descriptive of its activities. The Complainant explains that the differences do nothing to negate the confusing similarity between the NATIXIS Trademarks and the Disputed Domain Name. The Complainant specifies that when searching the Disputed Domain Name on an Internet browser, the browser automatically suggests amending the search with the NATIXIS Trademarks.

Then, the Complainant submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant asserts that the Respondent does not own any trademarks comprising of the Disputed Domain Name. The Complainant adds that it has never authorized nor licensed the Respondent to use its NATIXIS Trademarks to register the Disputed Domain Name. Then, the Complainant stands that the Respondent is not commonly known under the Disputed Domain Name and that the Disputed Domain Name resolves to an error page; thus, demonstrating that the Disputed Domain Name is not used in a *bona fide* offering of goods and services or a legitimate noncommercial or fair use.

Finally, the Complainant contends that the Disputed Domain Name was registered and is being used in bad faith. The Complainant submits that its NATIXIS Trademarks are well known in France and in several other countries. The Complainant also highlights the use by the Respondent of a privacy service in order to hide his identity when registering the Disputed Domain Name. Finally, the Complainant asserts that the Respondent has apparently made no active use of the Disputed Domain Name since it resolves to an error/request denied page. For the Complainant, the Respondent is intentionally attempting to take advantage of the Complainant's trademarks to generate profit. To make this assumption, the Complainant underlines the setting of MX records to the Disputed Domain Name which can be used to send email as part of a phishing scam since the Disputed Domain Name is highly similar to the NATIXIS Trademarks enhancing the risk for Internet users to think they have reached a website associated with the Complainant.

B. Respondent

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

However, the Respondent has sent informal email communications in French on October 10, 2023. The Respondent requested further explanations about the present proceeding and the Complaint, as well stating that it uses the Disputed Domain Name. The Respondent also indicated that he is willing to amicably settle the present dispute.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant shall prove the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

A. Identical or Confusingly Similar

According to the Policy, paragraph 4(a)(i), the Complainant shall prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First of all, the Panel finds that the Complainant has provided evidence that it has rights in the NATIXIS Trademarks.

Then, the Panel wishes to remind that the first element of the UDRP serves essentially as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name.

This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name. 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 the UDRP (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

The Panel finds that the Disputed Domain Name is composed of:

- the NATIXIS Trademarks with an additional "i";
- the term "bank"; and
- the gTLD ".com".

According to prior UDRP panel decisions, it is sufficient that the domain name incorporates the entirety of a trademark, in order to consider the domain name as confusingly similar to that mark for purposes of UDRP standing. The mere addition of descriptive or geographical term to a mark does not prevent a finding of confusing similarity (see section 1.8 of the [WIPO Overview 3.0](#)).

Moreover, a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (see section 1.9 of the [WIPO Overview 3.0](#)).

Regarding the Disputed Domain Name, the Panel finds that it incorporates the NATIXIS Trademarks in their entirety with a misspelling consisting of an additional letter “i” followed by the term “bank” which is highly descriptive of the Complainant’s activities. This construction of the Disputed Domain Name does not prevent a finding of confusing similarity notably since the NATIXIS Trademarks remain recognizable.

Lastly, the Panel adds that the gTLD in a domain name is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark. See section 1.11.1 of the [WIPO Overview 3.0](#)

Finally, the Panel holds that the Disputed Domain Name is confusingly similar to the NATIXIS Trademarks, and that the Complainant has established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant shall demonstrate that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Policy, paragraph 4(c), outlines circumstances that if found by the Panel to be proved shall demonstrate the Respondent’s rights or legitimate interests in the Disputed Domain Name.

These circumstances are:

- before any notice of the dispute to the respondent, 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
- the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- 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 trademark or service mark at issue.

According to prior UDRP panel decisions, it is sufficient that a complainant shows *prima facie* that a respondent lacks rights or legitimate interests in a domain name in order to shift the burden of production to the respondent (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Indeed, while the overall burden of proof in a UDRP proceeding is on the complainant, previous UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out *prima facie* that a respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)).

According to the Panel, the Complainant has shown *prima facie* that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. Indeed, it appears that the Respondent has not received any authorization to use the NATIXIS Trademarks in any manner, including for the registration of domain names.

Moreover, it appears from the non-use of the Disputed Domain Name, which resolves to a parking page, that the Respondent is not using or has not prepared to use the Disputed Domain Name with a *bona fide* offering of goods or services, nor is the Respondent making a legitimate noncommercial or fair use of the Disputed Domain Name without intent for commercial gain. There is also no evidence on record showing that the Respondent is commonly known by the Disputed Domain Name or the name “natiixis bank”.

Finally, the Respondent did not formally reply to the Complainant's contentions, and consequently, did not rebut the Complainant's *prima facie* case.

Therefore, according to the Policy, paragraphs 4(a)(ii) and 4(c), the Panel considers that the Complainant has established that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name.

C. Registered and Used in Bad Faith

According to the Policy, paragraph 4(a)(iii), the Complainant shall prove that the Disputed Domain Name has been registered and is being used in bad faith.

Thus, paragraph 4(b) provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark 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 trademark 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 its 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.

According to prior UDRP decisions, particular circumstances panels may take into account in assessing whether the respondent's registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely-known mark, or a domain name incorporating the complainant's mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant's area of activity or natural zone of expansion), [...], (vi) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name (see section 3.2.1 of the [WIPO Overview 3.0](#)).

First of all, the Panel finds that it is established that the Complainant's NATIXIS Trademarks were registered and used well before the registration of the Disputed Domain Name. Therefore, there is a presumption of bad faith registration of the Disputed Domain Name given that it reproduces the Complainant's NATIXIS Trademarks in their entirety.

Moreover, the Panel notices that the Disputed Domain Name does not reach to an active website. The consensus view amongst UDRP panels is that “the non-use of a domain name (including a blank or ‘coming soon’ page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.” See section 3.3 of the [WIPO Overview 3.0](#).

In this case, the Panel is convinced that the overall circumstances of this case suggest that the Respondent’s non-use of the Disputed Domain Name is in bad faith. Such circumstances include:

- the fact that the Complainant’s NATIXIS Trademarks are distinctive and well-known worldwide, and have been recognized by many UDRP panels as such;
- the Respondent’s failure to provide any formal answer to the Complainant’s contentions,
- the setting of MX records with the Disputed Domain Name which may be used to send emails while trying to pass off as the Complainant as part of a phishing scheme, and
- there appears to be no conceivable good faith use that could be made by the Respondent of the Disputed Domain Name.

Therefore, in view of all the circumstances of this case, the Panel holds that the Respondent registered and is using the Disputed Domain Name in bad faith according to the Policy, paragraph 4(a)(iii).

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 Disputed Domain Name, <natiixisbank.com>, be transferred to the Complainant.

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: November 28, 2023