

ADMINISTRATIVE PANEL DECISION

Nexben, Inc. v. xingte Li
Case No. D2024-1948

1. The Parties

The Complainant is Nexben, Inc., United States of America (“United States”), represented by Fredrikson & Byron, PA, United States.

The Respondent is xingte Li, China.

2. The Domain Name and Registrar

The disputed domain name <mynexben.com> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 9, 2024. On May 10, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 10, 2024, 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 (John Doe / Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 17, 2024, 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 amendment to the Complaint on May 20, 2024.

The Center verified that the Complaint together with the amendment to the 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 May 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 25, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on July 8, 2024. 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, founded in 2015 in United States, is a fintech plan administration and payment solution in the benefits industry.

The Complainant has a pending United States trademark registration for NEXBEN (word) serial number 98500910 filed on April 15, 2024 for services in International class 36.

The Complainant owns and uses, as primary place to advertise its goods and services, the domain name <nexben.com>, registered on October 17, 2014. The Complainant also uses its NEXBEN trademark in connection with the website “www.my.nexben.com”, which is the portal where customers may access the Complainant’s service platform.

Except for its website, the Complainant promotes its goods and services under the trademark NEXBEN at various events, and via social media, such as LinkedIn where it has over 3,300 followers.

The disputed domain name was registered on September 14, 2023, and, at the time of filing of the Complaint, it resolved to a website listing pay-per-click (“PPC”) links.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that it has spent approximately USD 1.8 million on marketing its trademark between 2021-2024, in 2022 its revenue for the NEXBEN products and services exceeded USD 10 million and it had thousands of subscribers for its services; the disputed domain name is identical or confusingly similar to the Complainant’s trademark NEXBEN and websites, particularly with “www.my.nexben.com”; the Respondent should be considered as having no rights or legitimate interests in the disputed domain name; the Respondent registered the disputed domain name in bad faith, long after the Complainant’s first use of its trademark in 2015; by incorporating the NEXBEN mark in the disputed domain name as a principal identifier, the Respondent is using the disputed domain name in bad faith in order to create a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s services; the disputed domain name is particularly concerning given the Complainant’s line of business since visitors to the website under the disputed domain name might unwittingly share financial information and/or protected health information with the registrant, both of which are categories of information commonly targeted by scammers.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (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 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

It is well accepted that the first element functions primarily 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Here the Complainant does not have a trademark registration for a mark confusingly similar or identical to the disputed domain name. However, the Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3. Specifically, the Panel reaches this conclusion noting that the Complainant has been using NEXBEN as a source identifier of its products offered through the website at its domain name <nexben.com>; NEXBEN has no meaning in relation to the Complainant's goods and services; the Complainant promoted its NEXBEN trademark at various events and on its own websites; and the Complainant has 3K followers on LinkedIn. .

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the word "my" here may bear on assessment of the second and third elements, the Panel finds the addition of such word does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.9.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 a prima facie case that the 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence

demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent has used the disputed domain name in connection with PPC links related to various services and, in this regard, panels have held 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. [WIPO Overview 3.0](#), section 2.9.

The Panel further notes the composition of the disputed domain name, reproducing the NEXBEN mark and being very similar to the Complainant's subdomain <my.nexben.com>, which hosts the website where the customers may access the Complainant's services. There is a risk that Internet users will not notice the subtle misspelling, the missing dot in the disputed domain name. In the present case, the Panel therefore finds that the composition of the disputed domain name carries a risk of implied affiliation with the Complainant as it may mistakenly be seen as effectively impersonating or suggesting some connection with the Complainant. [WIPO Overview 3.0](#), section 2.5.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the disputed domain name was registered, more likely than not, in bad faith, with knowledge of the Complainant, its trademark and business particularly because the disputed domain name incorporates the Complainant's trademark, and reproduces the Complainant's subdomain name <my.nexben.com> with a slight alteration, and the Complainant's domain name predates the registration of the disputed domain name with about eight years.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

At the time of filing of the Complaint, the disputed domain name resolved to a page providing PPC links promoting various goods and services.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "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" is evidence of registration and use in bad faith.

The Respondent was using without permission the Complainant's trademark, and subdomain name, the latter reproduced with a slight alteration, in order to get traffic on its web portal and to misleadingly divert Internet users to third-party websites, and thus to potentially obtain commercial gain from the false impression created due to the composition of the disputed domain name with regard to a potential affiliation or connection with the Complainant. The disputed domain name is particularly concerning given the Complainant's line of business, involving online services where customers provide confidential financial and health information, a field commonly targeted by Internet scammers and with significant consequences for the parties involved.

The Respondent has not participated in the present proceeding to put forward any argument in its favor, and provided inaccurate/false contact details in the Whois underlying a privacy shield, likely to avoid being notified of a UDRP proceeding filed against it. These are further aspects supporting the Panel's finding of bad faith. [WIPO Overview 3.0](#), section 3.6.

The Panel finds that the Complainant has established the third element of the Policy.

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 <mynexben.com> be transferred to the Complainant.

/Marilena Comanescu /

Marilena Comanescu

Sole Panelist

Date: July 22, 2024