

ADMINISTRATIVE PANEL DECISION

Nexus Automotive International SA v. Asim Arslan
Case No. DNL2024-0002

1. The Parties

The complainant Nexus Automotive International SA, Switzerland, represented by BrandIT GmbH, Switzerland (“Complainant”).

The registrant of the disputed domain name is Asim Arslan, Netherlands (Kingdom of the), (“Respondent”).

2. The Domain Name and Registrar

The disputed domain name <nexusautos.nl> (the “Disputed Domain Name”) is registered with SIDN through Metaregistrar B.V.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 16, 2024. On January 16, 2024, the Center transmitted by email to SIDN a request for registrar verification in connection with the Disputed Domain Name.

On January 17, 2024, SIDN 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 and contact information in the Complaint.

The Center sent an email communication to Complainant on January 18, 2024, providing the information disclosed by SIDN, and inviting Complainant to amend the Complaint in this light. Complainant filed an amended Complaint on January 22, 2024.

The Center verified that the Complaint satisfies the formal requirements of the Dispute Resolution Regulations for .nl Domain Names (the “Regulations”).

In accordance with the Regulations, articles 5.1 and 16.4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on January 24, 2024. In accordance with the Regulations, article 7.1, the due date for Response was February 13, 2024. The Center did not receive any response. Accordingly, the Center notified the Respondent’s default on February 14, 2024. On February 19, 2024, a late Response was filed with the Center.

On February 21, 2024, SIDN commenced the mediation process. On March 22, 2024, SIDN extended the mediation process until April 22, 2024. On April 19, 2024, SIDN informed parties that the dispute had not been solved in the mediation process.

The Center appointed Moïra Truijens as the panelist in this matter on April 23, 2024. The Panel finds that it was properly constituted. The Panelist has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Regulations, article 9.2.

4. Factual Background

Complainant is active in the automotive aftermarket industry, with automotive car and truck parts distributors and suppliers across the world by providing local support and innovative global services. Complainant has more than 451 distributor members and 9,055 retail stores affiliated in 139 countries worldwide and is allied with more than 90 global manufacturers suppliers in the automotive and heavy-duty industry.

Complainant is the owner of the registered trademark NEXUS AUTO in numerous jurisdictions all over the world, including in the European Union. The aforementioned trademark registrations include, but are not limited to, the following earlier rights:

- European Union trademark registration with number 014651525 for NEXUS AUTO, registered April 14, 2016;
- International trademark registration with number 1327030 for NEXUS AUTO, registered October 13, 2016.

Moreover, Complainant is active in the online space and owns numerous domain names comprising its trademark NEXUS AUTO, such as <nexusautomotiveinternational.eu> and <nexusauto.nl>.

The NEXUS AUTO trademark registrations predate the registration of the Disputed Domain Name as the Disputed Domain Name was registered on June 16, 2020. At the time of filing the Complaint and the Decision, the Disputed Domain Name resolves to a developed website in Dutch, displaying in prominent positions, at the top of each website page, the mention “NEXUS AUTOMOTIVE” (with the term “NEXUS” being in a bigger character size) topped by a stylized version of a car. Additionally, the website presents the entity allegedly behind the Disputed Domain Name as, alternatively, “NEXUS AUTO’S” or “NEXUS AUTOMOTIVE” on different places throughout the webpage.

5. Parties’ Contentions

A. Complainant

The Disputed Domain Name incorporates Complainant’s NEXUS AUTO trademark in its entirety, with the addition, at the end, of the letter “s”. In accordance with previous decisions under the Regulations, the addition of the letter “s” in the second level portion of the Disputed Domain Name would not prevent a finding of confusing similarity to the trademark.

Furthermore, Complainant holds that, in accordance with established case law under the Regulations, the country code Top-Level Domain (“ccTLD”) “.nl” may be disregarded when assessing the similarity between the domain name and the relevant trademark due to it being a mere technical requirement (See WIPO Case No. [DNL2008-0008](#), *Roompot Recreatie Beheer B.V. v. Edoco LTD*).

Complainant therefore finds the Disputed Domain Name confusingly similar to Complainant’s NEXUS AUTO trademark.

Complainant further claims that Respondent has no rights to or legitimate interests in the Disputed Domain Name.

Complainant has never granted Respondent any right to use the NEXUS AUTO trademark in the Disputed Domain Name, nor is Respondent affiliated to Complainant in any form. Complainant further asserts that Respondent is not known as “NEXUS AUTOS” and when searching on a popular Internet search engine for the terms incorporated in the Disputed Domain Name, namely “nexusautos”, the vast majority of the results directly relate to Complainant and its websites, social media account(s) or related topics. The returned results do not show any connection between the Disputed Domain Name and Respondent.

Moreover, Complainant asserts that the structure of the Disputed Domain Name – incorporating the NEXUSAUTO trademark in its entirety and the additional letter “s” – reflects Respondent’s intention to create an association, and a subsequent likelihood of confusion, with Complainant and its NEXUS AUTO trademark in Internet users’ mind. Hence, the Disputed Domain Name in its structure directly refers to Complainant and its trademark. By reading the Disputed Domain Name, Internet users may believe that it is directly connected or authorized by Complainant and that the Disputed Domain Name will resolve to Complainant’s official website, which is not the case.

Furthermore, Complainant states that the Disputed Domain Name resolves to a developed website in Dutch, displaying in prominent positions, at the top of each website page, the mention “NEXUS AUTOMOTIVE” (with the term “NEXUS” being in a bigger character size) topped by a stylized version of a car. Complainant also points out the lack of any disclaimer on the website mentioning that the webpage and the entity referenced therein have no affiliation with Complainant.

Complainant shows that, in multiple instances, images containing the mention “Climax Design” are displayed on the website associated to the Disputed Domain Name. Complainant looked up the address available on the website on a popular search engine, where it was revealed that at the same address there is a “Climax Auto Glass Center” / “Climax Design” shop. The same address is present in the contact section of what can be presumed to be the official domain name (or one of the official domain names) of the aforementioned entity. Complainant therefore concludes that the website appears to be directed at informing and/or advertising to Internet users/consumers the services offered by the above-mentioned entity (i.e., “Climax Design”) connected to the automotive industry, such as, but not limited to, (i) the sales of used cars, (ii) financing services related to car purchases, as well as (iii) insurance and car wrapping services, among others.

By looking at the website at the Disputed Domain Name, Complainant asserts that it is not clear which person is operating the website as different mentions to “NEXUS AUTO’S”, “NEXUS AUTOMOTIVE”, and “Climax Design” appear throughout the website. Therefore, Complainant assumes that Respondent deliberately chose to use the NEXUS AUTO trademark as the main part of the Disputed Domain Name, as well as numerous mentions to “NEXUS AUTO’S” or “NEXUS AUTOMOTIVE” throughout the website, to benefit from Complainant’s trademark and goodwill in order to confuse Internet users as to the source or sponsorship of the Disputed Domain Name as well as the corresponding website, which cannot be considered as a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the Disputed Domain Name.

Complainant additionally asserts that this undermines the goodwill associated with Complainant’s trademark but also has the potential to divert traffic intended for Complainant’s legitimate online presence to Respondent’s website, thereby unfairly exploiting Complainant’s established reputation for Respondent’s financial benefit. Such activity is incompatible with a *bona fide* offering of goods and services and cannot, on the face of it, give Respondent rights or legitimate interests in the Disputed Domain Name.

Another argument held by Complainant, is that the principles set out in WIPO Case No. [D2001-0903](#), *Oki Data Americas, Inc. v. ASD, Inc.* are not met.

Furthermore, Complainant states that it sent a cease and desist letter to Respondent via the email address available on the website, as well as a reminder of the same, but that Respondent chose not to reply to the this letter. Complainant asserts this infers bad faith, referring to *International Business Machines Corporation v. Adam Stevenson, Global Domain Services*, WIPO Case No. [D2016-1695](#), and *Carrefour v. PERFECT PRIVACY, LLC / Milen Radumilo*, WIPO Case No. [D2018-2201](#).

Lastly, Complainant shared that the Disputed Domain Name has active Mail exchanger (“MX”) records. It claims those active MX records indicate possible use for email, which evidences a likelihood of bad-faith use of the Disputed Domain Name to engage in fraudulent email or phishing communications.

B. Respondent

Respondent did not formally reply to Complainant’s contentions, other than sending an e-mail stating:

“We don't understand this whole process. Can you please tell us exactly what you want and we will fix it. Do you need the domain name or whatever just let us know and we will make it right. Let's wrap this up.”

6. Discussion and Findings

Pursuant to article 2.1 of the Regulations, Complainant must prove each of the following three elements:

a. the Disputed Domain Name is identical or confusingly similar to:

I) a trademark, or trade name, protected under Dutch law in which Complainant has rights; or

II) a personal name registered in the General Municipal Register (“Gemeentelijke Basisadministratie”) of a municipality in the Netherlands, or the name of a Dutch public legal entity or the name of an association or foundation registered in the Netherlands under which Complainant undertakes public activities on a permanent basis; and

b. Respondent has no rights to or legitimate interests in the Disputed Domain Name; and

c. the Disputed Domain Name has been registered or is being used in bad faith.

In accordance with article 10.3 of the Regulations, the Panel shall determine the admissibility, relevance and weight of the evidence submitted; if no response has been submitted, the Panel shall rule on the basis of the complaint; and the Complaint shall in that event be granted, unless the Panel considers it to be without basis in law or fact.

A. Identical or Confusingly Similar

Complainant has shown registered rights in the NEXUS AUTO trademark. The Disputed Domain Name is confusingly similar to this trademark as it incorporates NEXUS AUTO in its entirety. The addition of the letter “s” to the NEXUS AUTO trademark in the Disputed Domain Name does not alter the fact that the NEXUS AUTO trademark is recognizable in the Disputed Domain Name (see also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7).¹

¹In view of the fact that the Regulations are to an extent based on the Uniform Domain Name Dispute Resolution Policy (“UDRP”), it is well established that both cases decided under the Regulations and cases decided under the UDRP, and therefore [WIPO Overview 3.0](#), may be relevant to the determination of this proceeding (see, e.g., *Aktiebolaget Electrolux v. Beuk Horeca B.V.*, WIPO Case No. [DNL2008-0050](#)).

The ccTLD “.nl” is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11).

The Panel finds that the Disputed Domain Name is confusingly similar to the NEXUS AUTO trademark and that Complainant has thus established the first element of article 2.1 of the Regulations.

B. Rights or Legitimate Interests

A complainant bears the burden of prima facie showing that the respondent has no rights to or legitimate interests in the domain name. If a complainant succeeds in making a prima facie case, the burden of production shifts to the respondent, which will then have to come forward with appropriate allegations or evidence demonstrating a right to or legitimate interest in the domain name (*Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Article 3.1 of the Regulations provides circumstances in which such rights or legitimate interests to a domain name may be demonstrated. These circumstances include; i) use of the domain name in connection with a bona fide offering of goods or services; ii) being commonly known by the domain name; and iii) making legitimate noncommercial or fair use of the domain name.

Based on the evidence and the undisputed submissions of Complainant, the Panel concludes that Respondent has not received Complainant’s consent to use the NEXUS AUTO trademark as part of the Disputed Domain Name, nor that it has otherwise been authorized to use the NEXUS AUTO trademark.

Respondent has not provided evidence, nor is there any indication in the record of this case that Respondent is commonly known by the Disputed Domain Name.

Respondent did not demonstrate any use or demonstrable preparation to use the Disputed Domain Name in connection with a bona fide offering of goods or services.

Furthermore, the addition of the letter “s” in the Disputed Domain Name is demonstrative of Respondent’s lack of rights or legitimate interests. Such addition illustrates Respondent’s intent to mislead unsuspecting Internet users, unaware of the addition in the Disputed Domain Name and expecting to find Complainant.

Finally, in the circumstances of this case, the Panel finds that a lack of rights to or legitimate interests in the Disputed Domain Name on the part of Respondent is further supported by the fact that no formal response was filed by Respondent, other than an email in which Respondent stated that if Complainant needed the Disputed Domain Name “or whatever” to just let Respondent know and Respondent “will make it right.”

The Panel concludes that Complainant has met the second requirement of article 2.1(b) of the Regulations.

C. Registered or Used in Bad Faith

In accordance with article 3.2 of the Regulations, Complainant has to show that the Disputed Domain Name was registered or is being used in bad faith. Several circumstances put forward by Complainant make that the Panel finds that this is so.

When Respondent registered the Disputed Domain Name, the NEXUS AUTO trademark had already been registered and was being used by Complainant for its products and services. Given the way the NEXUS AUTO trademark is prominently used on the website, the Panel finds that, at the time of registration of the Disputed Domain Name, Respondent knew that this use would be confusingly similar to this trademark.

The Panel therefore concludes that Respondent has intentionally attempted to attract Internet users, for commercial gain, to the Website by creating a likelihood of confusion with Complainant’s NEXUS AUTO trademark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website.

On this Website it is not clear which person is operating the Website, as different mentions to “NEXUS AUTO’S”, “NEXUS AUTOMOTIVE”, and “Climax Design” appear throughout the website. Therefore, the Panel must assume that Respondent deliberately chose to use the NEXUS AUTO trademark as the main part of the Disputed Domain Name, as well as numerous mentions to “NEXUS AUTO’S” or “NEXUS AUTOMOTIVE” throughout the website, to benefit from Complainant’s trademark and goodwill in order to confuse Internet users as to the source or sponsorship of the Disputed Domain Name as well as the corresponding Website. This cannot be considered as a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the Disputed Domain Name.

Respondent’s bad faith in the registration and use of the Disputed Domain Name is further confirmed by the fact that the Disputed Domain Name is identical to Complainant’s NEXUS AUTO trademark, only with the addition of the letter “s”, and that on the Website the Respondent refers to itself as “NEXUS AUTOMOTIVE” which is the name under which Complainant operates and it is part of its domain name <nexusautomotiveinternational.eu>.

The Panel finds that the lack of any disclaimer on the website mentioning that the webpage and the entity referenced therein have no affiliation with Complainant, further confirms that Respondent clearly registered and uses the Disputed Domain Name to mislead Internet users and derive a financial benefit. Such use of the Disputed Domain Name can only amount to an act of bad faith.

The Panel concludes that the requirement of article 2.1(c) of the Regulations has also been met.

7. Decision

For all the foregoing reasons, in accordance with articles 1 and 14 of the Regulations, the Panel orders that the Disputed Domain Name <nexusautos.nl> be transferred to Complainant.

/Moira Truijens/

Moira Truijens

Panelist

Date: May 7, 2024