

ADMINISTRATIVE PANEL DECISION

Natixis v. Privacy service provided by Withheld for Privacy ehf / unxchange international, web developer

Case No. D2022-2732

1. The Parties

Complainant is Natixis, France, represented by Inlex IP Expertise, France.

Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / unxchange international, web developer, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <natixis-market.online> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 26, 2022. On July 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on August 2, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on August 3, 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 Respondent of the Complaint, and the proceedings commenced on August 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 30, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 5, 2022.

The Center appointed Bradley A. Slutsky as the sole panelist in this matter on September 13, 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

Complainant is a French multinational financial services firm specializing in asset and wealth management, corporate and investment banking, insurance, and payments. Complainant has several trademarks for the term NATIXIS, including French trademark registration number 3416315, registered on March 14, 2006, European Union trademark registration number 005129176, filed on June 12, 2006 and registered on June 21, 2007, and International trademark registration number 1071008, registered on April 21, 2010. Complainant also is the registrant of <natixis.com>, created on February 3, 2005, and <natixis.fr>, created on October 20, 2006. The disputed domain name was registered on July 8, 2022. The disputed domain name has in the past led to a website bearing Complainant's logo and focusing on various financial investments and related activities.

5. Parties' Contentions

A. Complainant

Complainant notes that the disputed domain name is composed of Complainant's NATIXIS trademark, followed by a hyphen and the word "market". Complainant asserts that "the term NATIXIS has no meaning and is highly distinctive", while "the word ['market'] is directly descriptive of the activity of the Complainant". Complainant asserts that the addition of the generic Top-Level Domain (gTLD) ".online" does not prevent a finding of confusing similarity, and that the disputed domain name is confusingly similar to Complainant's NATIXIS mark. Complainant asserts that Respondent used a privacy service "in order to hide its identity", that Respondent does not have any trademark rights in the term NATIXIS (or any other trademark), that there is no legal or business relationship between Complainant and Respondent, and that Complainant has neither authorized nor licensed Respondent to use Complainant's trademarks in any way. Complainant also notes that a Google search for "unxchange international natixis" does not lead to any results about Respondent, but rather leads to results concerning Complainant's mark. Complainant thus asserts that Respondent is not commonly known as "Natixis", is not engaged in any legitimate noncommercial or fair use of the disputed domain name, and is not engaged any use of the disputed domain name in connection with a *bona fide* offering of goods or services. Complainant also asserts that the disputed domain name previously resolved to a website that contained Complainant's NATIXIS trademark and logo, that the website purported to offer investment services, and that the website either was counterfeit/intended to mislead, or else was used for phishing. Complainant notes that it took steps to have Respondent's website taken down and that the takedown request was granted promptly. Complainant also asserts that the unauthorized use of its trademark in the disputed domain name cannot constitute a fair use in these circumstances, and thus that Respondent has no rights or legitimate interests in respect of the disputed domain name. Complainant also asserts that the disputed domain name was registered to impersonate Complainant and to attract Internet users to Respondent's website – confusing them into believing that Respondent's website was associated with Complainant. Complainant asserts that its trademark is well known in France and in several other countries, with a Google search for NATIXIS yielding approximately 5,000,000 results. Complainant notes that it has more than 16,000 employees in 36 countries, and that "Natixis is the corporate, investment and financial services arm of BPCE Group, France's second-largest banking player". Complainant also refers to a number of awards it has received as evidence of its wide recognition. Complainant also observes that the address Respondent provided to the Registrar cannot be mapped on Google Maps and therefore is not valid (and thus is evidence of bad faith). Complainant also asserts that the use of Complainant's logo on Respondent's website demonstrates Respondent's awareness of Complainant and intent to create the impression that Respondent's website was related to or authorized by Complainant, and that Respondent's website was instead used for phishing. Complainant also asserts that Respondent activated email servers for the disputed domain name, and referenced the email address "[...]@natixis-market.online" on Respondent's website – with the intent to deceive consumers in bad faith. Complainant also asserts that the

fact that its takedown notice was successful not only does not prevent a finding of bad faith “passive holding”, but also is evidence of “the misleading nature of [Respondent’s] website”. Accordingly, Complainant asserts that it is in the public interest to transfer the disputed domain name to Complainant in order to avoid misleading consumers.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Pursuant to paragraph 15(a) of the Rules, a panel in UDRP proceedings “shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Under paragraph 4(a) of the Policy, Complainant must prove the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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

Under paragraph 4(a)(i) of the Policy, Complainant must show that the disputed domain name is “identical or confusingly similar to a trademark or service mark in which the complainant has rights”.

Complainant’s trademark registrations demonstrate that Complainant has rights in the NATIXIS mark.

The disputed domain name contains the NATIXIS mark, followed by a hyphen, followed by the word “market”, followed by the gTLD “.online”. Generally, “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”. WIPO Overview of Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7. The addition of “-market” does not prevent the disputed domain name from being confusingly similar to Complainant’s NATIXIS mark. [WIPO Overview 3.0](#), section 1.8 (“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 applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”. [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a mark in which Complainant has rights, and that paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Complainant also must demonstrate that Respondent has “no rights or legitimate interests in respect of the domain name”, paragraph 4(a)(ii) of the Policy.

“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 [Respondent’s] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

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

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

(iii) [Respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue". Policy, paragraph 4(c).

There is no evidence that Respondent was making a *bona fide* use of the disputed domain name before receiving notice of this dispute, or that Respondent has been commonly known by the disputed domain name, or that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. Rather, Complainant asserts that Respondent does not have any trademark rights in the term "natixis" (or any other trademark), that there is no legal or business relationship between Complainant and Respondent, that Complainant has neither authorized nor licensed Respondent to use Complainant's trademarks in any way, that a Google search for "unxchange international natixis" does not lead to any results about Respondent but rather leads to results concerning Complainant's mark, that the disputed domain name previously resolved to a website that contained Complainant's NATIXIS trademark and logo and that engaged in phishing.

Complainant's allegations make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, which Respondent has not rebutted. See, e.g., *Virgin Enterprises Limited v. James Boisson*, WIPO Case No. [D2022-0896](#) ("The disputed domain name carries a clear risk of implied affiliation since consumers would expect to land on a website of the Complainant when typing in the Complainant's VIRGIN trademark with two dictionary terms 'business' and 'money', or the Complainant's VIRGIN MONEY trademark with the dictionary term 'business,' particularly since the Complainant also uses the VIRGIN MONEY trademarks for financial services. The risk of misleading consumers is compounded by a website at the disputed domain name that offers or purports to offer financial services. [...] Since the Respondent has no permission from the Complainant and chose not to respond, his use of the disputed domain name is deemed to be without rights or legitimate interests."); *Diamond Hill Investment Group, Inc. v. Richard Stroud*, WIPO Case No. [D2016-0510](#) ("The Panel finds that the use of the Domain Name to divert Internet traffic to a scam or a phishing scheme is not a *bona fide* offering of goods or services."); *Cantor Fitzgerald Securities, Cantor Index Limited v. Cantor Index Limited*, WIPO Case No. [D2010-2204](#) ("Complainant asserts it has not authorized or licensed Respondent to use or register its CANTOR mark in the domain name. [...] Complainant provided evidence that Respondent has a link at the website to an application form for allegedly opening an account with Respondent, which is used to harvest the confidential personal information of unsuspecting Internet users. This fraud, called phishing, cannot constitute a *bona fide* offering of goods or services."); *Google Inc. v. Markus Weiler, Francotel Francophone Telecom*, WIPO Case No. [D2011-0921](#) ("There is no evidence in these Policy proceedings that the Complainant has authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Complainant has prior rights in the Trade Mark which precede the Respondent's registration of the disputed domain name by over ten years. There is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden of production is thus on the Respondent to rebut this presumption"); *Xuxa Promoções e Produções Artísticas Ltda v. LaPorte Holdings*, WIPO Case No. [D2005-0899](#) ("The Complainant argued that the Respondent has no rights or legitimate interests in the conflicting Domain Name since the Respondent neither has any trademark registration for XUXA or WORLDXUXA nor any authorization from the Complainant to use the trademarks. On the other hand, the Respondent failed to file a Response and therefore it did not bring to these proceedings any element to show that the Respondent has rights or legitimate interests in the disputed Domain Name. In view of the above, and in accordance with the paragraphs 15(a), 14(a) and (b) and 10(d) of the Rules, the Panel finds that the Respondent has no rights or legitimate interests in the disputed Domain Name."); [WIPO Overview 3.0](#), section 2.13.1 ("Panels have categorically held that the use of a domain

name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”).

Accordingly, the record supports a conclusion that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Complainant also bears the burden of establishing that the “domain name has been registered and is being used in bad faith”. Policy, paragraph 4(a)(iii). As set forth in the Policy, paragraph 4(b):

“[T]he following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that [Respondent has] registered or [Respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to [C]omplainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of [Respondent’s] documented out-of-pocket costs directly related to the domain name; or

(ii) [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 [Respondent has] engaged in a pattern of such conduct; or

(iii) [Respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [Respondent’s] web site or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [Respondent’s] website or location or of a product or service on [Respondent’s] website or location.”

“Given that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative, even where a complainant may not be able to demonstrate the literal or verbatim application of one of the above scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to Complainant’s trademark would also satisfy Complainant’s burden.”

[WIPO Overview 3.0](#), section 3.1.

Complainant asserts that its NATIXIS trademark is well known and that Respondent was aware of Complainant and its NATIXIS trademark at the time Respondent registered the disputed domain name, as shown by, among other things, the use of Complainant’s logo on Respondent’s website. Complainant also asserts that the disputed domain name “was registered to impersonate the Complainant and to attract Internet users to the website of the disputed domain name causing at least some visitors, to be confused into believing that the Respondent’s website legitimately reflects that of the Complainant”, and that Respondent then used the website at the disputed domain name to engage in phishing. Complainant also notes that the disputed domain name was registered using a privacy service and a false address, and that Respondent activated its email servers and set up at least one email address at the disputed domain name. Respondent has not sought to controvert these allegations.

Respondent’s former use of the disputed domain name appears to be an effort to capitalize on the goodwill associated with Complainant’s mark, in order to attract users to Respondent’s site and engage in phishing. Respondent offers no explanation for such registration and use. The evidence, uncontroverted by Respondent, also tends to indicate that Respondent registered the disputed domain name using a false address, and set up at least one email address connected to the disputed domain name that could be used

in furtherance of the alleged phishing scheme impersonating the Complainant. This satisfies the requirements of the Policy, paragraph 4(a)(iii). See, e.g., *Virgin Enterprises Limited v. James Boisson*, WIPO Case No. [D2022-0896](#) (“The Respondent’s use of the term ‘Virgin’ with the terms ‘money’ and ‘business’ on a website designed to look like a banking website, targeted notably at UK consumers, indicates that the Respondent was and is aware of the Complainant’s trademarks, and that he registered and is using the disputed domain name in bad faith because of its connection with the Complainant to create a likelihood of confusion with the Complainant’s trademarks. Further, the Panel finds that the combination of the terms ‘Virgin’ and ‘money’ in the disputed domain name for a website that purports to offer financial services in fact increases or is intended to increase this risk of confusion. The Panel is satisfied that the disputed domain name was registered and is being used in bad faith.”); *Allianz SE v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Arinze Obiakor, SystemGram Communications Limited*, WIPO Case No. [D2021-1562](#) (finding bad faith due to registration by an unaffiliated entity of a domain name that is confusingly similar to a widely-known trademark, combining the trademark with a geographic descriptor in the disputed domain name, and use of the disputed domain name in connection with phishing); *Natixis v. Wallace Moore, ML LLC*, WIPO Case No. [D2020-2454](#) (“the record also shows that an email server has been created by the Respondent. As noted above, the Panel finds that, noting the composition of the Disputed Domain Name, an email originating from an address in the form “[username]@natixis-online-ca.com” would likely be understood to have originated with the Complainant. If it is the case that the Respondent is using the Disputed Domain Name as an email address, then such use would comprise a bad-faith exploitation of the Complainant’s reputation in its well-known mark. If it is the case that the Respondent is simply passively holding the Disputed Domain Name, previous UDRP panels have ruled that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding.”); *GVC Holdings plc / ElectraWorks Limited v. Registration Private, Domains By Proxy, LLC / Adnan Atakan Alta*, WIPO Case No. [D2016-2563](#) (“the Panel notes that the Respondent used a privacy service when creating the disputed domain names. Although privacy services might be legitimate in certain circumstances, it is for the Panel difficult to see in the present case why the Respondent should need to protect its identity except to make it difficult for the Complainant to protect its trademark rights. The Panel rather believes that the choice of the disputed domain names (which fully incorporate the Complainant’s trademark), the content as well as the design of the Respondent’s corresponding websites rather indicate that the Respondent deliberately opted for a privacy shield in order to prevent an efficient enforcement of legitimate trademark rights by the Complainant.”); [WIPO Overview 3.0](#), section 3.4 (use of a domain name for phishing or identity theft may constitute bad faith); [WIPO Overview 3.0](#), section 3.6 (“Panels additionally view the provision of false contact information (or an additional privacy or proxy service) underlying a privacy or proxy service as an indication of bad faith.”).

Accordingly, the Panel finds that the record supports a conclusion that the disputed domain name has been registered and is being used in bad faith, and that paragraph 4(a)(iii) of the Policy is satisfied.

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, <natixis-market.online>, be transferred to Complainant.

/Bradley A. Slutsky/

Bradley A. Slutsky

Sole Panelist

Date: September 25, 2022