

## **ADMINISTRATIVE PANEL DECISION**

Natixis v. Domain Admin, Whois Privacy Corp.  
Case No. D2022-0181

### **1. The Parties**

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

The Respondent is Domain Admin, Whois Privacy Corp., Bahamas.

### **2. The Domain Name and Registrar**

The disputed domain name <natuxis.com> is registered with Internet Domain Service BS Corp (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 20, 2022. On January 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 22, 2022, the Registrar transmitted by email to the Center its verification response confirming that:

- (a) it is the Registrar for the disputed domain name;
- (b) the Respondent is listed as the registrant and providing the contact details; and
- (c) English is the language of the registration agreement.

The Center verified that 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 January 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 17, 2022.

The Center appointed Warwick Rothnie as the sole panelist in this matter on February 25, 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 multinational financial services firm specializing in asset and wealth management, corporate and investment banking, insurance and payments. It is part of the Groupe BPCE which, according to the Complaint, is the second largest banking group in France.

Also according to the Complaint, the Complainant has some 16,000 employees in 36 countries. It has received numerous awards and accolades. These include:

- (a) being awarded the Latin America MLA of the Year Award in July 2020;
- (b) the Euromoney Fixed Income Research Survey has ranked the Complainant No. 4 for European fixed income research;
- (c) being ranked by Dealogic the first bookrunner for syndicated real-estate finance loans in the EMEA region in 2017;
- (d) being ranked in the Thomson Reuters Analyst Awards 2017 as the leader in equity research in France;
- (e) being ranked by Thomson Global Project Finance Review in 2015 as the number one bookrunner for project finance; and
- (f) being ranked by the French Association of Financial Management in 2015 as number one for employee savings.

The Complainant has registered a number of trademarks for NATIXIS. These include:

- (1) French registered trademark No. 3416315, NATIXIS, for a wide range of goods and services in International Classes 9, 16, 35, 36 and 38 which was formally registered on March 14, 2006;
- (2) European Union Registered Trademark No. 005129176, NATIXIS, which was filed on June 12, 2006 and formally registered on June 21, 2007 for a similarly wide range of goods and services in International Classes 9, 16, 35, 36 and 38; and
- (3) International Registration No. 1071008, NATIXIS and device, which was registered on April 21, 2010 in respect of a similarly wide range of goods and services in International Classes 9, 16, 35, 36 and 38.

The International Registration designated 19 countries under the Madrid Protocol, including China and the United States of America. For example, the International Registration matured into a registered trademark in the United States, No. 4,127,350, which was formally registered on April 17, 2012.

The Panel notes the well-established reputation of the Complainant's trademark, NATIXIS, has been recognized in numerous prior decisions under the Policy. At least one learned panelist held the Complainant's trademark was famous. See *e.g. Natixis v. Wallace Moore, ML LLC*, WIPO Case No. [D2020-2454](#).

According to the Whois record the disputed domain name was registered on January 11, 2022.

The disputed domain name has not resolved to an active website.

However, MX records have been activated for the Domain Name indicating that email services may be being used in connection with the disputed domain name.

#### 5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance

with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

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

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the registered trademarks identified in section 4 above.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. *e.g.* WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top-Level Domain (gTLD) component as a functional aspect of the Domain Name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" gTLD, the disputed domain name consists of the Complainant's registered trademark with the first letter "i" replaced by the letter "u".

As the Complainant points out the letter "u" is adjacent to the letter "i" on both the QWERTY and AZERTY keyboards and so there is a very high potential for mistaken entry of the Complainant's trademark when being typed. Such substitutions have long been recognised as "typosquatting" and readily qualify as confusingly similar for the purposes of the Policy. See *e.g.* [WIPO Overview 3.0](#), section 1.9.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

## B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the 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) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the 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.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived.

So far as the Complainant's searches of the Global Trademark Database disclose, the Respondent does not hold any registered trademarks for "Natuxis" or "Natixis".

So far as the record in this proceeding shows, neither "natuxis" nor "natixis" are common words with dictionary meanings. On the contrary, "Natixis" appears to be an invented word which has significance only as the Complainant's trademark.

The Respondent registered the disputed domain name well after the Complainant registered its trademark and also well after the Complainant began using its trademark.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

### C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see *e.g. Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

As already mentioned, “Natixis” and “Natuxis” appear to be invented words. “Natixis” in particular has significance on the record in this proceeding only because it was coined by the Complainant which has been using it extensively. It also appears that “Natixis” has a very well-established reputation in the financial services industry in many parts of the world. The invented and unusual nature of “Natixis” and the very close resemblance of “Natuxis” to “Natixis”, where “Natuxis” does not appear to have any meaning or reference anything else, in these circumstances raises a strong inference that the Respondent adopted “Natuxis” for the disputed domain name with knowledge the Complainant’s trademark and because of its resemblance to the Complainant’s trademark.

The disputed domain name does not resolve to an active website. It appears from the activation of the MX records, however, that the Respondent may be using the disputed domain name to support email accounts.

There is of course no obligation to use a domain name in connection with a website although that is one very common way that Domain Names are used today. Use only in connection with an email service could certainly qualify as use in good faith for the purposes of the Policy where that use is without an intent of taking unfair advantage of the similarity of a domain name with the trademark of a third party.

However, in this case the unusual nature of the expression “Natixis” and the length and extent (both in terms of geographical spread and the range of goods and services) of use of its trademark by the Complainant suggests it is more probable than not that the disputed domain name was registered due to its similarity with the Complainant’s trademarks. In that connection, as already noted, the Respondent has not denied the Complainant’s allegations or otherwise sought to explain the adoption of the disputed domain name.

Moreover, bearing in mind the close resemblance of the disputed domain name to the Complainant’s trademark, it is likely that the general public receiving an email based on the disputed domain name as its address would mistakenly think it came from the Complainant, especially if the email was unsolicited.

Further, the Complainant contends this conduct indicates it is likely that the Respondent has registered and is using the disputed domain names in connection with some sort of phishing or other scam. See *e.g. MIROVA v. Redacted for Privacy / Tod Francis, Francis Trucking Inc*, WIPO Case No. [D2020-2148](#)) where the panel explained:

“In the circumstances of this case, the Panel finds that such passive holding amounts to bad faith. Moreover, since the MX records attached to the disputed domain name have been activated, along with the nature of the disputed domain name (being a typo-squatting version of the mark), the Panel deems that there is a high risk that the disputed domain name is likely to be used for phishing activities, especially considering the Complainant’s financial business.”

In these circumstances, the Panel finds that the Respondent has both registered and is using the disputed domain name in bad faith. The use of a confusingly similar disputed domain name in connection with email services where the Respondent has been found to have no rights or legitimate interests in the disputed domain name and which are likely to mislead or deceive constitutes use in bad faith under the Policy. All the more so if, as the Complainant alleges, the disputed domain name is being used in connection with some phishing or scam exercise.

Further, the Respondent has been put on notice of the Complainant's allegations but has chosen not to deny them or advance any explanation or justification for its conduct.

Accordingly, the Complainant has established all three requirements under the Policy.

## **6. 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, <natuxis.com>, be transferred to the Complainant.

*/Warwick A Rothnie/*

**Warwick A Rothnie**

Sole Panelist

Date: March 14, 2022