

Dear Sirs and Madams,

I am sending this message on behalf of Dmytro Gadomsky in relation to the following.

On September, 17, 2014, the Complainant received the Respondent's response to the complaint submitted on August, 28, 2014, for consideration of the Administrative Panel. In order to clarify some issues and in response to the Respondent's arguments the Complainant would like to provide the Panel with some additional information and evidences.

The Complainant asks the Administrative Panel to consider information provided herein as additional substantiation of arguments listed in the complaint and to uphold the transfer of the domain names remedy asked for in our correspondence.

The Respondent states that the "NIX" trademark is registered in Ukraine and therefore is not protected under the laws of the United States of America. That statement is true. However, the statement does not deal with the fact that the domain names are identical or confusingly similar to the "NIX" trademark, and only confirms that the trademark is registered in the state of Complainant's geographical location and primarily business activity.

For Internet users there is obviously no difference whether a trademark is registered in the state of the domain name's registrar or somewhere else. The word "NIX" does not have any standard (generic) meaning, thus serving as the main distinctive part for both the trademark and the corporate name of the Complainant. Thus, Internet users are likely to associate the word "NIX" specifically with the Complainant rather than with something or someone else.

The Respondent states that "no reasonably prudent user of the Internet, including Ukrainian nationals seeking employment from the Complainant, would believe that the disputed domain names belong to or are sponsored by the Complainant" which is only the Respondent's statement of subjective opinion, since no evidence to support that statement was provided. In reality, English is not widely spoken among Ukrainian people, hence their understanding of the content located on websites associated with the disputed domain names may be confusing. The Respondent's statement "Complainant's company specializes in outsourced IT commerce, in which English is the foremost language of communication" is also a statement of subjective opinion, since no evidence to support that statement was provided as well. Moreover, the original website of the Complainant is provided in English- and Russian-speaking versions, which confirms that the target audience of Complainant speaks primarily these two languages, but not solely English. Therefore, the disputed domain names create a high risk that Internet users will be confusing them (or associating them) with the Complainant's trademark and corporate name.

The Respondent also states that the disputed domain names are used for "consumer criticism". However, the websites running under the disputed domain names are not even remotely made for "consumer criticism". Information on these websites is aimed solely to damage the Complainant's reputation at all costs. The website declares the words "thieves, scammers and low lives", which are of purely defamatory nature. The content of these websites also violates the presumption of innocence principle recognized in all modern jurisdictions, since, among other things, there does not exist a decision (ruling) of a court or any other authorized institution which confirms the Respondent's statements of the Complainant's involvement in criminal behavior.

Moreover, please note that the Respondent has recently modified these websites by adding and deleting some info (please find attached copies of these websites before and after changes were introduced). For example, the earlier version of the websites contained such statement as: “NIX Solutions doesn't abide by laws in their own country and are now facing jail time and fines” which is simply not true.

The Respondent states that “A direct link to the Respondent's complaint is clearly provided on the websites associated with the disputed domain names”. However, the 50+ page complaint of the Respondent was added to these websites only after the Complainant sent a complaint to the registrar and the Respondent was notified about it (which can be seen when comparing the previous and recent versions of these websites, see attached).

As the Complainant previously mentioned in its complaint, the Complainant respects Respondent’s right to criticize, which, however, does not apply to registering and using a domain name that is identical or confusingly similar to the trademark and Complainant’s corporate name.

The Respondent states that his websites display only information that is widely available. However, email, skype and ICQ personal contacts are not widely available information. Moreover, the websites are directly aimed at the collection of other private information about the Complainant’s employees.

Finally, the Respondent’s arguments regarding the existing domain names containing the “NIX” part are unrelated to the present case. Those are irrelevant facts which have no relation to the legal part of the issue in question.

We kindly ask you to consider the facts mentioned above and uphold our complaint.

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