

COMPLAINT TRANSMITTAL COVERSHEET

Attached is a Complaint that has been filed against you with the World Intellectual Property Organization (**WIPO**) Arbitration and Mediation Center (the **Center**) pursuant to the Uniform Domain Name Dispute Resolution Policy (the **Policy**) approved by the Internet Corporation for Assigned Names and Numbers (**ICANN**) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the **Rules**) approved by ICANN on October 30, 2009, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**).

The Policy is incorporated by reference into your Registration Agreement with the Registrar(s) of your domain name(s), in accordance with which you are required to submit to a mandatory administrative proceeding in the event that a third party (a **Complainant**) submits a complaint to a dispute resolution service provider, such as the Center, concerning a domain name that you have registered. You will find the name and contact details of the Complainant, as well as the domain name(s) that is/are the subject of the Complaint in the document that accompanies this Coversheet.

You have no duty to submit a Response to the Complaint until you have been formally Notified of the Complaint and Commencement of Administrative Proceedings by the Center. Once the Center has checked the Complaint to determine that it satisfies the formal requirements of the Policy, the Rules and the Supplemental Rules, it will forward an official copy of the Complaint, including annexes, to you by e-mail as well as sending you hardcopy Written Notice by post and/or facsimile, as the case may be. You will then have 20 calendar days from the date of Commencement within which to submit a Response to the Complaint in accordance with the Rules and Supplemental Rules to the Center and the Complainant. You may represent yourself or seek the assistance of legal counsel to represent you in the administrative proceeding.

- The **Policy** can be found at <http://www.icann.org/en/dndr/udrp/policy.htm>
- The **Rules** can be found at <http://www.icann.org/en/dndr/udrp/uniform-rules.htm>
- The **Supplemental Rules**, as well as other information concerning the resolution of domain name disputes can be found at <http://www.wipo.int/amc/en/domains/supplemental/eudrp/>
- A **model Response** can be found at <http://www.wipo.int/amc/en/domains/respondent/index.html>

Alternatively, you may contact the Center to obtain any of the above documents. The Center can be contacted in Geneva, Switzerland by telephone at +41 22 338 8247, by fax at +41 22 740 3700 or by e-mail at domain.disputes@wipo.int.

You are kindly requested to contact the Center to provide an alternate e-mail address to which you would like (a) the Complaint, including Annexes and (b) other communications in the administrative proceeding to be sent.

A copy of this Complaint has also been sent to the Registrar(s) with which the domain name(s) that is/are the subject of the Complaint is/are registered.

By submitting this Complaint to the Center the Complainant hereby agrees to abide and be bound by the provisions of the Policy, Rules and Supplemental Rules.

Before the:

**WORLD INTELLECTUAL PROPERTY ORGANIZATION
ARBITRATION AND MEDIATION CENTER**

“NIX SOLUTIONS LTD” LIMITED
LIABILITY COMPANY
181 GAGARINA AVE., OFFICE 401
KHARKIV, UKRAINE, 61105

(Complainant)

-v-

Redacted

(Respondent)

Disputed Domain Name(s):

NIXSOLUTIONSSUCKS.COM

NIXSOLUTIONS-SUCKS.COM

COMPLAINT

(Rules, Paragraph 3(b); Supplemental Rules, Paragraphs 4(a), 12(a), Annex E)

I. Introduction

[1.] This Complaint is hereby submitted for decision in accordance with the Uniform Domain Name Dispute Resolution Policy (the **Policy**), approved by the Internet Corporation for Assigned Names and Numbers (**ICANN**) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the **Rules**), approved by ICANN on October 30, 2009, and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the **Supplemental Rules**).

II. The Parties

A. The Complainant

(Rules, Paragraphs 3(b)(ii) and (iii))

[2.] The Complainant in this administrative proceeding is “NIX SOLUTIONS LTD” LIMITED LIABILITY COMPANY.

[3.] The Complainant’s contact details are:

Address: 181 Gagarina Ave., Office 401, Kharkiv, Ukraine, 61105
Telephone: + 38 057 784 06 00
Fax: + 38 057 784 06 16
E-mail: support@nixsolutions.com

[4.] The Complainant’s authorized representatives in this administrative proceeding are:

- 1) “JUSCUTUM” Attorneys Association, registered under the laws of Ukraine under Unified state corporate registry No. 38688779, legal address: 32-B Turgenevska Str., Kyiv, Ukraine, 01054, mailing (correspondence) address: 20 Esplanadna Str., Office 1006, Kyiv, Ukraine, 02023, tel.: +38 044 223 38 47;
- 2) Dmytro Gadomsky, attorney-at-law, resident at the address: 55 Glushkova Str., Apt. 88, Kiyv, Ukraine, passport ME 667723 issued on 11 August 2005 by the Golosiyisky district department of the Main department of the Ministry of Internal Affairs of Ukraine in Kyiv, individual tax number 3021716536;
- 3) Mykhailo Pergamenshchik, attorney-at-law, registered at the address: 5-A Avtozavodska Str., Apt. 116, Kyiv, Ukraine, passport ME 190563 issued by Obolonskiy district department of the Main department of the Ministry of Internal Affairs of Ukraine in Kyiv, individual tax number 3171912193.

All three representatives are authorized to act on behalf of the Complainant on the basis of the Power of Attorney as of 11 March 2014 (provided as Annex 1).

[5.] The Complainant's preferred method of communications directed to the Complainant in this administrative proceeding is:

Electronic-only material

Method: e-mail
Address: Dmytro.Gadomsky@juscutum.com
Contact: Dmytro Gadomsky

Material including hardcopy (where applicable)

Method: post/courier
"Juscutum" Attorney Association
Address: 20 Esplanadna Str., Office 1006
Kyiv, Ukraine, 02023
Fax: +38 044 223 38 47
Contact: Dmytro Gadomsky

B. The Respondent

(Rules, Paragraph 3(b)(v))

[6.] According to information from the publicly available online service WHOIS the identity of the holder of the disputed domain names is indicated as "WHOISGUARD PROTECTED". Copies of corresponding printouts are provided as Annex 2 and Annex 3. However according to a letter as of 20 May 2014 from Rome & Associates (provided as Annex 4), who serve as counsel to Namecheap, Inc. (the reseller of the disputed domain names), the registrant of both disputed domain names, thus the Respondent in this administrative proceeding, is the following person:

Redacted

[7.] All information known to the Complainant regarding how to contact the Respondent is as follows:

1) According to WHOIS:

Registrant Name: WHOISGUARD PROTECTED

Registrant Organization: WHOISGUARD, INC.

Registrant Street: P.O. BOX 0823-03411

Registrant City: PANAMA

Registrant State/Province: PANAMA

Registrant Postal Code: NA

Registrant Country: PA

Registrant Phone: +507.8365503

Registrant Fax: +51.17057182

Registrant Email:

- 14405AC9D9A9445A8A7E26000D69455.PROTECT@WHOISGUARD.COM for NIXSOLUTIONS-SUCKS.COM,
- 799521FB814645CBA559753B6727579D.PROTECT@WHOISGUARD.COM for NIXSOLUTIONSSUCKS.COM.

2) According to Rome & Associates (on behalf of Namecheap, Inc.):

Redacted

III. The Domain Name(s) and Registrar(s)

(Rules, Paragraphs 3(b)(vi), (vii))

[8.] This dispute concerns the domain name(s) identified below:

- 1) NIXSOLUTIONSSUCKS.COM;
- 2) NIXSOLUTIONS-SUCKS.COM.

[9.] The registrar with which the domain names are registered is:

Registrar: ENOM, INC.

Registrar IANA ID: 48

Registrar Abuse Contact Email: abuse@enom.com

Registrar Abuse Contact Phone: +1.4252744500

Also, according to WHOIS the reseller for both disputed domain names is NAMECHEAP.COM.

IV. Language of Proceedings

(Rules, Paragraph 11)

The language of this administrative proceeding shall be ENGLISH.

- [10.] To the best of the Complainant's knowledge, the language of the Registration Agreement is ENGLISH, the most current version of which is available at the following URL: <https://www.namecheap.com/legal/domains/registration-agreement.aspx>, and a copy of which is provided as Annex 5 to this Complaint. The Complaint has been submitted in ENGLISH.

V. Jurisdictional Basis for the Administrative Proceeding

(Rules, Paragraphs 3(a), 3(b)(xv))

- [11.] This dispute is properly within the scope of the Policy and the Administrative Panel has jurisdiction to decide the dispute. The registration agreement, pursuant to which the domain names that are the subject of this Complaint are registered, incorporates the Policy. The Policy is incorporated by reference in Section 9 of the mentioned registration agreement. A true and correct copy of the domain name dispute policy that applies to the domain name(s) in question is provided as Annex 5 to this Complaint and can be found at <https://www.namecheap.com/legal/domains/registration-agreement.aspx>.

VI. Factual and Legal Grounds

(Policy, Paragraphs 4(a), (b), (c); Rules, Paragraph 3)

- [12.] This Complaint is based on the following grounds:
- A. **The domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;**
(Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

- The Complainant has all rights and interest in the mark for goods and services “NIX” (state registration in Ukraine under No.84541, hereinafter – the “Trademark”) under an exclusive license agreement as of 12 January 2008 (provided in Annex 6). The Trademark by itself, as well as the main element in the Complainant’s corporate name “Nix Solutions Ltd” and corporate domain name “www.nixsolutions.com”, is used by and is associated with the Complainant for, among other things, providing custom software development, technical support and maintenance, staff leasing, IT consulting etc. A printout from the official state trademark database of Ukraine confirming the effectiveness of the abovementioned Trademark is provided in Annex 7 herein.
- Both disputed domain names contain as their main element a literal representation of the Trademark (“NIX”), also being the main element in the Complainant’s corporate name “NIX Solutions” and corporate domain name “www.nixsolutions.com”. The literal representation of the Trademark (“NIX”) is neither a commonly used or recognized word, phrase, term or abbreviation, which excludes the possibility that third parties will not associate the disputed domain names and corresponding websites with the Trademark, the Complainant’s corporate name, corporate domain name and provided goods and services.
- Respondent’s registration and use of the disputed domain names violates the Complainant’s respective rights to the Trademark and Complainant’s corporate name, both recognized and protected under the laws of Ukraine and the State of California, USA.
- The majority of the people working for Complainant and looking for Complainant’s vacancies are Ukrainian nationals who are not fluent in English. There is also a significant number of Complainant’s potential and existing clients who operate their business in Ukraine and, thus, are not fluent in English as well. They do not therefore appreciate the significance of the ‘-sucks’ suffix in the disputed domain names. This fact increases the chances that third parties from certain geographical regions will be under the false impression that the disputed domain names belong to the Complainant or are otherwise officially connected to or approved by the Complainant, thus

significantly and permanently damaging the reputation and sales of the Complainant. Due to that fact there is a confusion among Internet users who are aware of Complainant's existence and who visit websites associated with the disputed domain names, Complainant hereby claims that actions of Respondent are in breach of Paragraph 4(a)(i) of the Policy.

B. The Respondent has no rights or legitimate interests in respect of the domain name(s);

(Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2))

In accordance with Rules, Paragraph 3(b)(ix)(2) Respondent does not have any rights or legitimate interests in respect of the disputed domain names that are the subject of the Complaint. Respondent is not currently and has not in the past been using the disputed domain names in connection with any of his legitimate business or legitimate commercial gain. The only purpose to which the disputed domain names are put by the Respondent from their registration date is for spreading defamatory statements and confidential information about the Complainant and its employees, as is obvious from the content of the corresponding websites, which is described in more detail below.

Complainant has a good faith belief that such Respondent's use of the Trademark and Complainant's corporate name was never authorized by the Complainant, its agent, or any law, more so when in combination with the word "sucks". The word "sucks" which is used in the disputed domain names has only one goal – to focus the attention on the Trademark and the Complainant's corporate name. Based on the content of the websites associated with the disputed domain names Respondent is obviously not making any legitimate non-commercial, commercial or fair use of the disputed domain names. 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.

At the same time, the content of the websites associated with the disputed domain names cannot be considered as fair and non-commercial criticism due to facts described below, which completely excludes any possibility that Respondent might have a right or legitimate interest in respect of the disputed domain names.

C. The domain names were registered and are being used in bad faith.

(Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3))

The disputed domain names were exclusively registered and used by the Respondent in bad faith due to the following facts.

Complainant acquired the exclusive right to use the Trademark on 12 January 2008 on the basis of a license agreement with Brahinska Yuliya Viktorivna, which remains effective till this day. At the same time according to WHOIS the disputed domain names were registered on 14 October 2013, which, therefore, happened much later than Complainant acquired the exclusive right to use the Trademark.

Respondent obtained services from Complainant in the past, which the Respondent admits numerous times on the websites associated with the disputed domain names, and, therefore, on the disputed domain names' registration date was clearly aware of the fact of Complainant's existence, the Trademark, the Complainant's corporate name. The aforesaid means that the sole aim of the disputed domain names' registration was to take advantage of the similarity and confusion between the disputed domain names and the Trademark, the Complainant's corporate name and domain name to the detriment of the Complainant.

Also, the content of the websites associated with the disputed domain names is clearly indicated the bad-faith nature of the registration and use of the disputed domain names, namely:

- 1) Respondent uses such phrases as "Scammers" together with "Thiefs, Scammers and Low Lives" which is not supported by any evidences except for bold statements of Respondent. Besides, Respondent states that Complainant is involved in developing hardcore explicit pornographic websites while this statement has also no grounds and evidences which may be identified from the websites of Respondent.
- 2) In addition Respondent offers personal (private) information of the Complainant's employees (full name, image, location, Facebook account, email, ICQ). He literally invites visitors to submit additional personal (private) information on the Complainant's employees to "mail@nixsolutionssucks.com" in exchange for compensation.

Complainant has a good faith belief that none of the Complainant's employees consented to the publication of their personal (private) information, and surely none of them consented to be publically called "Thiefs, Scammers and Low Lives!".

Also, an invitation to submit personal (private) information on third persons without those persons' permission, especially in exchange for payment, is an open instigation of illegal activity. The abovementioned is a violation of the Complainant's and his employees' respective rights to a good name (reputation) and privacy, protected both under the laws of Ukraine and the State of California, USA.

VII. Remedies Requested

(Rules, Paragraph 3(b)(x))

- [13.] In accordance with Paragraph 4(i) of the Policy, for the reasons described in Section VI above, the Complainant requests the Administrative Panel appointed in this administrative proceeding that the disputed domain names be cancelled.

VIII. Administrative Panel

(Rules, Paragraph 3(b)(iv); Supplemental Rules, Paragraph 8(a))

- [14.] The Complainant elects to have the dispute decided by a SINGLE-MEMBER Administrative Panel.

IX. Mutual Jurisdiction

(Rules, Paragraph 3(b)(xiii))

- [15.] In accordance with Paragraph 3(b)(xiii) of the Rules, the Complainant will submit, with respect to any challenges that may be made by the Respondent to a decision by the Administrative Panel to transfer or cancel the domain name(s) that is/are the subject of this Complaint, to the jurisdiction of the courts at the location of the principal office of the concerned registrar both for NIXSOLUTIONSSUCKS.COM and NIXSOLUTIONS-SUCKS.COM domain names.

X. Other Legal Proceedings

(Rules, Paragraph 3(b)(xi))

[16.] There are no other legal proceedings that have been commenced or terminated in connection with or relating to the domain names that are subject of the Complaint.

XI. Communications

(Rules, Paragraphs 2(b), 3(b)(xii); Supplemental Rules, Paragraphs 3, 4, 12)

[17.] A copy of this Complaint, together with the cover sheet as prescribed by the Supplemental Rules, has been according to paragraph 2 (a) (A) of the Rules sent or transmitted to the Respondent on 28 August 2014 by:

1) e-mail to following “postmaster” email addresses:

- postmaster@nixsolutionssucks.com;
- postmaster@nixsolutions-sucks.com;

2) e-mail to the following known email addresses of the Respondent:

- footguru2010@gmail.com;
- mail@nixsolutionssucks.com.

[18.] A copy of this Complaint has been sent or transmitted to the concerned registrar and reseller on 28 August 2014 by email to legal@enom.com and support@namecheap.com respectively.

[19.] This Complaint is submitted to the Center in electronic form, including annexes, in the appropriate format.

XII. Payment

(Rules, Paragraph 19; Supplemental Rules Paragraph 10, Annex D)

[20.] As required by the Rules and Supplemental Rules, payment in the amount of USD 1500 will be made as soon as Complainant receives confirmation that this Complaint has been received by the Center.

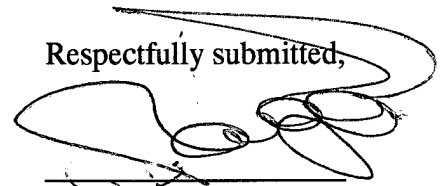
XIII. Certification

(Rules, Paragraph 3(b)(xiv); Supplemental Rules, Paragraph 14)

[21.] The Complainant agrees that its claims and remedies concerning the registration of the domain name(s), the dispute, or the dispute's resolution shall be solely against the domain name holder and waives all such claims and remedies against (a) the WIPO Arbitration and Mediation Center and Panelists, except in the case of deliberate wrongdoing, (b) the concerned registrar(s), (c) the registry administrator, (d) the Internet Corporation for Assigned Names and Numbers, as well as their directors, officers, employees, and agents.

[22.] The Complainant certifies that the information contained in this Complaint is to the best of the Complainant's knowledge complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dmytro Gadomsky', written over a horizontal line.

Dmytro Gadomsky

Date: 28 August 2014

XIV. List of Annexes

(Rules, Paragraph 3(b)(xv); Supplemental Rules, Paragraphs 4(a), 12(a), Annex E)

Schedule of Annexes	
Annex 1	Power of Attorneys issued by Complainant as of 11 March 2014 authorizing “Juscutum” Attorneys Association, Mr. Dmytro Gadomsky and Mr. Mykhailo Pergamenshchuk to act as its representatives.
Annex 2	Print-out from online service WHOIS in respect of domain name “NIXSOLUTIONSSUCKS.COM”.
Annex 3	Print-out from online service WHOIS in respect of domain name “NIXSOLUTIONS-SUCKS.COM”.
Annex 4	Letter from Rome & Associates (who serves as counsel to Namecheap as of 20 May 2014) to Mr. Dmytro Gadomsky in respect of the disputed domain names.
Annex 5	Namecheap, Inc. Registration Agreement.
Annex 6	Exclusive license agreement between owner of the trade mark “NIX” and Complainant as of 12 January 2008.
Annex 7	Printout from official Ukrainian database “Marks for Goods and Services Registered in Ukraine” in respect of trade mark “NIX”.