

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Domain Administrator, See PrivacyGuardian.org /
ConstanceJBrody, Constance Brody
Case No. D2022-0605

1. The Parties

The Complainant is Meta Platforms, Inc., United States of America (“United States”), represented by Tucker Ellis, LLP, United States.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States / ConstanceJBrody, Constance Brody, United States.

2. The Domain Name and Registrar

The disputed domain name <facebook-download.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2022. On February 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 22, 2022, 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 the Complainant on February 28, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 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 the Respondent of the Complaint, and the proceedings commenced on March 10, 2022. In accordance with the Rules,

paragraph 5, the due date for Response was March 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 31, 2022.

The Center appointed Joseph Simone as the sole panelist in this matter on April 8, 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, Meta Platforms, Inc., is a leading company in the social media industries.

The Complainant has an extensive global portfolio of trade marks containing the term "facebook", including the following:

- United States Trade Mark Registration for FACEBOOK No. 3881770 in Classes 35, 38, 41, 42, and 45, registered on November 23, 2010;
- European Union Trade Mark Registration for FACEBOOK No. 009151192 in Classes 9, 35, 36, 38, 41, 42, and 45, registered on December 17, 2010;
- International Trade Mark Registration for FACEBOOK No. 1075094 in Classes 9, 35, 36, 38, 41, 42, and 45, registered on July 16, 2010.

The Complainant owns the domain name <facebook.com>.

The disputed domain name was registered on June 20, 2021.

According to screenshots provided by the Complainant, at the time of filing the Complaint, the disputed domain name dynamically resolved to various websites including a website at "https://tw.appledaily.com", a website with a warning message of deceptive site ahead, and a website inviting users to download a software. At the time of this Decision, the disputed domain name continues to resolve to "https://tw.appledaily.com".

5. Parties' Contentions

A. Complainant

The Complainant asserts that it has prior rights in the FACEBOOK trade marks and that it is a leading player in its fields of business.

The Complainant further asserts that the disputed domain name is identical or confusingly similar to the Complainant's FACEBOOK trade marks, and the addition of the term "download" does not affect the analysis as to whether the disputed domain name is identical or confusingly similar to the Complainant's trade marks.

The Complainant also asserts that it has not authorized the Respondent to use the FACEBOOK mark and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

The Complainant further asserts that there is no evidence suggesting that the Respondent has any connection to the FACEBOOK mark in any way, and that there is no plausible good faith reason for the Respondent to have registered the disputed domain name, especially after considering the relevant circumstances. The Complainant therefore concludes that the registration and any use of the disputed domain name whatsoever must be in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel acknowledges that the Complainant has established rights in the FACEBOOK trade marks in many territories around the world.

Disregarding the generic Top-Level Domain ("gTLD") ".com", the disputed domain name incorporates the Complainant's trade mark FACEBOOK in its entirety. The Panel further notes that the addition of a hyphen and the English word "download" does not prevent a finding of confusing similarity.

The Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the FACEBOOK trade marks and in demonstrating that the disputed domain name is identical or confusingly similar to its marks.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent bears the burden of producing evidence in support of its rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 2.1.

The Complainant asserts that it has not authorized the Respondent to use its trade marks and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services.

Thus, the Complainant has established its *prima facie* case with satisfactory evidence.

The Respondent did not file a response and has therefore failed to assert factors or put forth evidence to establish that it enjoys rights or legitimate interests in the disputed domain name. As such, the Panel concludes that the Respondent has failed to rebut the Complainant's *prima facie* showing of the Respondent's lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Prior to the notice of the dispute, the Respondent did not provide any evidence of any use of the disputed domain name or a trade mark corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Further, according to the evidence provided by the Complainant, the disputed domain name dynamically resolved to various websites at the time of filing of the Complaint.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances in which bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trade mark of another party. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

For the reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

When the Respondent registered the disputed domain name, the FACEBOOK trade marks were already widely known and directly associated with the Complainant's activities. Panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Given the extensive prior use and fame of the Complainant's marks, in the Panel's view, the Respondent should have been aware of the Complainant's marks when registering the disputed domain name.

The Respondent has provided no evidence to justify its choice of the term "facebook" in the disputed domain name. In light of the foregoing, it would be unreasonable to conclude that the Respondent – at the time of the registration of the disputed domain name – was unaware of the Complainant's trade mark, or that the Respondent's adoption of the distinctive trade mark FACEBOOK was a mere coincidence.

The Complainant's registered trade mark rights in FACEBOOK for its signature products and services predate the registration date of the disputed domain name by about two decades. A simple online search (e.g., via Google) for the term "facebook" would have revealed that it is a world-renowned brand.

The Panel is therefore of the view that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark rights, a finding which is reinforced considering the addition of the term "download" that illustrates the intention of the Respondent to target the Complainant.

The Respondent has used the disputed domain name for dynamic redirections including a website with a warning message of deceptive site ahead, a website at "https://tw.appliedaily.com", and a website inviting users to download a software. Therefore, the Respondent is intentionally attempt to attract Internet users to its website or other online locations, by creating a likelihood of confusion with the Complainant's mark. Such use may also disrupt the Complainant's business.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.

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 <facebook-download.com> be transferred to the Complainant.

/Joseph Simone/

Joseph Simone

Sole Panelist

Date: April 21, 2022