

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc. and Meta Platforms Technologies, LLC v. 赵先生 (zhao xian sheng), 长沙浮游星辰软件科技有限公司 (chang sha fu you xing chen ruan jian ke ji you xian gong si)  
Case No. D2022-2911

### **1. The Parties**

The Complainants are Meta Platforms, Inc. (the “First Complainant”) and Meta Platforms Technologies, LLC (the “Second Complainant”), both of the United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is 赵先生 (zhao xian sheng), 长沙浮游星辰软件科技有限公司 (chang sha fu you xing chen ruan jian ke ji you xian gong si), China.

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

The disputed domain name <facebookquest.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 7, 2022. On the following day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 10, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent and contact information in the Complaint. On the same day, the Center received an informal email communication in English from the Respondent. The Center sent an email communication to the Complainants on August 11, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Respondent filed an informal Response in Chinese and partly in English on August 13, 2022. The Complainants filed an amended Complaint in English on August 15, 2022.

On August 11, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On August 11, 2022, the Complainants confirmed their request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on August 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 6, 2022. The Respondent did not submit any further response. The Center notified the commencement of the panel appointment process to the Parties on September 7, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on September 22, 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 First Complainant was founded in 2004 as “Facebook, Inc.” and adopted its present name on October 28, 2021. It operates the Facebook social networking service. According to Alexa data, its main Facebook website at “www.facebook.com” is the third most-visited website in the world. Facebook is not freely available in mainland China but the evidence shows that it has received considerable press coverage there. The First Complainant owns multiple trademark registrations, including Chinese trademark registration number 5251162 for FACEBOOK, registered on September 21, 2009, and specifying services in class 38. That trademark registration remains current.

The Second Complainant, originally named “Oculus VR LLC”, was acquired by the First Complainant in 2014, changed its name to “Facebook Technologies, LLC” in 2018, and adopted its present name on March 18, 2022. It released a virtual reality headset named “Oculus Quest” on May 21, 2019 and now markets this product as “Meta Quest”. The Second Complainant owns multiple trademark registrations including Chinese trademark registrations numbers 33818192 and 33818197 for OCULUS QUEST and QUEST, respectively, both registered on June 14, 2019, and specifying services in classes 38 and 45, respectively. Those trademark registrations remain current.

The Respondent is an individual and a Chinese company whose names may be translated as “Mr. Zhao” and “Changsha Fuyouxingchen Software Technology Co., Ltd”, respectively.

The disputed domain name was created on November 28, 2019. It does not resolve to any active website. According to evidence provided by the Complainants, as at May 10, 2022 it was advertised for sale as a premium domain name on a broker’s website for the price of EUR 131,244.44.

The Complainants sent a cease-and-desist letter dated June 14, 2022 to the Registrar to be forwarded to the Respondent.

#### **5. Parties’ Contentions**

##### **A. Complainants**

The disputed domain name is confusingly similar to the FACEBOOK, OCULUS QUEST, and QUEST trademarks.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not a licensee of the Complainants or affiliated with the Complainants in any way. The

disputed domain name is passively held and was offered for sale in a classic example of opportunistic cybersquatting.

The disputed domain name was registered and is being used in bad faith. It is inconceivable that the Respondent was unaware of the Complainants when it registered the disputed domain name in 2019, 10 years after the registration of the FACEBOOK mark in China and six months after the launch of Oculus Quest. The Complainants are well known internationally, including in China. The Complainants cannot conceive of any good faith use to which the Respondent could put the disputed domain name.

## **B. Respondent**

The disputed domain name bears no resemblance to the Complainants' names. First of all, it has no resemblance to the Complainants' company name "Meta Platforms". As for the Facebook name formerly used by the Complainants, there are some similarities but the disputed domain name is composed of "Face" followed by "Bookquest", which refers to face (recognition) book exploration, because the Respondent's company will in future use artificial intelligence for business development.

The Respondent provides proof of its registration of the disputed domain name.

The Respondent submits that the disputed domain name was not registered in [bad] faith.

## **6. Discussion and Findings**

### **6.1 Procedural Issues**

#### **A. Consolidation: Multiple Complainants**

The Complaint was filed by two complainants against a single respondent. Both Complainants form part of the same corporate group and each of them owns relevant trademark registrations, one for FACEBOOK and the other for QUEST. The Panel finds that the Complainants have a common grievance against the disputed domain name registrant and that it is efficient to permit the consolidation of their complaints. Therefore, the Complainants are referred to below separately and collectively as "the Complainant" except as otherwise indicated.

#### **B. Language of the Proceeding**

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the Respondent communicated with the Center in English, which constitutes clear evidence of its ability to understand English, and it would be disproportionate to require the Complainant to present the Complaint in Chinese as this would result in additional expenses and unnecessary delay.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that in this proceeding the Complaint and the amended Complaint were filed in English whereas the informal Response is mostly in Chinese and only partly in English. However, the Respondent sent its initial communication to the Center in English and submits that it chose the disputed domain name based on the meaning of its constituent English words, which indicates that it is able to understand English. Despite the Center having sent an email regarding the language of the proceeding in both Chinese and English, the Respondent did not comment on that issue but, rather, took the opportunity to present its views in its informal Response. Therefore, the Panel considers that requiring either Party to translate its submission would create an undue burden and delay, whereas accepting them in their original language as filed will not cause unfairness to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English but that the Panel will accept the informal Response in Chinese, without translation.

## **6.2 Substantive Issues**

Paragraph 4(a) of the Policy provides that a complainant must prove the following elements:

- (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**

Based on the evidence presented, the Panel finds that the First Complainant has rights in the FACEBOOK mark and the Second Complainant has rights in the QUEST mark, among others.

The disputed domain name wholly incorporates both the FACEBOOK and QUEST marks. The fact that it contains two trademarks, rather than one, does not avoid a finding of confusing similarity because both trademarks are clearly recognizable within the disputed domain name. See generally WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8; and *Konica Corporation, Minolta Kabushiki Kaisha aka Minolta Co., Ltd. v. IC*, WIPO Case No. [D2003-0112](#).

The only additional element in the disputed domain name is a generic Top-Level Domain ("gTLD") extension, ".com". As a standard requirement of domain name registration, the Panel may disregard that element in the comparison between the disputed domain name and the Complainant's marks. See [WIPO Overview 3.0](#), section 1.11.

The Respondent submits that the disputed domain name was intended as a combination of the word "face" and "bookquest". However, regardless of the Respondent's alleged intention, it suffices for the purposes of the first element of paragraph 4(a) of the Policy to note that, to an Internet user, the marks FACEBOOK and QUEST remain clearly recognizable within the disputed domain name.

Therefore, the Panel finds that the disputed domain name is confusingly similar to trademarks in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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.

As regards the first and third circumstances set out above, the disputed domain name does not resolve to any active website but it was formerly offered for sale on a broker's website. The Complainant submits that the Respondent is not its licensee or affiliated with it in any way. The Panel finds that these circumstances do not constitute use of the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name for the purposes of the second element of paragraph 4(a) of the Policy.

As regards the second circumstance, the Respondent's names are 赵先生 (zhao xian sheng), meaning "Mr. Zhao", and 长沙浮游星辰软件科技有限公司 (chang sha fu you xing chen ruan jian ke ji you xian gong si), which may be translated as "Changsha Fuyouxingchen Software Technology Co., Ltd", not the disputed domain name. Nothing on the record indicates that the Respondent, either as an individual, business, or other organization has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Turning to the Respondent's arguments, it provides evidence that it is indeed the registrant of the disputed domain name. However, the Panel recalls that the mere registration of a domain name does not create rights or legitimate interests for the purposes of the second element of paragraph 4(a) of the Policy, otherwise no complaint could ever succeed, which would be an illogical result. See, for example, *Pharmacia & Upjohn Company v. Moreonline*, WIPO Case No. [D2000-0134](#). Further, while the Respondent claims that the disputed domain name is intended for use in connection with artificial intelligence it provides no evidence at all of any preparations to use the disputed domain name in this way. Accordingly, the Panel finds that the Respondent has failed to rebut the Complainant's *prima facie* case.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, but these circumstances are not exhaustive. The first circumstance is as follows:

- (i) circumstances indicating that [the respondent has] registered or [the respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark 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 [disputed] domain name.

As regards registration, the disputed domain name was registered in 2019, after the registrations of the Complainant's FACEBOOK and QUEST marks, including in China, where the Respondent is located. Even though the Facebook social networking service is not available without a virtual private network in mainland China, the evidence shows that it has appeared in mainland Chinese press articles. Moreover, FACEBOOK

and QUEST are both marks owned by companies within the Complainant's Facebook group (as it was then known), so that the combination of them in the disputed domain name is not random but, rather, indicates an awareness of the Complainant's group and its various product offerings. This inference is reinforced by the fact that the disputed domain name was registered only a matter of months after the release of Oculus Quest (as it was then known) by the Second Complainant. The Respondent submits that it chose the disputed domain name to refer to "face (recognition)" and "bookquest" but the Panel finds this reading contrived, unsubstantiated by evidence, and incomplete (as the disputed domain name lacks the element "recognition"). In view of these circumstances, the Panel finds that the Respondent targeted the Complainant's FACEBOOK and QUEST marks when it registered the disputed domain name.

As regards use, the disputed domain name was previously advertised for sale on a broker's website for the price of EUR 131,244.44. In the Panel's view, the premium asking price is clearly in excess of the out-of-pocket costs directly related to the disputed domain name, although no such costs are documented. It may be assumed that the broker, who is a well-known Registrar, acted on instructions from the Respondent as the domain name registrant. The Respondent has made no other use of the disputed domain name. Accordingly, these circumstances indicate that the Respondent has registered the disputed domain name primarily for the purpose of selling the disputed domain name registration to the Complainant or to a competitor of the Complainant for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name, within the terms of paragraph 4(b)(i) of the Policy.

Even if the offer of the disputed domain name for sale was not authorized by the Respondent, that would not alter the Panel's conclusion. Passive use of a domain name does not preclude a finding of use in bad faith. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In the present dispute, the disputed domain name combines two trademarks both owned by the Complainant, *i.e.*, FACEBOOK and QUEST. The Complainant has acquired a considerable reputation in its FACEBOOK mark, even in mainland China. The Respondent provides no plausible or substantiated explanation of any potential good-faith use of the disputed domain name. In all these circumstances, even if the Respondent has not offered the disputed domain name for sale, the Panel considers it more likely than not that the disputed domain name is being used in bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the Policy.

## 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 <facebookquest.com> be transferred to the First Complainant Meta Platforms, Inc.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: October 6, 2022