

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. MovieWorld.s.r.o.

Case No. D2022-4206

1. The Parties

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

The Respondent is MovieWorld.s.r.o., Czech Republic.

2. The Domain Name and Registrar

The disputed domain name <userfacebook.com> (the “Disputed Domain Name”) is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 7, 2022. On November 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 8, 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 (Privacy Protection) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 9, 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 November 15, 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 November 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 7, 2022. The Respondent submitted several informal email communications on November 18, 2022. Accordingly, the Center notified the Commencement of Panel Appointment on December 9, 2022. The Respondent sent an additional email communication on December 10, 2022.

The Center appointed Payne, Alistair as the sole panelist in this matter on December 23, 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 operates the Facebook social networking website and mobile application. Facebook enables its users to create their own personal profiles and connect with each other on their personal computers and mobile devices and has more than one billion daily active accounts and over two billion monthly active users from all over the world. Approximately 85 percent of the daily active Facebook users are outside the United States and Canada. Facebook's social networking services are provided in more than 70 languages. The Facebook app is also available for mobile devices, and in recent years has consistently ranked among the top "apps" in the market.

The Complainant owns numerous trade mark registrations worldwide for its marks, including United States trade mark registration 3,122,052, which was registered on July 25, 2006, and European Union trade mark registration 009151192, which was registered on December 17, 2010. The Complainant owns <facebook.com> from which it operates its main website.

The Disputed Domain Name was registered on June 1, 2022, through a privacy service by the Respondent based in Prague in the Czech Republic and it redirects to a pornographic website.

5. Parties' Contentions

A. Complainant

The Complainant submits that it owns registered rights in its FACEBOOK trade mark as set out above. It says that the Disputed Domain Name wholly incorporates its FACEBOOK mark and is therefore confusingly similar to it. The Complainant asserts that the addition of the word "user" in the Disputed Domain Name amounts to the addition of a descriptive term and does not prevent a finding of confusing similarity.

The Complainant submits that it has not licensed nor authorised Respondent to use the Complainant's FACEBOOK trade mark and neither does the Respondent have any legal relationship with the Complainant that would entitle the Respondent to use the FACEBOOK trade mark. Further, it says that neither the Whois data for the Disputed Domain Name, nor the corresponding website available at the Disputed Domain Name, supports a conclusion that the Respondent is known by the Disputed Domain Name. The Complainant notes that it monitors the use of its FACEBOOK trade mark and is not aware of the Respondent being known by the Disputed Domain Name in any other way.

The Complainant says that the Respondent has no legitimate reason for using the FACEBOOK trade mark within the Disputed Domain Name, and instead has provided evidence that the Respondent is using the Disputed Domain Name to re-direct to a website that features adult-oriented and pornographic content which it says is not a *bona fide* offering of goods or services. Further, the Disputed Domain Name has also been flagged by security vendors for malicious use according to the Complainant. In this regard, the Complainant has submitted a screen capture of a search result for the Disputed Domain Name from VirusTotal.com, a service that analyzes suspicious domains to detect malware and other breaches. The Complainant submits that none of this use amounts to legitimate noncommercial or fair use of the Disputed Domain Name.

The Complainant submits that use of the Disputed Domain Name to divert Internet users to a website featuring pornographic and adult content is conduct that fulfils the requirements of paragraph 4(b)(iv) of the Policy and is evidence of registration and use of the disputed domain name in bad faith. It also says that the use of a confusingly similar domain name that is obviously connected with a particular trade mark owner, by

someone with no connection with the trade mark owner, suggests bad faith.

Furthermore, the Complainant notes that the Disputed Domain Name was registered on June 1, 2022, many years after the FACEBOOK trade mark was first registered and became one of the most well-known brands worldwide. It suggests that the Respondent cannot claim that it was unaware of this at the time of registration.

The Complainant says that the Respondent's bad faith is further indicated by the fact that the Disputed Domain Name has been flagged as malicious by security vendors and under these circumstances, there is no conceivable use of the Disputed Domain Name by the Respondent that could be legitimate. It says that the Respondent's registration and use of the Disputed Domain Name therefore constitutes bad faith under Policy 4(a)(iii).

B. Respondent

The Respondent did not reply to the Complainant's contentions. In its email communications of November 18, 2022, the Respondent repeatedly reiterated that it had no interest in the Disputed Domain Name and had simply purchased it. The Respondent questioned why the Complainant had not purchased the Disputed Domain Name and offered to do whatever the Complainant wanted.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns registered trade mark rights in various countries for its FACEBOOK word mark including United States trade mark registration 3,122,052, which was registered on July 25, 2006, and European Union trade mark registration 009151192, which was registered on December 17, 2010.

The Disputed Domain Name wholly incorporates the Complainant's FACEBOOK trade mark and is therefore confusingly similar to it. The addition of the word "user" in the Disputed Domain Name does not prevent a finding of confusing similarity.

As a result, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's registered FACEBOOK trade mark and that the Complaint succeeds under the first element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that it has not licensed or authorised the Respondent to use the Complainant's FACEBOOK trade mark and that the Respondent has no legal relationship to the Complainant that would entitle the Respondent to use the FACEBOOK trade mark. It has also asserted that neither the Whois data for the Disputed Domain Name, nor the corresponding website available at the Disputed Domain Name, supports a conclusion that the Respondent is known by the Disputed Domain Name. The Complainant has confirmed that it monitors the use of its FACEBOOK trade mark and is not aware of the Respondent being known by the Disputed Domain Name in any other way.

The Complainant has also submitted that the Respondent has no legitimate reason for using the FACEBOOK trade mark within the Disputed Domain Name. It has provided evidence that the Respondent is in fact using the Disputed Domain Name to re-direct to a website that features adult-oriented and pornographic content which it says is not a *bona fide* offering of goods or services. The Complainant has also asserted that the Disputed Domain Name has been flagged by security vendors as being used for malicious purposes and in this regard the Complainant has submitted a screen capture of a search result for the Disputed Domain Name from VirusTotal.com, a service that analyzes suspicious domains to detect

malware and other breaches. The Complainant has also submitted that that none of this use amounts to legitimate noncommercial or fair use of the Disputed Domain Name.

The Complainant's FACEBOOK trade mark is extremely well reputed worldwide. Its use to divert to a website featuring pornographic content is not *bona fide* use and the Respondent has offered no other explanation for its registration and use of the Disputed Domain Name. The Panel notes that the Respondent's informal email communications to the Center failed to explain such use.

In these circumstances, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has failed to rebut the Complainant's case and for these reasons and for the reasons set out under Part C below, the Panel finds that the Complaint also succeeds under this element of the Policy.

C. Registered and Used in Bad Faith

The Disputed Domain Name was registered on June 1, 2022, many years after the FACEBOOK trade mark was first registered. The Panel notes that it is among the most well-known brands worldwide and is very distinctive and therefore the Panel finds that the Respondent must have been aware of the Complainant's FACEBOOK trade mark at the time of registration.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the Disputed Domain Name in bad faith where a Respondent has used the Disputed Domain Name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

The Respondent's blatant use of the Disputed Domain Name incorporating the Complainant's extremely well reputed and highly distinctive FACEBOOK trade mark to attract and confuse Internet users and to divert them to a website page at < xnxx.stream > featuring pornographic and adult content, which is obviously for the commercial benefit of the Respondent, fulfills the requirements of paragraph 4(b)(iv) of the Policy and amounts to evidence of registration and use of the Disputed Domain Name in bad faith.

That there is some evidence that the Disputed Domain Name may have been used for malicious purposes and the fact that the Respondent has attempted to mask its identity by using a privacy service, only reinforces the Panel's view of the Respondent's bad faith.

The Panel therefore finds that the Disputed Domain Name has been both registered and used in bad faith and that the Complaint also succeeds under this element 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 < userfacebook.com > be transferred to the Complainant.

/Payne, Alistair/

Payne, Alistair

Sole Panelist

Date: January 6, 2023