

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Marty Krytus, Acme Billing Co.
Case No. D2022-4374

1. The Parties

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

Respondent is Marty Krytus, Acme Billing Co., United States.

2. The Domain Names and Registrar

The disputed domain names <blissfacebook.com>, <facebookadicto.com>, <facebookappsiami.com>, <facebookclocksucker.com>, <facebookgalore.com>, <facebooklogiiin.com>, <facebookparaempresarios.com>, <facebook-skype.com>, <facebook-smiley.com>, <facebookstumbleuponfunny.com>, <facebooksurveyquestions.com>, <facebook-teams.com>, <facebooktestexample.com>, <hitfacebookvideos.com>, <hot-facebook.com>, <ideasfacebook.com>, <instant-facebook.com>, <lintasfacebook.com>, <mifacebookg.com>, <myfacebookbackup.com>, <onurairfacebook.com>, <rhondaonfacebook.com>, <thisweeknfacebook.com>, <top10facebookgames.com>, <waiterfacebook.com>, and <24facebook.com> are registered with eNom, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 17, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. Also on November 17, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Whois Agent, Whois Privacy Protection Service, Inc.) and contact information in the Complaint. The Center sent an email communication to Complainant on November 21, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on November 23, 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 Respondent of the Complaint, and the proceedings commenced on November 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 15, 2022.

The Center appointed Scott R. Austin as the sole panelist in this matter on December 29, 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

Without contest by Respondent, Complainant asserts in its Complaint as amended, and its Annexes attached provide evidence sufficient to support that:

Complainant, the company formerly known as Facebook Inc., which on October 28, 2021, announced worldwide it changed its name to Meta Platforms, Inc. (“Meta”), provides social networking website and mobile application services under the trademark FACEBOOK (the “FACEBOOK Mark”) in which it holds exclusive rights and which it has used since 2004. Complainant’s website and app enables users to create their own personal profiles and connect with each other on their personal computers and mobile devices.

Complainant claims worldwide fame and recognition of the FACEBOOK Mark based on its use worldwide for more than 17 years and submits content supporting its claims for such world-wide recognition in the Annexes to its Complaint. For example, the Annex evidence submitted shows Complainant’s Facebook social networking service has more than one billion daily active accounts and over two billion monthly active users from all over the world. Complainant’s official website, accessed through its domain name <facebook.com> (the “Official FACEBOOK Website”) is currently ranked as the seventh most visited website in the world according to information company Alexa, the third most downloaded app globally and the seventh most downloaded app in the United States, both according to Forbes magazine. Approximately 85 percent of active daily Facebook users are outside the United States and Canada. Facebook’s social networking services are provided in more than 70 languages. In support of its claim of worldwide fame for the FACEBOOK Mark, Complainant also submits evidence that the Mark ranked 15th in Interbrand’s current Best Global Brands report.

Complainant is the registrant of numerous domain names consisting of or including the FACEBOOK Mark under a wide range of generic Top-Level Domains (“gTLDs”) as well as under numerous country code Top-Level Domains (“ccTLDs”).

Complainant owns numerous registrations protecting the FACEBOOK Mark in the United States and around the world, including:

United States Registration No. 3,122,052, FACEBOOK, registered on July 25, 2006, for services in International Class 38, and claiming a first use date of November 16, 2004;

International Registration No. 1075094, FACEBOOK, registered on July 16, 2010, for goods and services in International Classes 9, 35, 36, 38, 41, 42, and 45, designating several jurisdictions;

European Union Trade Mark No. 009776618, FACEBOOK, registered on November 2, 2011, for goods and services in International Classes 9, 16, 35, and 36.

All twenty-six of the disputed domain names were registered on the same day, November 11, 2012, through the same registrar, Enom, Inc., to the same registrant, Respondent, as disclosed in the Registrar's verification response, and share common name servers (NS01.CASHPARKING.COM and NS02.CASHPARKING.COM).

According to the evidence submitted with the Complaint, of the twenty-six disputed domain names registered by Respondent, twenty-two resolve to websites comprised of commercial parking pages which are, in appearance and structure, identical to one another as "parking" websites that reproduce Complainant's FACEBOOK Mark without authorization and under the terms "related searches" feature the same three conceivably pornographic links labelled "casual sex", "adult affair dating", and "sex dating"; two resolve or previously resolved to websites with parking pages displaying the text "Related Search Topics" but with no other substantive content; three resolve to blank pages and do not resolve to an active website, which non-use amounts to passive holding by Respondent of the disputed domain names; and three have been flagged for harmful content, phishing, or other malicious use.

Regarding the disputed domain name <facebook-skype.com>, Complainant provided evidence of consent from Microsoft Corporation ("Microsoft"), owner of the SKYPE trademark (the "SKYPE Mark"), to transfer the disputed domain name to Complainant, if ordered by the Panel, under the conditions that the disputed domain name remain inactive at all times and be maintained for defensive purposes only.

5. Parties' Contentions

A. Complainant

Complainant holds numerous trademark registrations for the FACEBOOK Mark across many jurisdictions around the world. Complainant shows in its Annexes that it owns registered trademark rights, including those set out in Section 4 above. Complainant further relies on the goodwill and recognition that has been attained under the FACEBOOK Mark, which has become a famous distinctive identifier for its products and services. Complainant's FACEBOOK trademarks are globally recognized by the public.

Complainant asserts that the disputed domain names are confusingly similar to the FACEBOOK Mark because each of the disputed domain names clearly and prominently encompass Complainant's globally distinctive FACEBOOK Mark in full, only followed or preceded by various descriptive or generic terms, misspelled terms, and third party marks, none of which additions are sufficient to prevent a finding of confusing similarity.

Complainant submits that there are no rights or legitimate interests held by Respondent in respect of the disputed domain names. Respondent is not commonly known by any of the disputed domain names, nor does Respondent have any authorization or license from Complainant to use the FACEBOOK Mark or to register any of the disputed domain names.

Complainant contends that the fact that each disputed domain name contains the FACEBOOK Mark together shows that the aim of Respondent in each case is to confuse Internet users searching for Complainant's products or services into thinking that they had arrived at Complainant's website and to create a false link between Complainant's FACEBOOK Mark and each of the disputed domain names.

Respondent is not making a legitimate noncommercial or fair use of any of the disputed domain names. Rather Respondent is using 22 of the 26 disputed domain names to resolve to parking websites that provide "related searches" links to adult content under Complainant's FACEBOOK Mark, without permission or consent from Complainant. Several of the disputed domain names, <facebook-skype.com>, <onurairfacebook.com>, and <lintasfacebook.com>, contain the mark of a third party brand and have been

used to create a false association with not only Complainant but also the offerings of each third-party brand. Such use does not amount to a *bona fide* offering of goods and services and can never confer rights or legitimate interests on a respondent, nor can such unauthorized impersonation to sell goods constitute a legitimate noncommercial or fair use of any of the disputed domain names. None of these resolving sites contain disclaimers accounting for their connection (or lack thereof) to Complainant. The remaining disputed domain names either have not been actively used by Respondent or have been flagged as potentially distributing harmful content, enabling phishing, or other malicious use. Respondent's non-use of the remaining passively held disputed domain names does not confer it with a legitimate interest nor would use of a domain to further an illegitimate purpose or phishing scheme.

Complainant contends that the disputed domain names were registered and are being used in bad faith. First, Complainant asserts that the FACEBOOK Mark is recognized worldwide and therefore Respondent must have been aware that it would be registered as a trademark in various jurisdictions worldwide. Complainant's earliest FACEBOOK Mark registration also predates the registration of all of the disputed domain names by approximately 8 years. Complainant submits, therefore, that Respondent knowingly registered each of the disputed domain names in bad faith with the intention of targeting Complainant's FACEBOOK Mark to trade off the goodwill and reputation attaching to Complainant FACEBOOK Mark. Complainant contends that Respondent's use of the disputed domain names is to capitalize on the reputation of Complainant's trademark by diverting Internet users seeking Complainant's services to its websites for financial gain, by intentionally creating a likelihood of confusion with Complainant's registered trademarks as to the source, sponsorship, affiliation, or endorsement of its websites and/or the goods and services offered or promoted through the websites. Complainant contends, therefore, that Respondent's conduct amounts to registration and use of each of the disputed domain names in bad faith.

Accordingly, Complainant requests transfer of 24 of the disputed domain names, and cancellation of the disputed domain names <onurairfacebook.com> and <lintasfacebook.com>.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

In view of Respondent's failure to submit any Response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable, and supported, allegations and inferences set forth in the Complaint as true, unless the evidence is clearly contradictory.

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied.

The Panel will address its findings on each of these requirements in more detail below.

The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

A. Identical or Confusingly Similar

Ownership of a nationally registered trademark constitutes *prima facie* evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Complainant claims registered trademark rights in the FACEBOOK Mark for its social media related products dating back to 2004. Sufficient evidence has been submitted in the form of electronic copies of valid and subsisting national and international trademark registration documents in the name of Complainant or its predecessor in interest referenced in Section 4. Complainant has demonstrated, therefore, that it has rights in the FACEBOOK Mark required under the Policy. See *Horten v. Nikolaevich et al.*, WIPO Case No. D2016-0205; see also *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

Further, for the disputed domain name <facebook-skype.com>, which contains Complainant's FACEBOOK Mark and adds the additional "SKYPE Mark, which is owned by Microsoft. Complainant has provided evidence in the Annex to its complaint of a signed consent letter by which Microsoft has consented to Complainant's filing of the present Complaint in connection with the <facebook-skype.com> domain name, and for the Panel if it determines it consistent with the Policy, to transfer the domain name to Complainant. See [WIPO Overview 3.0](#), section 1.12; see also *Verizon Trademark Services LLC v. Cyrus de Ocampo*, WIPO Case No. [D2012-0282](#). For two additional disputed domain names which incorporate third-party marks, <lintasfacebook.com> and <onurairfacebook.com>, Complainant has elected cancellation.

Prior UDRP panels have held that the addition of other third-party marks is insufficient in itself to avoid a confusing similarity between a disputed domain name and complainant's trademark. See, e.g., *F. Hoffmann-La Roche AG v. N/A*, WIPO Case No. [D2006-0751](#), and [WIPO Overview 3.0](#), section 1.12.

Complainant's extensive and detailed evidence submitted in the Complaint and its Annexes relating to each disputed domain name shows that all of the 26 disputed domain names clearly and prominently encompass Complainant's FACEBOOK Mark in full, only followed or preceded by additional terms or in several cases by third party marks and Complainant contends therefore, that each of the disputed domain names is recognizable in and therefore confusingly similar to Complainant's FACEBOOK Mark.

Prior UDRP panels have held that a domain name which wholly incorporates a complainant's registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy despite the addition of other terms to such marks. [WIPO Overview 3.0](#), section 1.8 ("Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element") see also *Meta Platforms, Inc. et al. v. Abuz Hamal et al.*, WIPO Case No. [D2022-0212](#). Further, the addition of a gTLD "is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test". [WIPO Overview 3.0](#), Section 1.11.1.

Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the second element of the Policy, a complainant is first required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. If a complainant makes that showing, the burden of production on this element shifts to the respondent to come forward with relevant evidence of such rights or legitimate interests in the domain name. If the respondent fails to come forward with such evidence, a complainant is generally deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

Complainant has established, *prima facie*, that Respondent lacks rights or legitimate interests in each of the disputed domain names. First, Complainant submits that it has not licensed, or otherwise authorized Respondent to use the FACEBOOK Mark in any manner or to register any of the disputed domain names, nor has Complainant in any way or manner associated with or entered into any legal relationship with Respondent. There is no evidence of record that Respondent has registered as trademarks or used as unregistered marks the term "facebook" and Complainant states that to the best of its knowledge, Respondent has not registered any trademarks for "facebook", nor has Complainant found any evidence to

suggest Respondent holds unregistered rights in such term.

Complainant also contends and provides persuasive registration data evidence in the Annexes to its Complaint that Respondent is not commonly known by any of the disputed domain names. Complainant has also asserted that it is neither in possession of, nor aware of the existence of any evidence demonstrating that Respondent might be commonly known by any of the disputed domain names.

Complainant next contends that Respondent lacks rights or legitimate interests in the respective disputed domain name because each disputed domain name is either actively used divert Complainant's potential customers to Respondent's website for its commercial gain or is passively held and such non-use under the circumstance here cannot be sustained as legitimate use.

Prior UDRP panels have consistently held that the use of a domain name to divert consumers to a commercial webpage with links is not a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. See [WIPO Overview 3.0](#), at Section 2.9; see also *Facebook, Inc. et al. v. John Obeye*, WIPO Case No. [D2017-2106](#); *Facebook Inc. v. Yumei Luo*, WIPO Case No. [D2020-2306](#). After reviewing the 22 parking sites operating from the disputed domain names, there is clearly no legitimate noncommercial or fair use on the part of Respondent using its disputed domain names for such websites. See *Houghton Mifflin Co. v. The Weathermen, Inc.*, WIPO Case No. [D2001-0211](#).

Three of the remaining disputed domain names have not been used by Respondent, are inactive for website purposes, and as such are considered passively held by Respondent. Inactive websites, on their own, would not typically confer rights or legitimate interests under paragraph 4(c)(iii). Considering the circumstances of this case, where no content is displayed on the websites to which the disputed domain names resolve, such non-use can neither be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use. See [WIPO Overview 3.0](#), section 3.3; *Instagram, LLC v. Asif Ibrahim*, WIPO Case No. [D2020-2552](#).

Finally, three of the disputed domain names have been flagged for unsafe content, phishing, and/or other malicious use. Prior UDRP panels have held that the use of a domain name for illegal activity involving impersonation and fraud (e.g. phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.

Complainant has presented a *prima facie* case indicating that Respondent does not have any rights or legitimate interests in the disputed domain names. The Panel notes that Respondent has not submitted a Response in this proceeding, much less provided the Panel with any evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude Respondent has rights or legitimate interests in the respective disputed domain name. As such, Respondent has failed to rebut Complainant's *prima facie* case.

The Panel finds, therefore, that Complainant has successfully met its burden and that the Complaint succeeds under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent's actions constitute bad faith registration and use of the disputed domain names.

Under this third element of the Policy, Complainant first contends that that because Respondent has created a series of disputed domain names that are each confusingly similar to Complainant's FACEBOOK Mark, it is implausible to believe that Respondent was not aware of Complainant's famous FACEBOOK Mark when he registered such confusingly similar domain names. This likelihood of awareness is especially true where Complainant's earliest FACEBOOK Mark registration predates the registration of all of the disputed domain names by approximately eight years.

Complainant's FACEBOOK Mark is also registered all over the world, including the United States, where Respondent is located. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith registration and use. See, [WIPO Overview 3.0](#), section 3.1.4.

Based on the foregoing, the Panel finds it most likely that Respondent knew of and targeted Complainant and the FACEBOOK Mark, noting *inter alia* its choice to encompass Complainant's well-known FACEBOOK Mark, with various added terms surrounding the FACEBOOK Mark, in each of the disputed domain names. In these circumstances, registration of 26 disputed domain names incorporating Complainant's well-known FACEBOOK Mark points to registration in bad faith. See *Facebook, Inc. v. Ricky Bhatia*, WIPO Case No. [D2017-2542](#).

Bad faith use is also clear from Respondent's conduct as discussed in section 6.B. Complainant has shown that 22 of the disputed domain names operated by Respondent resolve to active parking sites which reproduce Complainant's registered and incontestable FACEBOOK Mark as well direct to commercial parking pages featuring various sponsored links. It appears to the Panel that Respondent has used its disputed domain names to intentionally attract, for commercial gain, Internet users to their website by creating a likelihood of confusion with Complainant's FACEBOOK Mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website which the Panel finds constitutes bad faith registration and use under paragraph 4(b)(iv) of the Policy. See, e.g., *Facebook, Inc. v. Online Admin et al.*, WIPO Case No. [D2021-1210](#) (use of the disputed domain names to resolve to parking pages displaying sponsored links constitutes use in bad faith). Given the circumstances of this case, such a showing is sufficient to establish bad faith registration and use. See also [WIPO Overview 3.0](#), sections 3.1.4 and 3.5.

Complainant also submits that the three disputed domain names of which Complainant has not seen any prior use are nonetheless being "used" in bad faith under the principle of passive holding. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#), section 3.3. It is the consensus of UDRP panels that the key points in determining bad faith use under the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), *supra*.

Based on factors already explored in depth, the Panel finds the three disputed domain names which are passively held do not prevent a finding of bad faith use, considering: (1) the world renown and well-recognized nature of the distinctive FACEBOOK Mark for social media services; (2) that Respondent has submitted no response, nor any evidence of actual or contemplated good faith use; (3) the Panel concludes that the passively held domain names cannot plausibly be used by Respondent in good faith. Prior UDRP panels have repeatedly made this finding based on the relevant circumstances of a case, including a complainant's mark's distinctiveness and reputation. See *Cloudflare, Inc. v. Anson Network Limited*, WIPO Case No. [D2019-2435](#).

Moreover, the Panel notes that Respondent has registered 26 disputed domain name, all wholly incorporating the Complainant's well-known FACEBOOK Mark. Respondent has provided no explanation of why it registered the disputed domain names, and particularly no explanation why 26 registrations were necessary or appropriate. In the circumstances of this case, these registrations suggest a pattern of abuse indicative of bad faith.

Accordingly, the Panel finds that the disputed domain names have been both registered and used in bad faith, and that the Complaint has met its burden under paragraph 4(a)(iii) 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 names, <blissfacebook.com>, <facebookadicto.com>, <facebookappsmiami.com>, <facebookclocksucker.com>, <facebookgalore.com>, <facebooklogiijin.com>, <facebookparaempresarios.com>, <facebook-skype.com>, <facebook-smiley.com>, <facebookstumbleuponfunny.com>, <facebooksurveyquestions.com>, <facebook-teams.com>, <facebooktestexample.com>, <hitfacebookvideos.com>, <hot-facebook.com>, <ideasfacebook.com>, <instant-facebook.com>, <mifacebookg.com>, <myfacebookbackup.com>, <rhondaonfacebook.com>, <thisweeknfacebook.com>, <top10facebookgames.com>, <waiterfacebook.com>, and <24facebook.com> be transferred to Complainant, and that the disputed domain names <onurairfacebook.com> and <lintasfacebook.com> be cancelled.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: January 23, 2023