

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Domain Administrator, See PrivacyGuardian.org/
Tuyen Quang
Case No. D2022-0102

1. The Parties

The Complainant is Meta Platforms, Inc., United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States / Tuyen Quang, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <fbion.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 January 12, 2022. On January 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 13, 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 January 14, 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 January 18, 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 January 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2022. The Respondent sent two informal emails on January 27, 2022.

The Center appointed Andrew F. Christie as the sole panelist in this matter on February 21, 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 is a United States social technology company, and operates Facebook, Instagram, and WhatsApp. Founded in 2004, the Complainant's Facebook platform is a leading provider of online social media and social networking services. As of June 30, 2021, Facebook had approximately 2.90 billion monthly active users and 1.91 billion daily active users on average worldwide. With approximately 85% of its daily active users outside the United States and Canada, Facebook's social networking services are provided in more than 70 languages. The term "FB" has been used to refer to Facebook by international publications, including *The New York Times* (in "Generation FB" dated June 23, 2011), and *The Guardian* (in "Who are the most social publishers on the web?" referencing "FB Likes, FB Shares, FB Comments", dated October 3, 2013).

The Complainant (under its previous name Facebook, Inc.) is listed as the owner of a number of trademark registrations throughout the world for the word trademark FB, including United States Trademark Registration No. 4659777 (registered on December 23, 2014), and European Union Trademark Registration No. 008981383 (registered on August 23, 2011).

The Complainant (under its previous name Facebook, Inc.) or one of its subsidiaries, is listed as the registrant of a number of domain names consisting of or including the Complainant's FB trademark, registered under various generic Top-Level Domains ("gTLDs") as well as under a number of country-code Top-Level Domains ("ccTLDs"), including <fb.com>, <fb.co.uk>, and <fb.fr>.

The disputed domain name was registered on November 12, 2018. The Complainant has provided screenshots, taken on January 12, 2022, showing that the disputed domain name resolved to a website which purported to provide a tool to download videos from Facebook, and which displayed commercial banners. At the time of this decision, the disputed domain name resolves to a website that appears to be the same as the website shown in the screenshots provided by the Complainant.

The Complainant sent a cease and desisted letter to the Respondent on November 2, 2021, to which it did not receive a response.

5. Parties' Contentions

A. Complainant

The Complainant made the following contentions to establish that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The disputed domain name is composed of the Complainant's FB trademark in its entirety as the leading element, followed by the letters "ion" which is sufficient to establish confusing similarity between the disputed domain name and the Complainant's FB trademark. The addition of the letters "ion" in the disputed domain name does not prevent a finding of confusing similarity with the Complainant's FB trademark, which remains recognizable in the disputed domain name. The gTLD ".com" may be disregarded for the purposes of assessment under the first element as it is viewed as a standard registration requirement.

The Complainant made the following contentions to establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not a licensee of the Complainant, and the Respondent has not been authorized by the Complainant to make any use of its FB trademark in a domain name or otherwise. The Respondent's website purports to provide a tool to download content from

Facebook, which is in breach of Facebook's Developer Policies as the creation of a tool that facilitates the downloading of content from the Facebook platform goes beyond the limits that Facebook has placed on the functionality of its own product. The provision of such a tool also places the privacy and security of Facebook users at risk, as content scraped from Facebook's platform may be stored and later used for unauthorized purposes by third parties. The Respondent cannot credibly claim to be commonly known by the disputed domain name, or a name corresponding to it. According to the Whois record publicly available, the disputed domain name has been registered using a privacy service and it is not being used in the promotion of any business or any other online service that might give rise to the Respondent being commonly known by the disputed domain name. The underlying registrant details that have been disclosed by the Registrar of the disputed domain name list "Tuyen Quang", which bears no resemblance to the disputed domain name whatsoever. To the best of the Complainant's knowledge, there is no evidence of the Respondent having obtained or applied for any trademark registration or similar right for "fbion", or any variation thereof. The provision of a tool that allows Internet users to download content from Facebook does not amount to legitimate noncommercial or fair use in the form of a fan site or otherwise. The provision of services that violate Facebook's Developer Policies cannot give rise to rights or legitimate interests in the disputed domain name. The presence of commercial banners on the Respondent's website is further evidence that the Respondent is not making any legitimate noncommercial or fair use of the disputed domain name.

The Complainant made the following contentions to establish that the disputed domain name was registered and is being used in bad faith. The Complainant's FB trademark was registered with the European Union Intellectual Property Office (EUIPO) in 2011 and has rapidly acquired considerable goodwill and renown worldwide, with all the top results obtained by typing "FB" into the Google search engine referring to the Complainant. Given this, the Respondent could not credibly argue that it did not have prior knowledge of the Complainant's trademark at the time of registration of the disputed domain name in 2018, by which time the Complainant's social network had already amassed well over 2 billion users. The Respondent's intent to target the Complainant through the disputed domain name may be inferred from the contents of the Respondent's website, which makes explicit reference to Facebook and provides a tool for downloading content in violation of Facebook's Developer Policies. The use of a Vietnamese province "Tuyen Quang" as the registrant name and the repetition of the term "Da Nang" suggest that the disputed domain name has been registered with false Whois information. The Respondent has no authorization from or other affiliation with the Complainant. The Respondent is using 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 trademark as to the source, sponsorship, affiliation or endorsement of the website, as it displays commercial banners from which the Respondent is likely obtaining financial gain. The Respondent's website uses a similar color scheme as Facebook's official website, thereby creating a misleading impression of association with the Complainant in bad faith. The presence of a disclaimer on the Terms of Service page of the Respondent's website does not serve to render the Respondent's activities *bona fide*, as the Respondent's website clearly creates a misleading impression of endorsement by the Complainant. The Respondent failed to respond to the Complainant's cease and desist letter. The Respondent's use of a privacy service to conceal its identity with regard to the disputed domain name further supports an inference of bad faith on the part of the Respondent, as does the lack of contact details on the website to which the disputed domain name resolves.

B. Respondent

In response to its notification of the Complaint to the Respondent, the Center received two brief, informal emails on January 27, 2022. The first asked: "Can I sell the domain name for Facebook?" The second stated: "I want to talk directly to the Facebook manager. If Facebook contact me through intermediaries I will think it's a hacker." The Respondent did not submit a formal response.

6. Discussion and Findings

A. Identical or Confusingly Similar

Once the gTLD “.com” is ignored (which is appropriate in this case), the disputed domain name consists of the whole of the Complainant’s registered word trademark FB, followed by the string “ion”. The Complainant’s word trademark is clearly recognizable within the disputed domain name. The recognizability of the Complainant’s trademark is enhanced by virtue of the fact that it appears at the beginning of the domain name, where attention tends to focus, and that it is followed by a string that is not a common word. As provided in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. Thus, the addition of the string “ion” after the Complainant’s trademark does not avoid the confusing similarity of the disputed domain name with the Complainant’s trademark.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Respondent is not a licensee of the Complainant, is not otherwise affiliated with the Complainant, and has not been authorized by the Complainant to use its FB trademark. The Respondent has not provided any evidence that it has been commonly known by, or has made a *bona fide* use of, the disputed domain name, or that it has, for any other reason, rights or legitimate interests in the disputed domain name. The evidence provided by the Complainant shows that the disputed domain name was used to resolve to a website that purported to offer a tool to facilitate the downloading of content from the Facebook platform. Such an application is in contravention of the Complainant’s Facebook Developer Policies, and may place the privacy and security of Facebook users at risk. Given the confusing similarity of the disputed domain name to the Complainant’s trademark, the absence of any relationship between the Respondent and the Complainant, and the risk of implied false affiliation with the Complainant, such a use of the disputed domain name is neither a *bona fide* use nor a legitimate noncommercial or fair use.

The Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the Respondent has not rebutted this. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The disputed domain name was registered many years after the Complainant first registered its FB trademark. It is inconceivable that the Respondent registered the disputed domain name ignorant of the existence of the Complainant’s FB trademark, given that the disputed domain name contains the trademark, and that the Respondent used the disputed domain name to resolve to a website that refers to the platform in respect of which the trademark is used.

Given the Respondent’s lack of rights or legitimate interests in the disputed domain name, and the confusing similarity of the disputed domain name to the Complainant’s trademark, any use of the disputed domain name by the Respondent almost certainly implies an affiliation with the Complainant that does not exist, and so would be a use in bad faith.

Furthermore, the evidence on the record provided by the Complainant indicates that the Respondent has used the disputed domain name in an attempt to attract, for commercial gain, Internet users to a website by creating confusion in the minds of the public as to an association between the website and the Complainant.

Accordingly, the Panel finds that the disputed domain name has been 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, <fbion.com>, be transferred to the Complainant.

/Andrew F. Christie/

Andrew F. Christie

Sole Panelist

Date: March 7, 2022