

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Alan Sullivan

Case No. D2022-4204

1. The Parties

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

Respondent is Alan Sullivan, United States.

2. The Domain Name and Registrar

The disputed domain name <accountverify-facebook.com> (the “Domain Name”) is registered with GoDaddy.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 Domain Name. On November 8, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email to Complainant on November 8, 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 22, 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 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 13, 2022. The Response was filed with the Center on December 12, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on December 19, 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

Complainant Meta Platforms, Inc. operates, among other things, Facebook, an online social media service provider. Complainant has provided social networking services under the FACEBOOK trademark since 2004, and today is one of the largest social media firms. Complainant has more than 2.93 billion active monthly users and more than 1.97 billion active daily users around the world. Complainant's website, located at "www.facebook.com", is one of the most visited sites in the world.

The trademark FACEBOOK is registered in numerous jurisdictions, including United States Patent and Trademark Office Reg. No. 3,041,791, registered on January 10, 2006.

The Domain Name was registered on May 19, 2011. According to Respondent, at the time he registered the Domain Name, the Facebook platform "had no service to verify accounts" of its subscribers. Respondent claims that he sought "to create a business that provided a 3rd party account process that could be used by Facebook account holders". (Facebook has since developed an account verification system.) Respondent provided no contemporaneous evidence of any preparations to develop such a service or website.

The Domain Name currently resolves to a parking page stating that the Domain Name "may be for sale" and providing contact information to those interested in purchasing the Domain Name.

Complainant has provided screenshot evidence to show that the Domain Name had previously resolved to a "commercial parking page" containing "Related searches" hyperlinks. Respondent has not disputed this.

According to Complainant, the Domain Name "is listed on one or more block lists, supporting that it has been used in connection with spam, malware, or other domain name abuse". Respondent did not address this allegation in his Response.

Complainant also points to a prior UDRP case, from 2010, in which Respondent was found to be in bad faith in connection with another trademark that Respondent targeted. Respondent did not address this point in his Response.

5. Parties' Contentions

A. Complainant

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

The essence of Respondent's position vis-à-vis the Domain Name is reflected above in the "Factual Background" section.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark FACEBOOK through widespread registration and use demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to that mark. Since the entirety of the mark FACEBOOK is reproduced in the Domain Name, this is sufficient to find that the Domain Name is confusingly similar to the mark. Moreover, the addition of the words “account verify” does not prevent the mark FACEBOOK from being recognizable in the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in connection with the Domain Name. Without any evidence, Respondent claims that he registered the Domain Name, containing the famous trademark FACEBOOK, for the purpose of creating a user account verification service for Facebook users. The Panel is also dubious about this explanation because, according to the undisputed record here, the Domain Name – registered over a decade ago – used to point to a “commercial parking page” containing “Related searches” hyperlinks, and currently points to a parking page indicating that the Domain Name may be for sale. The fact that Respondent was found, in a prior UDRP case, to have registered and used another domain name in bad faith further undermines Respondent’s credibility.

Moreover, even if there were some evidence that this was actually Respondent’s motive, noting the Domain Name is inherently misleading (the added words “account verify” in the Domain Name is a term that would be closely associated with Facebook in the minds of its users) in that it suggests a non-existent affiliation this would be tantamount to appropriating the famous FACEBOOK trademark and essentially seeking to glom on to that massive platform’s fame as an adjunct service provider not authorized by Complainant.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation”, are evidence of the registration and use of the Domain Name in “bad faith”:

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

The Panel concludes that Respondent registered and used the Domain Name in bad faith under the Policy. The Panel incorporates its discussion above in the “Rights or Legitimate Interests” section.

It is admitted that Respondent was aware of the famous FACEBOOK trademark when he registered the Domain Name. As discussed above, the Panel does not credit Respondent’s explanation of his motives. Rather, the Panel finds Respondent’s motivation more likely captured in the actual use to which he put the Domain Name, as reflected in evidence of record here. The undisputed record is that Respondent operated a “commercial parking page” with hyperlinks, and has also offered the Domain Name for sale to the public generally.

On this record, the Panel finds that Respondent has registered and used the Domain Name in bad faith within the meaning of the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

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 Domain Name <accountverify-facebook.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: January 2, 2023