

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. 刘梓韬 (Liu Zi Tao)

Case No. D2022-0494

1. The Parties

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

The Respondent is 刘梓韬 (Liu Zi Tao), China.

2. The Domain Name and Registrar

The disputed domain name <facebookad.top> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 12, 2022. On February 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 15, 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 February 15, 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 in English on February 17, 2022.

On February 15, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on February 17, 2022. 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 of the Complaint, and the proceedings commenced on February 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 16, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 17, 2022.

The Center appointed Sok Ling MOI as the sole panelist in this matter on March 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 Complainant operates the Facebook social networking website and mobile application, and has used FACEBOOK as a trade mark for its products and services since 2004. Facebook has more than one billion daily active accounts and over two billion monthly active users from all over the world. Facebook's social networking services are provided in more than 70 languages, with around 85% of the daily users outside the United States and Canada.

The Complainant owns the <facebook.com> domain name and numerous other domain names consisting of the FACEBOOK mark in combination with various generic and country code top-level domain extensions, including <facebook.org> and <facebook.net>.

The Complainant owns numerous trade mark registrations for FACEBOOK, including the following:

Jurisdiction	Mark	Registration No.	Registration Date	Filing Date
United States	FACEBOOK	3,122,052	July 25, 2006	February 24, 2005
United States	FACEBOOK	3,881,770	November 23, 2010	June 29, 2006
United States	FACEBOOK	4,441,540	November 26, 2013	October 7, 2010
International designating, <i>alia</i> , China, Singapore, Japan, Republic of Korea	FACEBOOK (stylized)	1075094	July 16, 2010	May 5, 2011
European Union	FACEBOOK	009151192	December 17, 2010	June 3, 2010
European Union	FACEBOOK	009776618	November 2, 2011	March 1, 2011

The Respondent registered the disputed domain name <facebookad.top> on June 2, 2021. According to the evidence submitted by the Complainant, the disputed domain name does not resolve to any active website but is being passively held.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to its FACEBOOK trade marks, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and the disputed domain name has been registered and is being used in bad faith.

The Complainant requests for the transfer of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

6.1. Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, 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.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the proceeding takes place with due expedition and that the Parties are treated fairly and given a fair opportunity to present their respective case.

The language of the Registration Agreement for the disputed domain name is Chinese. From the evidence on record, no agreement appears to have been entered into between the Complainant and the Respondent regarding the language issue. The Complainant filed its Complaint in English and has requested that English be the language of the proceeding. The Respondent did not comment on the language issue.

On the record, the Respondent appears to be a Chinese individual. The Panel notes that:

- (a) The disputed domain name <facebookad.top> is registered in Latin characters, rather than Chinese script;
- (b) The disputed domain name consists of the English words "face", "book", and "ad";
- (c) The Center has notified the Respondent of the proceeding in both Chinese and English;
- (d) The Respondent has been given the opportunity to present its case in this proceeding and to respond to the issue of the language of the proceeding but has failed to do so; and
- (e) The Center has informed the Respondent that it would accept a response in either English or Chinese.

The Panel finds the choice of English as the language of the present proceeding is fair to both Parties and is not prejudicial to either one of the Parties in his or her ability to articulate the arguments for this case. The Panel is also of the view that to require the Complaint and all supporting documents to be translated into Chinese would in the circumstances of this case cause an unnecessary cost burden to the Complainant and unfairly disadvantage the Complainant. The proceeding would also be unnecessarily delayed.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that (i) it shall accept the Complaint and all supporting materials as filed in English; and (ii) English shall be the language of the proceeding and the decision will be rendered in English.

6.2. Substantive Matters

Paragraph 4(a) of the Policy directs that the complainant must prove each of the following three elements to obtain an order for the disputed domain name to be cancelled or transferred:

- (i) the disputed domain name registered by the respondent is identical or confusingly similar to a trade mark or service mark in which the complainant has rights;
- (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.

On the basis of the evidence introduced by the Complainant, the Panel concludes as follows:

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has trade mark rights in FACEBOOK by virtue of use and registration. The disputed domain name incorporates the Complainant's trade mark in its entirety. The addition of the word "ad" does not prevent a finding of confusingly similarity between the disputed domain name and the Complainant's trade mark. The addition of the generic Top-Level Domain ("gTLD") ".top" is generally disregarded for the purpose of the similarity assessment.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark.

Accordingly, the Complainant has satisfied the requirements of the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the complainant bears the burden of establishing that the respondent lacks rights or legitimate interests in the disputed domain name. However, once the complainant makes a *prima facie* case showing under paragraph 4(a)(ii), the burden of production shifts to the respondent to establish its rights or legitimate interests in the disputed domain name by demonstrating any of the following, without limitation, under paragraph 4(c) of the Policy:

- (i) before any notice to it 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 has been commonly known by the disputed domain name, even if it has acquired no trade mark 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 trade mark or service mark at issue.

(See *Taylor Wimpey PLC, Taylor Wimpey Holdings Limited v. honghao internet foshan co, ltd*, WIPO Case No. [D2013-0974](#).)

The Respondent's name does not bear any resemblance to the term "facebook". There is no evidence suggesting that the Respondent is commonly known by the disputed domain name or that it has any rights or legitimate interests in the term "facebook". The Complainant has confirmed that the Respondent is not in any way related to or affiliated with the Complainant or otherwise authorized or licensed to use the FACEBOOK trade mark or to seek registration of any domain name incorporating the trade mark. According to evidence submitted by the Complainant, the disputed domain name does not resolve to any active website. There is no evidence to suggest that the Respondent has made any preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services or for a legitimate noncommercial purpose. Moreover, by incorporating the entirety of the FACEBOOK trademark, the disputed domain name unfairly implies association with the Complainant, contrary to the fact.

The Panel is therefore satisfied that the Complainant has made out a *prima facie* case showing that the Respondent lacks rights or legitimate interests in the disputed domain name. The burden of production thus shifts to the Respondent to establish its rights or legitimate interests in the disputed domain name. Since the Respondent has failed to respond, the *prima facie* case has not been rebutted.

Consequently, the Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied the requirements of the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of a disputed domain name in bad faith, namely:

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

The Panel accepts that the Complainant's trade mark is a distinctive mark which has become well-known worldwide as a result of extensive use over the past 17 years. A cursory Internet search would have disclosed the FACEBOOK trade mark and its extensive use by the Complainant. Thus a presumption arises that the Respondent was aware of the Complainant's FACEBOOK trade mark and social networking website when he registered the disputed domain name. Registration of a domain name that incorporates a complainant's distinctive and well-known trade mark by an unaffiliated entity suggests opportunistic bad faith.

The Panel notes that, as of the date of this decision, the disputed domain name does not resolve to any active website. Nevertheless, the consensus view of previous UDRP panels is that passive holding in itself does not preclude a finding of bad faith. UDRP panels must examine all the circumstances of the case to determine whether a respondent is acting in bad faith. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 3.3.

The Respondent has not denied the Complainant's allegations of bad faith. In view of the above finding that the Respondent does not have rights or legitimate interests in the disputed domain name, and taking into account all the circumstances, the Panel concludes that the Respondent has registered and used the disputed domain name in bad faith. The circumstances referred to in Paragraph 4(b)(iv) of the Policy are applicable in this case.

Furthermore, the Respondent has provided incomplete contact details to the Registrar at the time of registration of the disputed domain name, noting that the courier was unable to deliver the Center's written communication to the physical address disclosed by the Registrar for the Respondent. This may be further indication of bad faith.

Accordingly, the Complainant has satisfied the requirements of the third element under 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 <facebookad.top> be transferred to the Complainant.

/Sok Ling MOI/

Sok Ling MOI

Sole Panelist

Date: May 2, 2022