

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc. v. Richard Dynas  
Case No. D2022-0725

### **1. The Parties**

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

Respondent is Richard Dynas, United States.

### **2. The Domain Names and Registrar**

The disputed domain names <horizoncreator.com>, <horizoncreators.com>, <horizondiscover.com>, <horizoneasy.com>, <horizonengineer.com>, <horizonexpand.com>, <horizongirl.com>, <horizonhomebuilder.com>, <horizonmeeting.com>, <horizonmultiverse.com>, <horizonqueen.com>, <horizonsex.com> and <horizonxxx.com> (the “Domain Names”) are registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 2, 2022. On March 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On March 4, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on March 7, 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 March 9, 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 March 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 31, 2022. The Response was filed with the Center on March 11, 2022.

On March 22, 2022, Complainant submitted a Supplemental Filing. Respondent sent an email communication to the Center on March 22, 2022, objecting to Complainant's Supplemental Filing. Respondent submitted a Supplemental Filing on March 25, 2022. Respondent then submitted additional Supplement Filings on April 14-17, 2022, while also submitting emails in which Respondent raised the prospect of settlement discussions with Complainant. In view of these submissions, the Panel issued Procedural Order 1, seeking Complainant's response to Respondent's April 14-17 submissions. Complainant submitted its Reply on April 21, 2022. Among other things, Complainant's Reply confirms that Complainant has no interest in settlement discussions with Respondent. Finally, Respondent on April 21, 2022, submitted an email claiming that legal counsel for Complainant faces a conflict of interest because counsel is also a listed panelist for the Center.

The Center appointed Christopher S. Gibson as the sole panelist in this matter on March 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.

Complainant requested that this case be allowed to proceed on the basis of a single consolidated Complaint for all the Domain Names based on multiple factors supporting the inference that the Domain Names are subject to common control. Respondent did not object to this request and, through his submissions, has confirmed that the Domain Names were all registered by Respondent.

#### 4. Factual Background

Complainant is a United States social technology company that operates Facebook, Instagram, Meta Quest (formerly Oculus), Novi, Portal, and WhatsApp. Formerly known as "Facebook, Inc.", Complainant changed its name to "Meta Platforms, Inc." on October 28, 2021. Complainant's states that its focus is to bring the metaverse to life and help people connect, find communities, and grow businesses.<sup>1</sup>

Complainant has made investments to develop a strong presence online by being active on various social-media platforms. For instance, Complainant's official page on Facebook has over 72 million "likes". In addition, Complainant has 13.9 million followers on Twitter and 1.7 million on Instagram. Complainant states it has developed considerable reputation and goodwill worldwide in connection with a large number of goods and services, including, *inter alia*, the provision of a social virtual reality experience called "Horizon Worlds", where people can create and explore together. This collaborative platform, which was first announced in September 2019 under the name "Facebook Horizon", has an integrated game creation system for the Meta Quest virtual reality headsets.

Complainant has secured ownership of trademark registrations for HORIZON in jurisdictions around the world for use in connection with its Horizon products and services, including the following:

- United Kingdom Trademark No. 3499858, HORIZON, registered on September 18, 2020;
- Swiss Trademark Registration No. 758821, HORIZON, registered on February 2, 2021;
- Taiwanese Trademark Registration No. 02146118, HORIZON, registered on June 1, 2021;
- European Union Trademark No. 018252474, HORIZON, registered on June 15, 2021;
- Chinese Trademark Registration No. 47189601, HORIZON, registered on July 7, 2021; and
- Japanese Trademark Registration No. 6452202, HORIZON, registered on October 6, 2021.

Complainant provided evidence of media coverage in the days leading up to its name change from Facebook to Meta Platforms, including articles dating from October 19-20, 2021, where there was

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<sup>1</sup> Complainant states the metaverse will feel like a hybrid of today's online social experiences, sometimes expanded into three dimensions, or projected into the physical world. It will let users share immersive experiences with other people even when they cannot be together — and do things together they could not do in the physical world.

speculation that the new company name might include the word "horizon", which Facebook had already been using for its virtual reality applications, such as "Horizon Worlds" and a version for workplace collaboration called "Horizon Workrooms".

All the Domain Names were registered on either October 20 or 22, 2021. All of them redirect to a website at "www.dan.com", where they have been offered for sale.

Respondent sent numerous unsolicited messages both to Complainant and Complainant's lawyers. Between October 26, 2021, and February 25, 2022, Respondent sent thirteen emails and one voice mail to Complainant, while also contacting Complainant's lawyers fifty-two times, by email and voice messages. Below are excerpts from several of the numerous emails that were sent by Respondent to Complainant and its lawyers:

October 26, 2021:

"Hello -

My name is Richard Dynas and I am the exclusive broker for MetaMultiverse.com. Cut your cost of acquisition by owning an exact match domain name. We use Escrow for the security of our clients. I also have some Horizon names for sale."

November 3, 2021:

"I have some names that are perfect for Facebooks rebrand. I did not register these today, I just happen to own them. I will sign an NDA to discuss and use a 3rd party if needed. Lets have a conversation."

November 4, 2021:

"Good morning. Just as an FYI - I have two Fortune 500 companies contacting me about all these names. One only wants the Meta and the other wants them all. I would like to sell them as a group but I would split them up. I have not heard back from you if there is any interest, but I obviously can't hold these names. If I negotiate the price I need, it's first come first serve. If you decide you have an interest, I will give you the right of first refusal."

December 7, 2021:

"Good afternoon. I just reached out via telephone and I believe I was cut off while transferring to your assistant. There may have been a language barrier. I want to apologize for contacting you so many times the past few days. I have other buyers with timelines. Meta and Horizon domain names are in demand right now and I have the best names on the market so I am getting many inquiries. I do not want to lose my chance at a sale. Obviously the easiest path to sell these names is to Meta. I also think it is the most ethical. I pride myself on doing things the right way and not harming anyone. I cant hold these names forever, that would be bad business on my end. I accept Crypto - Cash or Equity or a combination of all. I only need to know if Meta has an interest. If they do not please let me know so I can sell the names off. You can unsubscribe at the bottom or send me a quick email."

January 18, 2022:

"We have received an initial offer for some of the names. I was asked to take down MetaMultiverse.com down as we work on competitive pricing, and I have complied. If you look at the companies that have jumped into this space, and who have bought other companies to bolster their presence, you will understand why I am attracting big buyers and big money. This space is on fire and its only in its infancy.

Does Meta have an interest? I cant turn down real offers versus a company that is just looking. I hope you understand."

February 2, 2022:

"Please note, that I did not register these domains to target Facebook. I thought that they were attractive as they contain the generic word 'Horizon', which has a lot of use outside of Facebook. As you have indicated your concern, while I still believe I'm entitled to hold, develop, or sell these domain names to any party, I'm willing to transfer these names to you and forego any rights I may have in exchange for the nominal payment of \$10,000 per domain name. I've consulted with legal counsel, but do not wish to escalate this and hope we can reach a good faith resolution. We can use escrow.com if this is something your client is amenable to doing. If you have an interest in MetaMultiverse.com we can bundle all names in one package. This will include the trademark."

February 3, 2022:

"I just spoke with my attorney and he suggested offering a deal. I own MetaMultiverse.com and some other Meta names. They were all registered before your client was Meta. I trademarked the name for digital use - avatars and a bunch of other things. The MetaMultiverse.com has always fascinated me and I love the Marvel movies. As we move further and further into the metaverse this name is getting a ton of offers. Much of them are tire kickers and some are getting bigger. If I hold this name for 5, 10 or 20 years it will be worth 8 figures. This is literally just the beginning. I want you to know I am trying to avoid all this ruckus and settle things. I will sell your client MetaMultiverse.com and my other Meta names for 2 million USD. Half of that will go to taxes.

I will:

- Never contact you or Meta again.
  - Sign an NDA with a stiff financial penalty for any disclosure.
  - I will never register another name associated in any way with your client.
  - I will add the Horizon names so your client doesn't feel like they are buying them.
- You know if this goes any further legally it is going to open up me and Meta to undue scrutiny. All the filings will be released and the press will want to talk to me. During the UDRP all our emails will be released. I don't want that and Im sure you don't want more bad publicity associated with Meta. The stock is down significantly today, lets do something positive. Don't let pride or stubbornness get in the way of a great deal for everyone. This is today only, tomorrow is our deadline."

February 3, 2022 (2<sup>nd</sup> message):

"I will make Meta a deal. For today I will drop the price to 5K per domain. That's half what I am asking for any inquiries. I dont want to be adversaries, we can all benefit from each other. I love Facebook! Obviously nobody wants to go to a UDRP - you never know what side a panel will take. If this goes until tomorrow I will assume we are going the legal route and the price will go

back up.

MetaMultiverse.com is still in 7 figures. This is the biggest and best Multiverse name on the planet. Everything else has been sold. With the trademark, its worth every penny to a company moving into that space and there are hundreds right now.

Lets make a deal on the Horizon names, after today the price goes back up so I can pay for my counsel.”

February 16, 2022:

“25K for all the Horizon names. This is much cheaper than filing a UDRP on all the names I will sign an NDA and never speak of it again. Its a win -win.”

February 25, 2022:

“As I have also stated in the past, I will not transfer the names for free. I did not purchase these names for resale. I am pursued legally, I will 100% go to the media.

I have given you every opportunity to purchase these names that I or anyone else, including Meta could have registered.

Dont wait until Monday - lets start this today.”

During the period when these emails were being sent by Respondent, Complainant emailed Respondent on January 11, 2022, requesting that Respondent provide a comprehensive list of domain names registered by Respondent, and then on January 14, 2022, informing Respondent that Complainant was reviewing the list provided by Respondent. On January 27, 2022, Complainant's lawyers sent a cease-and-desist letter to Respondent. On February 3, 2022, in response to Respondent's continuing emails, Complainant's lawyers sent the following message:

“Thank you for your emails. We have duly considered your communications in reply to our cease and desist letter. Please be advised that our client does not purchase domain names containing their trademarks, especially not when it is clear that such domain names have been registered for resale to the relevant trademark holder. Our client's position in relation to this matter has not changed. We reiterate our request for transfer of the domain names at no cost.”

A final email from Complainant's lawyers to Respondent on February 25, 2022, stated the following:

“We acknowledge receipt of your numerous emails on this topic. As noted in our cease and desist letter on 27 January 2022 and our two follow up communications on 3 February 2022 and 15 February 2022, our client does not purchase domain names containing its trademarks when it is clear that such domain names have been registered specifically for resale to the relevant trademark holder.

The only acceptable solution to this matter would be the voluntary transfer of the domain names listed in our cease and desist letter to our client. We invite you to ensure that they are unlocked and to send us the auth codes no later than COB on Monday (your time). Once the transfers are complete we will reimburse you your reasonable registration costs for the domain names, upon provision of the relevant receipts.

If you do not wish to comply with our client's request, we have instructions to pursue legal action against you.”

## **5. Parties' Contentions**

### **A. Complainant**

(i) Identical or confusingly similar

Complainant states that it owns numerous trademark registrations for the trademark HORIZON in jurisdictions around the world. Complainant anticipates that Respondent is likely to assert that the Complaint

is invalid on the basis that Complainant does not own an active United States trademark registration for the HORIZON mark. However, Complainant contends that the particular jurisdictions where a complainant's trademark is registered is not considered relevant to the panel assessment under the first element.

Complainant states that Respondent is also likely to argue that "horizon" is a dictionary term. Complainant responds that previous panels have found that where a trademark is duly registered, questions concerning its distinctiveness are not considered under the first element of the Policy. Complainant concludes that it has established its trademark rights in the HORIZON mark for purposes of paragraph 4(a)(i) of the Policy.

Complainant further states that the Domain Names incorporate Complainant's HORIZON trademark in its entirety as the leading element, together with the terms "builder", "creator", "creators", "discover", "easy", "engineer", "expand", "girl", "home", "meeting", "multiverse", "queen", "sex", and "xxx", all under the generic Top Level Domain ("gTLD") ".com". Complainant submits that this is sufficient to establish confusing similarity, as the HORIZON mark is immediately recognizable in each of the Domain Names. Complainant submits that the addition of the descriptive terms does not prevent a finding of confusing similarity with Complainant's HORIZON mark, which remains clearly recognizable in each of the Domain Names.

In sum, Complainant submits that the Domain Names are confusingly similar to the HORIZON trademark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

(ii) Rights or legitimate interests

Complainant states that Respondent is not a licensee of Complainant, nor has Complainant otherwise authorized Respondent to make any use of the HORIZON trademark, in a domain name or otherwise.

Complainant claims Respondent cannot assert that, prior to any notice of this dispute, he was using, or had made demonstrable preparations to use, the Domain Names in connection with a *bona fide* offering of goods or services. Despite Respondent's claims that he intends to "develop the [Domain Names] for their original plan and purpose when [he] bought them", Respondent has not come forward with any evidence of business formation-related due diligence/legal advice/correspondence; evidence of credible investment in website development or promotional materials such as advertising, letterhead, or business cards; proof of a genuine (*i.e.*, not pretextual) business plan utilizing the Domain Names or credible signs of pursuit of a business plan; evidence of *bona fide* registration and use of related domain names; or other evidence generally pointing to a lack of indicia of cybersquatting intent. Instead, Respondent has simply parked the Domain Names at the website "www.dan.com", listing them for sale, while sending numerous unsolicited messages to Complainant and its lawyers in which he offered to sell the Domain Names.

Complainant submits that the following factors support the inference that Respondent was aware of Complainant's rights in the HORIZON trademark, and proceeded to register the Domain Names containing the trademark for the purpose of selling them to Complainant with a view to deriving profit from the goodwill associated with Complainant's mark:

(a) The timing of Respondent's registration of the Domain Names, noting the international media speculation that Facebook was planning a potential rebranding as "Horizon";

(b) Respondent's promotion of the Domain Names for sale via his LinkedIn profile, making use of the hashtag "#horizonworlds", indicating actual knowledge of Complainant's "Horizon Worlds" product; and

(c) Respondent's repeated offers to sell the Domain Names to Complainant for amounts that appear to far exceed Respondent's demonstrable out-of-pocket costs associated with the Domain Names' registration.

Complainant therefore contends that Respondent's parking the Domain Names at the "www.dan.com" site and advertising them for sale, and Respondent's repeated attempts to sell the Domain Names to Complainant, does not amount to a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy.

Complainant asserts that Respondent cannot credibly claim he is commonly known by the Domain Names. The name that Respondent uses to sign his correspondence bears no resemblance to the Domain Names. Respondent has not made use of the Domain Names in such a manner that supports a claim of being commonly known by them. Further, Respondent does not appear to have acquired any trademark rights including the term "horizon" that would confer any rights or legitimate interests on Respondent. Nor can Respondent assert that he has made or is currently making a legitimate noncommercial or fair use of the Domain Names. Respondent is commercially motivated given his repeated offers to sell the Domain Names.

Complainant states that Respondent is likely to come forward to assert rights or legitimate interests in the Domain Names on the basis that they are composed of combinations of dictionary terms. Complainant asserts that UDRP panels have recognized that merely registering a domain name comprised of a dictionary word does not by itself confer rights or legitimate interests. Further, Complainant observes that none of the added terms ("builder", "creator", "creators", "discover", "easy", "engineer", "expand", "girl", "home", "meeting", "multiverse", "queen", "sex", and "xxx") is commonly associated with the word "horizon" such that any of the Domain Names may be said to correspond to a common phrase, as compared to combinations such as "beyond the horizon", "dark horizon", "event horizon", "true horizon", "visible horizon". Nor has Respondent provided any evidence of demonstrable preparations to use the Domain Names in connection with the term "horizon." Complainant therefore submits that the registration of the Domain Names does not confer rights or legitimate interests on Respondent. Indeed, noting that Complainant's HORIZON trademark is used in the context of providing virtual reality services, many of the terms appended to Complainant's trademark tend to carry a risk of implied affiliation with Complainant, further evidencing Respondent's intent to target Complainant.

For reasons set out above, Complainant submits that it has established a *prima facie* case that Respondent has no rights or legitimate interests in the Domain Names.

(iii) Registered and used in bad faith

Complainant asserts that the Domain Names were registered and are being used in bad faith. While paragraph 4(b) of the Policy lists four factors that, in particular but without limitation, may be evidence of registration and use of a domain name in bad faith, Complainant submits that paragraphs 4(b)(i) and 4(b)(ii) of the Policy are of relevance in this case, although there are other factors that further show Respondent's bad faith.

As described above, Complainant provides a social virtual reality experience called Horizon Worlds, which was first announced in September 2019 under the name "Facebook Horizon". Complainant's trademarks for the mark HORIZON, which were registered between September 18, 2020 and October 6, 2021, predate the registration dates for the Domain Names (*i.e.*, October 20 and 22, 2021). Complainant asserts that while Respondent is likely to claim he was unaware of Complainant's registered rights in the HORIZON mark at the time the Domain Names were registered, the surrounding circumstances suggest otherwise.

Respondent has advertised the sale of the Domain Names on LinkedIn using the hashtag "#horizonworlds", demonstrating actual knowledge of Complainant's Horizon virtual reality services and corresponding trademark. Moreover, the timing of Respondent's registration of the Domain Names cannot be ignored. In the days immediately prior to Respondent's registration of the Domain Names, there was international media coverage concerning Complainant's possible rebranding under the name "horizon".

Not only did Complainant already have registered trademark rights in October 2021, but the timing of Respondent's registration of the Domain Names, coupled with Respondent's repeated attempts to sell the Domain Names to Complainant, supports a finding that Respondent registered the Domain Names opportunistically, anticipating Complainant's potential rebranding as "horizon", with a view to selling the Domain Names to Complainant at a substantial profit. The fact that the Domain Names redirect to web pages at "www.dan.com" offering them for sale is further evidence of Respondent's intent upon registering the Domain Names.

Considering the above, Complainant submits that Respondent registered the Domain Names primarily for the purpose of selling them to Complainant for valuable consideration in excess of his documented out-of-pocket costs incurred at the time of registration, in bad faith pursuant to paragraph 4(b)(i) of the Policy.

Complainant further submits that by registering 13 Domain Names, each of which contains Complainant's HORIZON trademark, Respondent has engaged in a bad faith pattern of conduct seeking to prevent Complainant from reflecting its trademark in corresponding domain names within the meaning of paragraph 4(b)(ii) of the Policy. For these reasons, Complainant submits that Respondent registered the Domain Names in bad faith.

Complainant states that, as described above, Respondent has not made any substantive use of the Domain Names other than to redirect them to the website at "www.dan.com", offering them for sale. Complainant contends that it is clear from Respondent's repeated attempts to sell the Domain Names to Complainant that Respondent is seeking to profit from their sale to Complainant, the owner of the HORIZON trademark. Prior UDRP panels have held that such behavior amounts to bad faith use for purposes of the Policy.

In view of the above, Complainant asserts that the Domain Names were registered and are being used in bad faith under the Policy.

## **B. Respondent**

Respondent submitted a Response that raised points in a manner that was not sequenced according to the UDRP elements. The Panel has undertaken to summarize Respondent's arguments below.

### **(i) Identical or confusingly similar**

Respondent emphasizes that Complainant has no United States trademark. Respondent states that the word "horizon" is generic in nature, and that without a trademark in the United States, Respondent has as much right to the Domain Names as Complainant. Respondent points out that there was nothing stopping Complainant from registering the Domain Names at any time before Respondent registered them.

Respondent states that the trademarks held by Complainant are in foreign countries, such that there is a language barrier for Respondent, who speaks only English. Respondent's states that "[w]hile doing my due diligence I searched the trademark database and found the US trademark [of Complainant] has been suspended since 9/20/2021 and Meta acknowledges this". Respondent observed that Complainant owns the European trademark for META HORIZON, which uses "Meta" as the first word and would not be confused with Respondent's Domain Names.

Respondent emphasizes that there are thousands of companies with the name "horizon", and there are many companies that have registered the word "horizon" as their trademark or a constituent element of their mark. Respondent also indicates that Complainant has competition that also uses the "horizon" name in the video game arena. Respondent emphasizes he did not register <horizonworlds.com> or <facebookhorizon.com>. The only shared word in the Domain Names is the dictionary word "horizon", which describes many things, but none of the meanings correspond to a virtual world or video game.

Respondent observes that the Horizon Worlds game has gone through many iterations and had many confusing name changes: Oculus, Meta Quest, Facebook, Horizon, and Horizon Worlds are all names used over a two-year period, thus making it confusing to the public. Respondent indicates that the public in this case are only the people who own Oculus virtual reality headsets and consumers invited to the beta version. Respondent states the general public would have no knowledge of Horizon Worlds, unless you were one of the few gamers in the United States or Canada invited to beta test the product. Horizon Worlds was only opened for public consumption on December 9, 2021, which is after Respondent registered the Domain Names.

Respondent asserts that none of the Domain Names will be confused with Complainant, and none use the word “Meta”, which would make it confusingly similar.

(ii) Rights or legitimate interests

Respondent states that he registered the Domain Names because he was developing a website for himself and his daughter. He states that the dictionary meaning for “horizon” is “the limit of a person’s mental perception, experience, or interest”, and that “this made sense to me on our journey as father and daughter”. He says that he was intending “on making a website and board game”, while some of the Domain Names were registered as defensive tactics (e.g., <horizonxxx.com> and <horizonsex.com>). Respondent points out that the Domain Names have not been parked for advertisements, and none were ever pointed to Complainant or Facebook. Respondent states the Domain Names were parked at “www.dan.com” after he faced money issues and needed to raise money fast, so he was attempting to sell them.

Respondent contends that nowhere in the Policy is there a requirement that a respondent be under a positive obligation to use an unused domain name or that failure to use a domain name is *per se* evidence that its owner has no right or legitimate interest in it.

Respondent states Complainant was not the only company he contacted in attempts to sell the Domain Names. He acknowledges he contacted Complainant numerous times but says this was because Complainant is a giant company and knowing who buys domain names is difficult to determine. Respondent states his original outreach was for selling his “meta” domain names and he included the “horizon” domain names just in case Complainant had interest. Respondent says Complainant could have unsubscribed from his emails and asked him to stop, but neither of these things happened.

(iii) Registered and used in bad faith

Respondent contends that Complainant has not proven that the Domain Names were registered in bad faith. If anything, Respondent states he has proven that the generic dictionary word “horizon” has been associated with many other companies much longer than Complainant has been in existence. The Domain Names were linked to a website and listed for sale with no advertisements, and they did not point anywhere.

Respondent states he did not register the Domain Names with intent to target Complainant, as proven by the emails he sent to other companies. Respondent also says that he has shown Complainant has competition from another company using the “horizon” name in the video game field. As for the reference to the “#horizonworlds” hashtag on his LinkedIn account when advertising the Domain Names, Respondent claims that the hashtags sometimes automatically fill themselves out: “I must have typed Horizon and it filled in the rest – it was a mistake.” No other advertisement to sell the Domain Names included that hashtag.

Respondent insists he has a right to profit from a domain name sale and he also tried to sell the Domain Names to Marvel and Amazon and did not target Complainant. Further, a domain name reseller is free to place whatever market value it chooses on the domain name. While Complainant offered only conclusory allegations, Respondent claims he registered the Domain Names for their inherent value as domain names incorporating common descriptive terms.

Respondent requests that the Panel find Complainant responsible for reverse domain name hijacking (“RDNH”).

## 6. Discussion and Findings

To succeed on its Complaint, Complainant must demonstrate that the three elements set forth in paragraph 4(a) of the Policy have been satisfied. These elements are that:

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

### **A. Supplemental Filings**

Complainant submitted a Supplemental Filing on March 22, 2022, requesting that the filing be admitted in the record at the Panel's discretion in accordance with paragraphs 10 and 12 of the Rules. Respondent objected to Complainant's Supplemental Filing. Respondent submitted several Supplemental Filings on March 25 and April 14-17, 2022, requesting that they be admitted in the record.

The Rules provide for the submission of the Complaint by Complainant and the Response by Respondent, while no express provision is made for supplemental filings by either party, except in response to a deficiency notification or if requested by the Center or Panel. Paragraphs 10 and 12 of the Rules in effect grant the Panel sole discretion to determine the admissibility of supplemental filings. Further, WIPO Overview of Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.6, states that "panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some 'exceptional' circumstance)".

Complainant in its submission indicates that an email purportedly sent from Respondent to Complainant, dated January 5, 2022, which was an exhibit to Respondent's Response, was never received by Complainant. Complainant further points out characteristics that raise the issue of whether the purported email was authentic.

Respondent's Supplemental Filing of March 25, 2022, indicates that Complainant filed an application in the United States for the trademark HORIZON WORLDS, application No. 97318111, on March 17, 2022, which is after the filing of the Complaint and after Respondent filed its Response. Based on this trademark application, Respondent contends that Complainant filed a frivolous UDRP complaint for names and trademarks that Complainant did not own and thus, the trademark application after the UDRP filing is "a self-admission of reverse domain hijacking". Respondent's Supplemental Filings of April 14-17, 2022, reference press releases and social media on Complainant's developmental activities for its Horizon Worlds product, claiming that these sources demonstrate Complainant's product has no Internet presence. Based on this assumption, Respondent argues that the Domain Names do not infringe Complainant's brand, trademark, or business interests because Complainant's Horizon Worlds product has no Internet presence.

The Panel observes that while supplemental filings are generally discouraged, those submitted by each of the parties in this case provide information that was not available when each filed their respective Complaint or Response, as the case may be. The Panel determines that to ensure the parties are treated with equality and that each is given a fair opportunity to present its case, the parties' Supplemental Filings will be admitted in this case; however, in accordance with paragraph 10 of the Rules, the Panel reserves the right to determine the relevance, materiality and weight of any evidence presented.

Further, regarding Respondent's April 21, 2022, email claiming that Complainant's legal counsel faces a conflict of interest, the Panel finds no basis for this.

### **B. Identical or Confusingly Similar**

The Panel finds that Complainant has demonstrated rights in its HORIZON trademarks, both through registration and use in several countries. Although Respondent emphasizes that Complainant does not own a trademark registration in the United States and has recently submitted a trademark application there, the Panel observes that in accordance with the [WIPO Overview 3.0](#), section 1.1.2, "the jurisdiction(s) where the

trademark is valid is not considered relevant to the panel assessment under the first element" of the Policy. Complainant has provided evidence of ownership of a trademark for its HORIZON mark dating from as early as September 2020 in the United Kingdom. The Panel also notes that the location of a trademark's registration and use may be relevant to the second and third elements of the Policy.

The Panel further determines that the Domain Names are confusingly similar to Complainant's HORIZON trademark. The Panel finds that the Domain Names each incorporate the HORIZON mark in its entirety, with this word placed in the first position, while adding the terms "builder", "creator", "creators", "discover", "easy", "engineer", "expand", "girl", "home", "meeting", "multiverse", "queen", "sex", and "xxx". This combination in the Domain Names does not prevent a finding of confusing similarity as the HORIZON mark is recognizable within the Domain Names. Numerous UDRP decisions have found that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8; see also section 1.7, which states, "where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing".

Accordingly, the Panel finds that the Domain Names are confusingly similar to a trademark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

### **C. Rights or Legitimate Interests**

Regarding the second element of the Policy, section 2.1 of the [WIPO Overview 3.0](#) provides that "where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name".

Here, the Panel determines that Complainant has made out a *prima facie* case, while Respondent has failed to rebut adequately Complainant's contentions. In particular, the Panel finds that Complainant has not authorized Respondent to use Complainant's HORIZON trademark; that Respondent is not commonly known by the Domain Names or the name "horizon;" and that Respondent has not used the Domain Names for a legitimate noncommercial or fair use.

Further and importantly, the Panel also determines that Respondent has not used the Domain Names in connection with a *bona fide* offering of goods or services. Instead, the Panel finds, on the balance of the probabilities, that Respondent registered the Domain Names while targeting Complainant and its HORIZON trademark, and then attempted to sell the Domain Names to Complainant. This use by Respondent does not support a finding of rights or legitimate interests in the Domain Names. The following findings are integral to the Panel's analysis. The thirteen Domain Names at issue in this case, all incorporating Complainant's HORIZON mark, were registered by Respondent on October 20 and 22, 2021, right at the time when international media sources were reporting on Complainant's impending change of name from "Facebook" to a new name, which might use or incorporate the word "horizon" (which Complainant had already registered as a trademark, as noted above). Although Respondent claims that he registered the Domain Names for "developing a website for my daughter and myself", the Panel finds this explanation to be implausible. Instead, the evidence indicates that just four days after he had completed his registrations, he contacted Complainant on October 26, 2021, asking whether Complainant was interested in buying them. This four-day period is not indicative of an intent to develop a personal website for Respondent and his daughter, nor is it a long enough period to support Respondent's claim that he then subsequently changed his original intentions (*i.e.*, to develop the website) because he faced money issues and needed to raise funds fast.

In his first message to Complainant on October 26, 2021, (just four days after completing the registrations and two days before Complainant formally announced its change of name), Respondent identified himself as "the exclusive broker for MetaMultiverse.com", but also stated that "I also have some Horizon names for sale". Several days later, on November 3, 2021, Respondent sent a second message to Complainant, stating, among other things, that "I have some names that are perfect for Facebooks rebrand. I did not

register these today, I just happen to own them". This message demonstrates that Respondent was aware of Complainant's rebranding during the contemporaneous period when he registered the Domain Names and sent his first communications. They also reveal his intentions for registering the Domain Names. Then, the following day on November 4, 2021, Respondent's next message indicated, "I have two Fortune 500 companies contacting me about all these names. One only wants the Meta and the other wants them all. I would like to sell them as a group but I would split them up. I have not heard back from you if there is any interest, but I obviously can't hold these names. If I negotiate the price I need, it's first come first serve. If you decide you have an interest, I will give you the right of first refusal".

These early communications, initiated by Respondent, support the view that he registered the Domain Names with the purpose of reselling them to Complainant. Although Respondent claimed to be receiving interest from other potential domain name buyers, even if this factual allegation was relevant, Respondent has provided no evidence of actual emails sent to or received from any third party. Moreover, Complainant's HORIZON trademark is used in the context of providing virtual reality services, and several descriptive terms in the Domain Names appended to Complainant's trademark (e.g., "multiverse" and "meeting") tend to carry a risk of implied affiliation with Complainant and its services, further demonstrating Respondent's intent to target Complainant. See [WIPO Overview 3.0](#), section 2.5.1. In addition, Respondent's stated purpose for registering the Domain Names (*i.e.*, to develop a website for his daughter and himself) does not align with two of the Domain Names registered, <horizonxxx.com> and <horizonsex.com>, nor does the Panel credit Respondent's statement that he registered these two only for defensive purposes.

Finally, as stated in [WIPO Overview 3.0](#), Section 2.10.1, "[p]anels have recognized that merely registering a domain name comprised of a dictionary word or phrase does not by itself automatically confer rights or legitimate interests on the respondent; panels have held that mere arguments that a domain name corresponds to a dictionary term/phrase will not necessarily suffice".

Accordingly, for all the above reasons, the Panel finds that Complainant has made a *prima facie* showing of Respondent's lack of rights or legitimate interests in respect of the Domain Names, which has not been rebutted by Respondent. The Panel therefore finds that Complainant has established the second element of the Policy in accordance with paragraph 4(a)(ii).

#### **D. Registered and Used in Bad Faith**

The third element of paragraph 4(a) of the Policy requires that Complainant demonstrate that Respondent registered and is using the Domain Names in bad faith. [WIPO Overview 3.0](#), section 3.1, states "bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark". Paragraph 4(b) of the Policy indicates that certain circumstances may, in particular but without limitation, be evidence of the registration and use of a domain name in bad faith.

The Panel determines, as explained in Section C immediately above, that the evidence in this case demonstrates Respondent registered and is using the Domain Names in bad faith. First, the evidence indicates that Respondent had Complainant (and Complainant's impending name change) in mind and targeted Complainant's HORIZON trademark when registering the Domain Names. Within less than a week after registering them, Respondent contacted Complainant in an effort to sell the Domain Names to Complainant for valuable consideration likely in excess of Respondent's out-of-pocket costs directly related to the Domain Names. Respondent's stated reasons for registering the thirteen Domain Names – to develop a website for himself and his daughter – are implausible in view of Respondent's actual conduct.

On these points, the Panel agrees with the pertinent reasoning in *Skandia Fastigheter AB v. Effekt Försäljning Ulla Olsson AB / Gunnar Falk, Effekt AB*, WIPO Case No. [D2017-0656](#):

"... it is clear that the name change of the shopping mall name was revealed to the public on February 6, 2008 and that the disputed domain names were registered on February 8 and March 11, 2008. The Panel finds the timing and circumstances of the domain name acquisitions by the Respondent suspicious, especially when considering the Respondent's absence of rights or

legitimate interests coupled with no plausible explanation for the choice of the domain names. It has been demonstrated by the Complainant that the Respondent registered twenty-four domain names in total containing the words 'danderyd', 'centrum', 'galleria' and 'shopping' from February 7, 2008, to April 10, 2012, none of which are put to any use in connection with the Respondent's allegations or otherwise."

Further, the Panel finds Respondent's argument to be misguided that Complainant is somehow precluded from bringing this case because Complainant does not yet have a web-based version of its Horizon Worlds product. Even if this was true, nothing in the UDRP limits its application only to trademark owners who offer online products or services.

The Panel additionally finds that by registering 13 Domain Names, each of which contains Complainant's HORIZON trademark, Respondent has engaged in a bad faith pattern of conduct seeking to prevent Complainant from reflecting its trademark in corresponding domain names within the meaning of paragraph 4(b)(ii) of the Policy.

In conclusion, the Panel determines that, for all the above reasons, the Domain Names were registered and are being used in bad faith. Accordingly, Complainant has satisfied the third 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 Domain Names – <horizoncreator.com>, <horizoncreators.com>, <horizondiscover.com>, <horizoneasy.com>, <horizonengineer.com>, <horizonexpand.com>, <horizongirl.com>, <horizonhomebuilder.com>, <horizonmeeting.com>, <horizonmultiverse.com>, <horizonqueen.com>, <horizonsex.com>, and <horizonxxx.com> – be transferred to Complainant.

*/Christopher S. Gibson/*

**Christopher S. Gibson**

Sole Panelist

Date: April 27, 2022