

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc. v. Whois Agent (552950183), Whois Privacy Protection Service, Inc. / Mille d Fuller, SMMPANEL.US LTD  
Case No. D2022-1030

### **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 Whois Agent (552950183), Whois Privacy Protection Service, Inc., United States / Mille d Fuller, SMMPANEL.US LTD, United Kingdom.

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

The disputed domain name <buyfacebookfollowers.com> (the “Domain Name”) is registered with eNom, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 24, 2022. On March 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 25 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 4, 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 April 8, 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 April 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 3, 2022.

The Center appointed Nicholas Smith as the sole panelist in this matter on May 9, 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 leading provider of online social networking services. Since 2004 the Complainant and its predecessor in title has operated a well-known social media network from its website at “www.facebook.com” (the “Complainant’s Website”) where it has 2.90 billion monthly active users. The Complainant’s Website is currently ranked the 3rd most visited website in the world.

The Complainant is the owner of trade mark registrations in various jurisdictions (including the European Union and United States) for marks consisting of the word “facebook” (the “FACEBOOK Mark”) including United States registration No. 3041791 registered on January 10, 2006.

The Domain Name was registered on October 1, 2021. The Domain Name resolves to a website (the “Respondent’s Website”) where the Respondent purports to offer a service allowing viewers to buy likes and followers on the Complainant’s Facebook service (and also the Complainant’s Instagram service). The purchasing of followers on Facebook and Instagram would be expected to involve the creation of false accounts or hacking into existing accounts.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant makes the following contentions:

- (i) that the Domain Name is confusingly similar to the Complainant’s FACEBOOK Mark;
- (ii) that the Respondent has no rights nor any legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the FACEBOOK Mark, having registered the FACEBOOK Mark in the United States and the European Union. The Domain Name consists of the FACEBOOK Mark in its entirety with the addition of the descriptive terms “buy” and “followers”.

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Respondent is not commonly known by the Domain Name, nor has it conducted a legitimate business under the Domain Name. The Complainant has not authorized or licensed the Respondent to use the FACEBOOK Mark. There is no noncommercial or fair use of the Domain Name. The use of the Domain Name to sell Facebook followers involves the Respondent engaging in fraudulent conduct. Such a use is not *bona fide*.

Given the reputation of the Complainant’s well-known FACEBOOK Mark and the use to which the Domain Name has been put, it is inconceivable that the Respondent registered the Domain Name unaware of the Complainant’s rights. The Domain Name revolves to a website which offers a service that likely involves some form of fraudulent operation. This conduct amounts to registration and use of the Domain Name in bad faith.

##### **B. Respondent**

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

To prove this element the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the FACEBOOK Mark, having registered the mark in the United States and the European Union.

The Domain Name consists of the FACEBOOK Mark with the additional words "buy" and "followers" (the generic Top Level Domain ("gTLD"), ".com" being discounted for the purposes of comparison). The addition of such terms to a complainant's mark does not prevent a finding of confusing similarity, see *Wal-Mart Stores, Inc. v. Henry Chan*, WIPO Case No. [D2004-0056](#). The Panel finds that the Domain Name is confusingly similar to the Complainant's FACEBOOK Mark. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

### B. Rights or Legitimate Interests

To succeed on this element, a complainant must make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. If such a *prima facie* case is made out, then the burden of production shifts to the respondent to demonstrate rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a domain name:

"Any of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you 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 (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or
- (iii) you are making legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue."

The Respondent is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the FACEBOOK Mark or a mark similar to the FACEBOOK Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name.

There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a *bona fide* offering of goods or services or for a legitimate noncommercial or fair use. Rather, it appears from the evidence submitted by the Complainant that the Respondent has used the Domain Name to operate a website that purport to be able to supply individuals with Facebook "likes" and/or "followers". If such services are not real, then the Respondent is engaging in fraudulent conduct. If such services are real then the Respondent, in providing these followers, is engaged in the process of making up fake accounts and/or hacking into existing accounts. Such conduct may be fraudulent and is not a *bona fide* offering of goods or services.

The Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has had an opportunity to rebut the *prima facie* case that it lacks rights or legitimate interests but has chosen not to do so. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

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

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith (Policy, paragraph 4(b)):

- (i) circumstances indicating that the Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name's 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 its documented out-of-pocket costs directly related to the Domain Name; or
- (ii) The Respondent has registered the 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 Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 finds that the Respondent was aware of the Complainant at the time the Domain Name was registered. The Respondent's Website purported to offer a service where the Respondent would generate "followers" for a user's Facebook account. The registration of the Domain Name in awareness of the Complainant and its rights in the FACEBOOK Mark and in the absence of rights or legitimate interests amounts to registration in bad faith.

The Respondent is using the Domain Name for a website purporting to offer a service that would seem to involve the creation of false Facebook accounts. In previous UDRP decisions such conduct has been found to be evidence of registration and use in bad faith, see *Instagram, LLC v. Whois privacy protection service / Olga Sergeeva / Ivan Ivanov / Privacy Protect, LLC (Privacy Protect.org)*, WIPO Case No. [D2020-0521](#), in which the panel described the then respondent's conduct (essentially identical to the present Respondent's conduct) as follows:

"The Panel is not convinced by the arguments of the Respondent, which are not supported by any evidence or explanation how its users would receive large numbers of genuine "followers", "likes", "views" and "comments" in such short periods of time legitimately [ ]. The Panel is not aware how this could possibly happen without some type of fraud or other illegitimate conduct. The elements of all of the disputed domain names and the content and appearance of the associated websites shows that they are all focused on the Complainant and its Instagram service, which makes the statement of the Respondent that it was not targeting the Complainant simply not credible."

and

"Taking the above into account, the Panel accepts that it is more likely than not that the Respondent has registered the disputed domain names with knowledge of the Complainant and targeting the INSTA and INSTAGRAM trademarks (or its abbreviated form INSTA) in an attempt to attract traffic to the disputed

domain names and to offer Internet users illegitimate services that destroy the authenticity of the user experience sought by Instagram and damage the reputation of the Complainant.”

The Panel agrees with the conclusions of the panel above and finds that the Respondent is using the Domain Name in bad faith.

Accordingly, the Panel finds that the Respondent has registered and is using the Domain Name in bad faith 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 Domain Name, <buyfacebookfollowers.com> be transferred to the Complainant.

*/Nicholas Smith/*

**Nicholas Smith**

Sole Panelist

Date: May 20, 2022