

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc. v. Domains By Proxy, LLC / Ali Kiper  
Case No. D2022-1050

### **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 Domains By Proxy, LLC, United States / Ali Kiper, Turkey.

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

The disputed domain name <cheapfacebooklikes.com> 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 March 25, 2022. On March 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 29, 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 March 30, 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 1, 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 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 29, 2022.

The Center appointed Gareth Dickson as the sole panelist in this matter on May 11, 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, which is listed on Alexa as being the 4th most visited website in the world, and a related mobile application. The Complainant is based in the United States and changed its name from Facebook, Inc. on October 28, 2021.

The Complainant is the owner of a number of trade mark registrations around the world comprising or incorporating FACEBOOK (the “Mark”), including:

- United States trade mark registration number 3,122,052, registered on July 25, 2006; and
- European Union trade mark registration number 009151192, registered on December 17, 2010.

The disputed domain name was registered on April 18, 2018. It currently directs Internet users to a webpage offering visitors the ability to buy “likes”, “comments”, “views”, “shares”, and “followers” for their Facebook accounts, along with similar services related to other social media platforms.

#### **5. Parties’ Contentions**

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

The Complainant argues that it has rights in the Mark by virtue of its ownership of various trade mark registrations for the Mark around the world. It contends that the disputed domain name is confusingly similar to the Mark since it incorporates the Mark (which is recognisable within the disputed domain name) with the addition of the descriptive terms “cheap” and “likes”, under the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant confirms that the disputed domain name was registered by the Respondent without its permission and that the Respondent is not a licensee of the Complainant. It alleges that the Respondent has created the disputed domain name to impersonate the Complainant and to confuse Internet users as to its origin and/or endorsement by the Complainant. The Complainant further alleges that the Respondent is offering services which are not permitted by the Complainant’s brand guidelines on the use of the Mark, such guidelines being freely available online, and whose use by Facebook account holders would be a breach of the Complainant’s Community Standards and Terms of Service.

The Complainant submits that there is no evidence to suggest that the Respondent: has been commonly known by the disputed domain name; is making, or intends to make, a legitimate noncommercial or fair use of it (the services offered on the Respondent’s website, accessible via the disputed domain name, having been commercial in nature); or has ever used or demonstrated preparations to use it in connection with a *bona fide* offering of goods or services.

The Complainant submits that the Respondent must have known of the Complainant and the Mark when it registered the disputed domain name. The Mark, according to the Complainant, is well known throughout the world, is highly distinctive and is recognised and identified as being connected to the Complainant, making a coincidental adoption of the disputed domain name by the Respondent virtually impossible. In addition, the Respondent’s use on its website of the Complainant’s logo and of another trade mark owned by the Complainant and its equally famous subsidiaries, further confirms that the Respondent was aware of the Mark and the Complainant prior to the selection and registration of the disputed domain name. Further, the Respondent’s own use of the disputed domain name to sell Facebook “likes” and other similar services, features which are unique to the Complainant’s website, confirms beyond any doubt that the Respondent knew of the Mark and the Complainant’s interest in it when it registered the disputed domain name and that it

registered and is using it in bad faith.

Finally, the Complainant argues that the Respondent has used the disputed domain name to attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Mark, contrary to the Policy. The Complainant notes too that the Respondent has used a privacy service to conceal its identity for as long as possible.

Together, the Complainant submits that the Respondent registered and is using the disputed domain name in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, the Complainant bears the burden of proving that:

- (a) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (c) the disputed domain name has been registered and is being used in bad faith.

These criteria are cumulative. The failure of the Complainant to prove any one of these elements means the Complaint must be denied.

### **A. Identical or Confusingly Similar**

The Panel accepts that the Complainant is the owner of, and therefore has rights in, the Mark.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)) provides that: "[I]n cases 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".

Section 1.8 of the [WIPO Overview 3.0](#) further provides that: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

The Panel therefore finds that the disputed domain name is confusingly similar to the Mark, since the disputed domain name incorporates the Mark in its entirety. The addition of the words "cheap" and "likes" in the disputed domain name does not prevent a finding of confusing similarity, nor does the use of the gTLD ".com".

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

### **B. Rights or Legitimate Interests**

Although a complainant is required to demonstrate that a respondent has no rights or legitimate interests in respect of the domain name, as explained in section 2.1 of the [WIPO Overview 3.0](#), the consensus view of previous UDRP panels is that where a complainant establishes 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The evidence before the Panel, which the Respondent has made no effort to rebut, is that the services offered by the Respondent via the disputed domain name are without exception unauthorised and prejudicial to the Complainant and users of its services. Furthermore, the Respondent has not accurately disclosed the lack of any relationship between it and the Complainant, notwithstanding that a commercial relationship may be inferred by the Respondent's use of the Complainant's trade marks in the disputed domain name, and offers services relating to third parties other than the Complainant.

Further evidence before the Panel demonstrates that the Mark is neither generic nor descriptive but is both distinctive of the Complainant and well known, making a coincidental adoption by the Respondent highly unlikely. The Complainant also states that it has not given the Respondent permission to use the Mark, in a domain name or otherwise, and submits that the Respondent has not been commonly known by the disputed domain name.

There is no evidence that the Respondent has acquired any common law rights to use the Mark, is commonly known by the Mark or is making any use of the disputed domain name that would establish rights or legitimate interests as a result of a noncommercial or fair use of it.

By not participating in these proceedings, the Respondent has failed to refute the Complainant's *prima facie* case that it has met its burden under the second UDRP element.

As clearly stated in section 2.1 of the [WIPO Overview 3.0](#), "a panel's assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed". Having reviewed and weighed the available evidence, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

The Panel notes that the disputed domain name was registered in 2018, several years after the Mark was first registered and put to extensive use around the world, and the Panel therefore accepts that the disputed domain name was chosen by reference to the Mark.

As a result, and in the absence of evidence from the Respondent that the similarity of the disputed domain name to the Mark is somehow coincidental, the Panel must conclude that the Respondent knew of the Complainant's rights in the Mark when it registered the disputed domain name.

The Panel therefore finds that the Respondent's registration of the disputed domain name was in bad faith since it attempted to appropriate for the Respondent, without the consent or authorisation of the Complainant, rights in the Complainant's Mark.

The disputed domain name is also being used in bad faith.

It is being used for a commercial purpose that involves misleading and diverting consumers to a website which is not affiliated with the Complainant, and enticing consumers to engage in illegitimate (and prohibited) activity, namely the purchase of artificial "likes", "comments", "views", "shares", and "followers". This practice is sometimes known as "astroturfing" in light of the manner in which it attempts to make something synthetic appear organic, and is generally considered to be harmful, in particular in systems reliant on trust and authenticity.

The Respondent has not sought to explain its registration and use of the disputed domain name, has attempted to conceal its identity, and has not participated in these proceedings. There is no conceivable use of the disputed domain name by the Respondent that would not be illegitimate, , *i.e.*, the (prohibited) purchase of “likes” in relation to a Facebook account.

Therefore, and on the basis of the information available to it, the Panel finds that the Respondent’s use of the disputed domain name is without justification and is inconsistent with the Complainant’s exclusive rights in the Mark. Consideration of these and other factors militates in favour of a finding of bad faith.

The Panel finds that the Respondent has registered and is using the disputed domain name 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 <cheapfacebooklikes.com> be transferred to the Complainant.

*/Gareth Dickson/*

**Gareth Dickson**

Sole Panelist

Date: May 25, 2022