

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Duong Minh Vuong, Freelancers Case No. D2022-1195

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 Duong Minh Vuong, Freelancers, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <tanglikefacebook.net> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2022. On April 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 8, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On April 12, 2022, the Center sent an email in English and Japanese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on April 12, 2022. The Respondent did not comment on the language of the proceeding.

The Center verified that the 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 in English and Japanese of the Complaint, and the proceedings commenced on April 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 9, 2022. On April 19 and 20, 2022, the Center received several email communications in Vietnamese from the administrative and technical contact of the disputed domain name. Accordingly, the Center notified the commencement of panel appointment process on May 13, 2022.

The Center appointed Keiji Kondo as the sole panelist in this matter on May 17, 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 a United States social technology company, and operates Facebook, Instagram, and WhatsApp. Founded in 2004, the Complainant's Facebook platform (hereinafter referred to as "Facebook") is a leading provider of online social-media and social-networking services. Since its launch in 2004, Facebook rapidly developed considerable renown and goodwill worldwide, with 1 million active users by the end of 2004, 100 million users in August 2008, 500 million users in July 2010, 1 billion users worldwide by September 2012 and 2.27 billion users as of September 2018. Today, Facebook has approximately 2.90 billion monthly active users and 1.91 billion daily active users on average worldwide (as of June 30, 2021).

As a result of its activities, Facebook has developed considerable reputation and goodwill worldwide in connection with a wide variety of goods and services. Given the exclusive online nature of the Complainant's social-networking business, the Complainant's domain names are the main way for millions of users to avail themselves of its services. Reflecting its global reach, the Complainant is the owner of numerous domain names consisting of or including its trademark, for example, <facebook.com>.

The Complainant owns a number of trademark registrations for FACEBOOK in many jurisdictions throughout the world, including, but not limited to, the following:

- European Union Trade Mark No. 002483857, FACEBOOK, registered on June 13, 2003;
- United States Trademark Registration No. 3041791, FACEBOOK, registered on January 10, 2006;
- Vietnamese Trademark No. 40128158000, FACEBOOK, registered on June 26, 2009; and
- International Registration No. 1280043, FACEBOOK, registered on December 23, 2014.

The disputed domain name is <tanglikefacebook.net>. The disputed domain name was registered on December 29, 2014. The disputed domain name resolves to a website in Vietnamese, the title of which is "Tang like Facebook", where "Tang" means "increase" in Vietnamese according to Google translation. In addition, the website displays logos which are similar, or almost identical, to the Complainant's figurative trademarks for which the Complainant also has trademark registrations.

5. Parties' Contentions

A. Complainant

The disputed domain name incorporates the Complainant's trademark in its entirety with the addition of the terms "tang" and "like" under the generic Top-Level Domain ("gTLD") ".net". 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 nature of such additional term(s) may however bear on assessment of the second and third elements. (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.8). The inclusion of the Complainant's trademark in its entirety in the disputed domain name is sufficient to establish confusing similarity between the disputed domain name and the Complainant's trademark. The addition of the terms "tang" and "like" in the disputed domain name does not prevent a finding of confusing similarity with the Complainant's trademark, which remains recognizable in the disputed domain name.

The addition of the gTLD ".net" may be disregarded for the purposes of assessing confusing similarity, as it is a standard requirement of registration. ([WIPO Overview 3.0](#), section 1.11.1).

The Respondent has no rights or legitimate interests in the disputed domain name. As submitted below, the Respondent is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy that would demonstrate its rights or legitimate interests in the disputed domain name.

First, the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy. The Respondent is not a licensee of the Complainant. The Respondent is not affiliated with the Complainant in any way. The Complainant has not granted any authorization for the Respondent to make use of its trademark, in a domain name or otherwise.

Prior UDRP panels have recognized that service providers using a domain name containing a third-party trademark may be making a *bona fide* offering of goods or services and thus have a legitimate interest in such a domain name if the list of factors (the “Oki Data criteria”) set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) are met:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trade marked goods or services;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
- (iv) the respondent must not try to “corner the market” in domain names that reflect the trademark.

The Respondent is unable to be viewed as a *bona fide* service provider, as it is not providing sales or repairs in relation to a product provided by the Complainant. Rather, the Respondent is making unauthorized use of the Complainant’s trademark to market its own ancillary services in relation to the Complainant but also to other social media companies. Moreover, even if one is to apply the Oki Data criteria, the Respondent fails to accurately and prominently disclose the website’s relationship with the Complainant. There is indeed no disclaimer on the Respondent’s website which would clarify the lack of relationship between the Complainant and the Respondent.

Second, there is no evidence to suggest that the Respondent is commonly known by the disputed domain name. According to the publicly-available Whois record, the disputed domain name has been registered by an individual named Duong Minh Vuong, which bears no resemblance to the disputed domain name whatsoever. To the best of the Complainant’s knowledge, there is no evidence of the Respondent having acquired or applied for any trademark registrations for “tanglikefacebook”, as reflected in the disputed domain name.

Third, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. As described above, the disputed domain name resolves to a website selling Facebook “likes”, and “followers” with prices ranging from VND 1 to VND 600, which is clearly commercial in nature and from which the Respondent is undoubtedly obtaining financial gain. Such a use of the disputed domain name by the Respondent cannot be considered either legitimate noncommercial or fair, as the Respondent is clearly seeking to unfairly exploit the goodwill of the Complainant’s trademarks for their own profit. See *Meta Platforms, Inc. v. Dont Know*, WIPO Case No. [D2021-3962](#).

For the foregoing reasons, the Complainant submits that it has established a *prima facie* showing that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the burden of production shifts to the Respondent to come forward with evidence to rebut the Complainant’s case. In the absence of such evidence, the Complainant may be deemed to have satisfied the requirements of paragraph 4(a)(ii) of the Policy.

As submitted below, the Complainant argues that the disputed domain name was registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists four factors which, in particular but without limitation, may be evidence of registration and use of a domain name in bad faith for the purposes of paragraph 4(a)(iii) of the Policy. Among the four factors, paragraph 4(b)(iv) of the Policy is of particular relevance in the present case,

although there are other factors not listed in paragraph 4(b) of the Policy that also strongly indicate bad faith, as explained in more detail below.

The Complainant's trademark is highly distinctive and famous throughout the world. It has been continuously and extensively used since 2004 in connection with the Complainant's social network, having rapidly acquired considerable goodwill and renown worldwide. All the top results obtained by typing FACEBOOK in to the Google search engine available at "www.google.com" and "www.google.com.vn" refer to the Complainant.

The fame of the Complainant's trademarks is also evidenced by the number of cybersquatters who have sought to exploit the very significant consumer recognition and goodwill attached to its mark. Prior UDRP panels have repeatedly recognized the strength and renown of the Complainant's trademark. See, e.g., *Facebook, Inc. v. Franz Bauer*, WIPO Case No. [D2010-1247](#)).

In light of the above, the Respondent could not credibly argue that it did not have knowledge of the Complainant or its trademark when registering the disputed domain name in December 2014, by which time Facebook had amassed over 1.3 billion monthly active users. In fact, the Respondent's intent to target the Complainant when registering the disputed domain name may be inferred from the contents of the website to which the disputed domain name resolves. The Respondent's website makes explicit reference to Facebook.

For the foregoing reasons, the Complainant submits that the disputed domain name was registered in bad faith.

By using the disputed domain name in the manner described above, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the website to which the disputed domain name resolves. Such a use is clearly in bad faith as the Respondent is using the Complainant's trademark seeking to increase traffic to its website in order to obtain commercial gain derived from the goodwill and reputation attached to the Complainant's trademark.

In addition, the Respondent's use of the disputed domain name is in bad faith, not only because the Respondent is seeking to unduly profit from the Complainant's reputation and goodwill, but also because this is destroying the authenticity of the user experience provided by the Complainant's social network by pointing the disputed domain name to a website selling false "likes" and "followers" and therefore damaging the Complainant's reputation and goodwill. Furthermore, as described above, the Respondent's activities likely involve some type of fraudulent operation, such as the creation of fake accounts, or hacking into existing accounts, which is also clearly illegitimate and therefore also constitutes an additional strong indication of the Respondent's bad faith. See *Instagram, LLC v. Registration Private, Domains By Proxy, LLC / Yan Jiang and Whois Domain Admin / Li Dan*, WIPO Case No. [D2020-2092](#)).

In view of the above, the Complainant asserts that the disputed domain name was registered and is being used in bad faith, in accordance with paragraph 4(a)(iii) of the Policy.

B. Respondent

The Respondent did not submit a formal Response. Someone that did not identify himself/herself submitted informal email communications to the Center (seemingly on behalf of the Respondent), but they were not in either English or Japanese, and appeared not to reply to the Complainant's contentions.

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement of the disputed domain name is Japanese. On April 12, 2022, the Center sent an email in English and Japanese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on April 12, 2022. The Respondent did not comment on the language of the proceeding.

Considering the following circumstances, the Panel, exercising its authority to determine the language of the proceeding under paragraph 11(a) of the Rules, has decided English as the language of the proceeding:

- the Complaint was filed in English;
- the Complainant is a United States entity, and represented by a French law firm;
- the Respondent's address is in Viet Nam;
- the Respondent did not comment on the language of the proceeding, nor did it reply to the Complainant's contentions in any manner;
- the Respondent's website displays a caption reading "MARKETING ONLINE", showing that the Respondent has some ability to communicate in English; and
- ordering the translation of the Complaint would only result in extra delay of the proceeding and additional cost for the Complainant.

6.2. Substantive Issues

A. Identical or Confusingly Similar

The Complainant owns trademark registrations for FACEBOOK, including a European Union Trade Mark Registration No. 002483857, registered on June 13, 2003.

The disputed domain name incorporates the Complainant's trademark in its entirety, with addition of "tang" and "like". Even with the addition of "tang" and "like", the Complainant's trademark is recognizable in the disputed domain name.

It is well-established that the gTLD ".net" should typically be disregarded in finding of confusing similarity because it is viewed as a standard registration requirement.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark within the meaning of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The disputed domain name resolves to a website in Vietnamese, the title of which is "Tang like Facebook". The Respondent's website is used to sell Facebook "likes", and "followers" with prices ranging from VND 1 to VND 600.

It is obvious that the Respondent's use of the disputed domain name is of commercial nature, and, thus, it does not constitute a legitimate noncommercial or fair use of the disputed domain name. Therefore, whether the Respondent's use may be regarded as in connection with *bona fide* offering of goods or services is a question here.

Applying Oki Data criteria, the Panel finds that the Respondent's use does not constitute a use in connection with *bona fide* offering of goods or services, at least for the following reasons:

- (i) the Respondent offers its own goods or services at its website; and

(ii) the Respondent does not disclose its relationship with the Complainant; that is, the Respondent presents no disclaimer at its website as to the relationship with the Complainant.

Therefore, the use of the disputed domain name by the Respondent is not a legitimate noncommercial or fair use under paragraph 4(c)(iii) of the Policy, nor a use in connection with a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy.

The name of the Respondent is not at all similar to the disputed domain name. Moreover, the Respondent did not reply to the Complainant's contentions, even though they had been properly given a notification of the Complaint. Under the circumstances, the Respondent's failure to respond to the Complaint may be regarded as evidence showing that the Respondent has never been commonly known by the disputed domain name. Therefore, the Panel concludes that the Respondent has never been commonly known by the disputed domain names within the meaning of paragraph 4(c)(ii) of the Policy.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant's European Union Trade Mark Registration No. 002483857 was registered on June 13, 2003, which predates the registration date of the disputed domain name more than ten years. In addition, the Complainant launched Facebook in 2004. Moreover, the Respondent website explicitly refers to Facebook with logos that are very similar to the Complainant's logos.

The disputed domain name consists of "tang", "like" and "facebook", and the gTLD ".net". Since "tang" means "increase" in Vietnamese, and the Respondent's business seems to target the Vietnamese market, addition of "tang" and "like" strengthens likelihood of confusion, for Facebook users would easily find these terms as associated with Facebook, or at least with SNS in general.

With all these facts, the Panel concludes that the Respondent was aware of the Complainant's trademark at the time of registration of the disputed domain name, and that the Respondent acquired the disputed domain name, intentionally attempting to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's products or services. The Panel finds that the Respondent registered the disputed domain name in bad faith.

As mentioned above, the Respondent still uses the disputed domain name to direct Internet users to its website. Therefore, the Panel finds that the Respondent uses the disputed domain name in bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of 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 disputed domain name <tanglikefacebook.net> be transferred to the Complainant.

/Keiji Kondo/

Keiji Kondo

Sole Panelist

Date: May 31, 2022