

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Brad A Biren

Case No. D2022-1376

1. The Parties

The Complainant is Meta Platforms, Inc.¹, United States of America (“United States”), represented by Tucker Ellis, LLP, United States.

The Respondent is Brad A Biren, United States.

2. The Domain Name and Registrar

The disputed domain name <facebookinfrastructure.com> (the “Disputed Domain Name”) is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 16, 2022. On April 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 19, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and further confirming the contact details of the Respondent.

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 of the Complaint, and the proceedings commenced on April 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 11, 2022. The Respondent submitted multiple informal communication emails on April 20, 23 and May 12, 13 and 16, 2022, requesting an extension for response. Accordingly, the Respondent was granted the automatic four-calendar day extension for Response under paragraph 5(b) of the Rules. The Respondent, however, did not submit a formal response. Accordingly, the Center proceeded to Panel appointment.

¹ On October 28, 2021, the Complainant, formerly known as Facebook, Inc., changed its name to Meta Platforms, Inc.

The Center appointed Lynda M. Braun as the sole panelist in this matter on May 15, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant operates the Facebook social networking website and mobile application, which enables its users to create their own accounts and user profiles and connect with each other on their personal computers and mobile devices. The website has more than one billion daily active accounts and over two billion monthly active users worldwide.

The Complainant owns the following registered trademarks, among others, which it has used for over 17 years: FACEBOOK, United States Registration No. 3,122,052, registered on July 25, 2006; FACEBOOK, United States Registration No. 3,881,770, registered on November 23, 2010; and FACEBOOK, United States Registration No. 4, 441,540, registered on November 26, 2013. The Complainant also owns International and European Union trademarks for the FACEBOOK trademark. The aforementioned trademarks will hereinafter collectively be referred to as the "FACEBOOK Mark".

The Complainant owns the domain name <facebook.com>, which redirects to its official website at "www.facebook.com". The Complainant also owns and operates numerous other domain names consisting of the FACEBOOK Mark in combination with various generic and country code top-Level-Domain extensions, including <facebook.org> and <facebook.net>. The Complainant also provides information on its website about infrastructure research and technical challenges related to data infrastructure, as well as on its Infrastructure Data Center Strategy team.

The Disputed Domain Name was registered on May 29, 2021, which postdates the Complainant's registration and use of the FACEBOOK Mark by many years. The Disputed Domain Name resolves to the Respondent's own commercial website at "www.iqmop.com" that sells various consulting services and books unrelated to the Complainant. The services offered are described on the website as: "IQMOP is your digital hub for expertise, talent, and opportunities to learn and educate within the Greater Des Moines, Iowa area."

The Complainant's attorneys sent a cease-and-desist letter to the Respondent on December 22, 2021, advising the Respondent of its infringing use of the Disputed Domain Name. The Respondent sent an informal response to the Complainant on the same day, denying such infringing use, although the Respondent continued to use the Disputed Domain Name to resolve to the Respondent's commercial website.

5. Parties' Contentions

A. Complainant

The following are the Complainant's contentions:

- the Disputed Domain Name is confusingly similar to the Complainant's FACEBOOK Mark;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name;
- the Disputed Domain Name was registered and is being used in bad faith; and
- the Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

The Respondent did not submit a formal response, although the Respondent sent an informal email communication to the Complainant on December 22, 2021, denying infringement of the Disputed Domain Name. In addition, the Respondent also sent multiple informal communications to the Center as described under Section 3.

6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the FACEBOOK Mark.

It is uncontroverted that the Complainant has established rights in the FACEBOOK Mark based on its years of use as well as its registered trademarks for the FACEBOOK Mark in the United States and other jurisdictions worldwide. The consensus view is that “registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive”. See *CWI, Inc. v. Domain Administrator c/o Dynadot*, WIPO Case No. [D2015-1734](#). The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the FACEBOOK Mark. Moreover, the registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2.1. Thus, the Panel finds that the Complainant has rights in the FACEBOOK Mark.

The Disputed Domain Name consists of the FACEBOOK Mark followed by the term “infrastructure”, and then followed by the generic Top-Level Domain (“gTLD”) “.com”. It is well established that a domain name that wholly incorporates a trademark is deemed confusingly similar to that trademark for purposes of the Policy despite the addition of other terms. As stated in section 1.8 of [WIPO Overview 3.0](#), “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”. For example, numerous UDRP decisions have reiterated that the addition of terms to a trademark does not prevent a finding of confusing similarity. See *Allianz Global Investors of America, L.P. and Pacific Investment Management Company (PIMCO) v. Bingo-Bongo*, WIPO Case No. [D2011-0795](#); and *Hoffmann-La Roche Inc. v. Wei-Chun Hsia*, WIPO Case No. [D2008-0923](#).

Further, the addition of a gTLD such as “.com” in a domain name is technically required. Thus, it is well established that, as here, such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under the Policy, a complainant has to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

There is no evidence in the record suggesting that the Respondent has rights or legitimate interests in the Disputed Domain Name. The Complainant has not authorized, licensed, or otherwise permitted the Respondent to use the Complainant's FACEBOOK Mark. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name. Furthermore, prior panels have held that using a disputed domain name to redirect users to a commercial website selling products and services unrelated to the complainant's mark is not a *bona fide* offering of goods or services under the Policy. See *Kabbage, Inc. v. Oneandone Private Registration, 1&1 Internet Inc. - www.1and1.com / Robert Hanssen, Ridiculous File Sharing*, WIPO Case No. [D2015-1507](#) (the respondent was not making a *bona fide* use of the disputed domain names when the domain names redirected users to commercial websites promoting services that were unrelated to complainant's business and complainant's trademarks). In the present case, the Respondent's resolving website prompts users to "Subscribe" and "Get 10% off your first purchase and updates when you sign up for our newsletter!". The website also enables users to book services and purchase products. The Panel holds that such use is commercial and is therefore not a legitimate noncommercial or fair use under the Policy.

Further, the composition of the Disputed Domain Name, comprising the entirety of the FACEBOOK Mark plus the additional term "infrastructure", related to the Complainant's services, which (especially in the absence of an explanation from the Respondent) does not seem to be a mere coincidence, carries a risk of implied affiliation and cannot constitute fair use here, as it may effectively suggest sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

In sum, the Panel finds that the Complainant has established an un rebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

The Panel finds that, based on the record, the Complainant has demonstrated the Respondent's bad faith registration and use of the Disputed Domain Name pursuant to paragraph 4(b) of the Policy.

First, the Disputed Domain Name was registered long after the Complainant first began using the FACEBOOK Mark. The Panel finds it likely that the Respondent had the Complainant's FACEBOOK Mark in mind when registering the Disputed Domain Name, demonstrating bad faith. Moreover, the Panel finds it likely that the Respondent had actual knowledge of the Complainant's FACEBOOK Mark and targeted the Complainant when it registered the Disputed Domain Name, also indicating the Respondent's bad faith. It can be inferred that the Respondent had actual knowledge of the Complainant and its FACEBOOK Mark when it registered the confusingly similar Disputed Domain Name. UDRP panels have found that the registration of a domain name that is confusingly similar to a well-known trademark by an unaffiliated entity can create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Second, based on the circumstances here, the Panel concludes that the Respondent's registration and use of the Disputed Domain Name had been done for the specific purpose of trading on the name and reputation

of the Complainant and its FACEBOOK Mark. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) (“[t]he only plausible explanation for Respondent’s actions appears to be an intentional effort to trade upon the fame of Complainant’s name and mark for commercial gain”).

Third, after receipt of the Complainant’s attorneys’ demand letter to the Respondent, and the Respondent’s informal response that contained no evidence of the Respondent’s good faith use of the Disputed Domain Name, supports a finding of bad faith. Notwithstanding the demand letter, the Respondent continued to use the Disputed Domain Name to redirect to the Respondent’s own unrelated commercial website, further indicating bad faith. See *International Business Machines Corporation v. New Ventures Services, Corp. / Web.com Holding Account, Abuse, Web.com*, WIPO Case No. [D2021-3769](#) (finding bad faith where the respondent continued to leave the disputed domain name active despite the complainant’s cease-and-desist letters); *Stockpile, Inc. v. Privacy service provided by Withheld for Privacy ehf / Richard Smith, Quantum Tech*, WIPO Case No. [D2021-4193](#) (finding bad faith where the respondent replied to the complainant’s cease-and-desist letter with only an informal email and did not provide any evidence of good faith use).

Finally, given the fame of the Complainant’s FACEBOOK Mark, and the Respondent’s unauthorized use of the entirety of the FACEBOOK Mark in the Disputed Domain Name, the Panel finds no circumstances under which the Respondent’s use of the Disputed Domain Name could conceivably be in good faith under the Policy. See *Facebook, Inc. and Instagram, LLC v. Adam Szulewski* WIPO Case No. [D2016-2380](#) (given the worldwide renown of the FACEBOOK Mark, the Panel cannot find any actual or contemplated good faith use of the disputed domain names by the Respondent).

Accordingly, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

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 <facebookinfrastructure.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: May 29, 2022