

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. 石磊 (Shi Lei)

Case No. D2022-3067

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 石磊 (Shi Lei), China.

2. The Domain Names and Registrar

The disputed domain names <facebookmai.com>, <facebookmal.com>, <facebookmil.com>, <facebooknail.com>, <faceboomail.com> and <fasebookmail.com> are registered with DNSPod, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 19, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 22, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 23, 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 in English on August 24, 2022.

On August 23, 2022, the Center also transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On August 24, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on August 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 19, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on October 4, 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 was founded in 2004 and operates the Facebook social networking website and mobile application. Its website address is "www.facebook.com". The Complainant owns multiple trademark registrations, including the following:

- United States trademark registration number 3,122,052 for FACEBOOK, registered on July 25, 2006 with a claim of first use in commerce on November 16, 2004, specifying services in class 38; and
- International trademark registration number 1075094 for a semi-figurative mark featuring FACEBOOK, registered on July 16, 2010, designating multiple jurisdictions, including China, and specifying goods and services in multiple classes.

The above trademark registrations remain current. According to evidence presented by the Complainant, the Facebook mobile application was the third most downloaded app globally in 2021, and the Facebook brand was ranked number 15 by Interbrand in its Best Global Brands of 2021. The Complainant also registered the domain name <facebookmail.com> on January 23, 2006, which it uses to send email notifications to Facebook users when it detects an attempt to log into an account or to change a password.

The Respondent is an individual. According to evidence presented by the Complainant, many UDRP panels in prior proceedings under the Policy have found that the Respondent registered and was using domain names in bad faith. See, for example, *Virgin Enterprises Limited v. 石磊 (Shi Lei)*, WIPO Case No. [D2021-2604](#); and *Nordic Entertainment Group AB v. 石磊 (Shi Lei)*, WIPO Case No. [D2022-0633](#).

The disputed domain names were all created on October 18, 2021. They all resolve to parking pages that display Pay-Per-Click ("PPC") links related to social media marketing platforms, email, Facebook, and social media videos, among other things.

5. Parties' Contentions

A. Complainant

The disputed domain names are confusingly similar to the Complainant's FACEBOOK mark.

The Respondent has no rights or legitimate interests with respect to the disputed domain names. The Complainant has not authorized or licensed the Respondent to use its FACEBOOK mark, nor does the Respondent have any legal relationship with the Complainant that would entitle it to use the mark.

The Respondent has registered and is using the disputed domain names in bad faith. The Respondent is using the disputed domain names to direct to commercial parking pages. Two disputed domain names have been flagged by security vendors as malicious for use in connection with phishing, malware and other suspicious activity. Further, the Respondent has targeted many other famous and distinctive marks and been respondent in many other UDRP proceedings where a transfer was ordered.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Registrar confirmed that the Registration Agreements for the disputed domain names are in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the disputed domain names are composed of English words, including misspelt words, and direct to websites entirely in English. Conducting the proceeding in Chinese would create significant additional expense and delay for the Complainant due to the need for translation. Additionally, the Respondent has been party to numerous prior proceedings under the Policy in which English was the language of the proceeding.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amended Complaint in this proceeding were filed in English. Despite the Center having sent an email regarding the language of the proceeding, and the Written Notice, in both Chinese and English, the Respondent did not comment on the language of the proceeding or express any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay whereas accepting the Complaint in English does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2. Analysis and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements with respect to each disputed domain name:

- (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

Based on the evidence presented, the Panel finds that the Complainant has rights in the FACEBOOK mark.

Four disputed domain names wholly incorporate the FACEBOOK as their respective initial element, followed by a misspelling of the word “mail” (variously, “mai”, “mal”, “mil”, or “nail”). The other two disputed domain names (<facebookmail.com> and <fasebookmail.com>) contain a misspelt version of the FACEBOOK mark (omitting the “k” or substituting an “s” for the “c”), followed by the word “mail”. The FACEBOOK mark, or a misspelt version of it, remains clearly recognizable within all the disputed domain names despite the additional word and the minor misspellings. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), sections 1.7, 1.8 and 1.9.

The only other element in each disputed domain name is a generic Top-Level Domain extension, “.com”. As a standard requirement of domain name registration, that element may be disregarded in the comparison between the disputed domain names and the Complainant’s FACEBOOK mark for the purposes of the first element of paragraph 4(a) of the Policy. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent has] acquired no trademark or service mark rights; or
- (iii) [the Respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

With respect to the first and third circumstances set out above, the disputed domain names resolve to parking pages displaying PPC links, including links related to the Complainant and competing social media marketing platforms. The links operate for the commercial gain of the Respondent, if he is paid to direct traffic to the linked sites, or the commercial gain of the operators of the linked sites, or both. The Complainant submits that it has not authorized or licensed the Respondent to use its FACEBOOK mark and that the Respondent has no legal relationship with the Complainant that would entitle it to use the mark. In view of these circumstances, the Panel does not consider that the Respondent is using the disputed domain names in connection with a *bona fide* offering of goods or services for the purposes of the Policy, nor that he is making a legitimate noncommercial or fair use of the disputed domain names.

With respect to the second circumstance set out above, the Respondent’s name is listed in the Registrar’s Whois database as “石磊 (Shi Lei)”, not any of the disputed domain names. Nothing in the record indicates that the Respondent is commonly known by any of the disputed domain names.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent did not rebut that *prima facie* case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, but these circumstances are not exhaustive. The fourth circumstance is as follows:

(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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.

As regards registration, the disputed domain names were registered in 2021, years after the registration of the Complainant's FACEBOOK mark, including in China where the Respondent is resident. The disputed domain names wholly incorporate the FACEBOOK mark or a misspelling of that mark, combined with the word "mail" or a misspelling of that word. Each disputed domain name is an obvious misspelling of the Complainant's domain name <facebookmail.com> with one letter either omitted or substituted. Moreover, the six disputed domain names (which were all registered on the same day) form a pattern that highlights the Respondent's intention to approximate the Complainant's domain name <facebookmail.com>. In these circumstances, the Panel finds that the Respondent was aware of the Complainant and its FACEBOOK mark when he registered the disputed domain names.

As regards use, the disputed domain names resolve to parking pages displaying PPC links, including links related to the Complainant and competing social media marketing platforms. There appears to be no reason to register the disputed domain names other than to approximate the Complainant's domain name <facebookmail.com>, which the Complainant uses for security-related communications with Facebook users. The disputed domain names take advantage of Internet users who inadvertently mistype that domain name in a browser to direct them to the Respondent's landing pages, for commercial gain. The Panel finds that these circumstances fall within the terms of paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain names have been registered and are being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 names <facebookmai.com>, <facebookmal.com>, <facebookmil.com>, <facebooknail.com>, <faceboomail.com> and <fasebookmail.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: October 18, 2022