

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc. v. michal restl  
Case No. D2022-3473

### **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 michal restl, Czech Republic.

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

The disputed domain names <facebookapp.cam>, <facebooklogin.cam>, <facebookmarketplace.cam>, <facebookmessenger.cam>, <facebooksearch.cam> and <facebookstock.cam> are all registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 20, 2022. On September 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 21, 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 the same day, 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 September 27, 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 September 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 19, 2022.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on October 24, 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 Facebook, a social networking website and mobile application. The services are provided worldwide in more than 70 languages through <facebook.com>.

The Complainant owns numerous registrations protecting its FACEBOOK trademark around the world. As such, in the European Union Intellectual Property Office: registration No. 009776618, registered on November 2, 2011.

FACEBOOK trademark is to be considered well known for the purposes of the UDRP.

The Respondent registered all the disputed domain names on November 18, 2021. While <facebooksearch.cam> and <facebookapp.cam> are inactive, the remaining four of the disputed domain names resolve to webpages with pay-per-click (“PPC”) links redirecting to third party websites unrelated to the Complainant.

The Respondent has engaged in a pattern of conduct within the meaning of paragraph 4(b)(ii) of the Policy. As such, *Allstate Insurance Company v. Michal restl c/o Dynadot Registrant*, WIPO Case No. [D2019-2206](#).

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant asserts that <facebookmessenger.cam> is identical to the Complainant’s FACEBOOK MESSENGER mark and confusingly similar to the Complainant’s FACEBOOK mark. The remaining five disputed domain names, which incorporate Complainant’s exact FACEBOOK mark with the additions of the terms “app,” “login,” “marketplace,” “search,” or “stock,” are confusingly similar to the Complainant’s FACEBOOK mark.

The Complainant, then, refers to Sections 1.7 and 1.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) to support a finding for this first requirement.

Moreover, says the Complainant, the addition of a generic Top-Level-Domain (“gTLD”) is viewed as a standard registration requirement and as such it is disregarded under the first element confusing similarity test.

Lastly, the Complainant notes that the Respondent’s pattern of registering multiple domain names targeting the Complainant’s FACEBOOK mark within this proceeding further supports a finding of confusing similarity.

With respect to the second requirement, the Complainant contends that there is no *bona fide* offering in the use of the disputed domain name. On one hand, four of the disputed domain names are used to divert consumers to a commercial webpage comprised of links which compete with, or capitalize on the reputation and goodwill of the Complainant’s mark, or otherwise mislead Internet users. The Complainant notes [WIPO Overview 3.0](#), at Section 2.9 and also *Facebook, Inc. Instagram, LLC v. John Obeye*, WIPO Case No. [D2017-2106](#). On the other hand, the two remaining disputed domain names <facebooksearch.cam> and <facebookapp.cam> resolve to webpages displaying an error message. That is to say, says the Complainant, these disputed domain names are inactive and this is not a use in connection with a *bona fide* offering of goods or services within the meaning of the Policy.

Additionally, the Complainant highlights that <facebooklogin.cam> has been flagged by several security vendors as malicious for use in connection with phishing, malware, and other suspicious activity.

Notwithstanding, the Complainant notes that there is no evidence of the Respondent's use of, or demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services. For such finding refers to the Complainant's brand guidelines which expressly prohibit the registration or use of its marks.

The Respondent does not appear to be commonly known by the disputed domain names. The Whois data for them do not identify a person or a company commonly known by the disputed domain names.

The Complainant also asserts that the Respondent is not making legitimate noncommercial or fair use of the disputed domain names. Namely, by redirecting to third parties' commercial pages, or by inactive use of some of the disputed domain names, or ultimately, for having being flagged for use in connection with phishing, malware, or other domain name abuse there is no fair use or noncommercial use.

The Complainant supports a finding for the third requirement of the Policy based on the following: The Respondent was well aware of the Complainant's trademark rights at the time of registration. Since the disputed domain names reference to its well-known trademarks, the registration and use of the disputed domain names by the Respondent supports a finding of bad faith under the Policy.

In relation to the use of the disputed domain names, the Complainant affirms that it is well settled that the use of a domain name that is confusingly similar to a complainant's mark to host a commercial parking page constitutes use in bad faith under the Policy. Further, the use of a disputed domain name to host a website with no substantive content constitutes passive holding of the disputed domain name indicative of bad faith. And the Respondent's bad faith is further indicated by the fact that the disputed domain name <facebooklogin.cam> has been flagged by security vendors as malicious for use in connection with phishing, malware, and other suspicious activity.

## **B. Respondent**

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

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names were registered and are being used in bad faith.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there from as it considers appropriate". This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

## A. Identical or Confusingly Similar

As noted above, the Complainant has established trademarks rights for the purposes of the UDRP. The Panel also notes that being the Domain Name System a global network, the jurisdiction where the trademark is valid is not relevant for the Panel assessment under the first requirement of the test.

The reproduction of the FACEBOOK mark is evident in all the disputed domain names. See [WIPO Overview 3.0](#), section 1.8 and *Playboy Enterprises International, Inc. v. Zeynel Demirtas*, WIPO Case No. [D2007-0768](#). The Panel finds that none of the additional terms added to the disputed domain names prevent a finding of confusing similarity with the Complainant's FACEBOOK mark.

Likewise, the gTLDs are generally irrelevant to the consideration of identity or confusing similarity between a trademark and a domain name. See *Red Bull GmbH v. Christos Bozikis*, WIPO Case No. [D2021-3457](#).

Therefore, the first requirement is met under paragraph 4(a)(i) of the Policy.

## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out non-exclusive examples in which the Respondent may establish rights or legitimate interests in the disputed domain name, by demonstrating any of the following:

(i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the domain names in connection with a *bona fide* offering of goods or services; or

(ii) that the Respondent has been commonly known by the disputed domain names, even if it has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Here, the Complainant has made out a *prima facie* case that the Respondent has not rights or legitimate interests in the disputed domain names on the following basis: The Complainant has not licensed nor authorized the Respondent to use the Complainant's trademarks rights in a corresponding domain name, neither the Respondent have any relationship with the Complainant, nor the Respondent has been commonly known by the disputed domain names.

Moreover, the Respondent is not making a *bona fide* offering of goods or services with reference to the disputed domain names. As alleged by the Complainant, by redirecting four of the disputed domain names to webpages with PPC links purportedly related to the Complainant but ultimately redirecting to third parties unrelated to the Complainant, the Respondent cannot demonstrate rights or legitimate interests as the Respondent is capitalizing on the reputation and goodwill of the Complainant's marks or otherwise misleading Internet users. Likewise, non-use of the remaining disputed domain names do not amount to *bona fide* offering for the purposes of the UDRP.

Further, the silence of the Respondent prevents the Panel to ponder any possible demonstrable preparations to use the disputed domain names. The evidence leads the Panel to conclude that, on balance of probabilities, the Respondent is taking advantage of the well-known nature of the FACEBOOK trademark to obtain a commercial gain, and consequently is not making a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy.

The evidence produced by the Complainant also allow the Panel to conclude that the Respondent is not making legitimate noncommercial or fair use of the disputed domain names pursuant to paragraph 4(c)(iii) of the Policy.

Further, the Panel also highlights that the composition of the disputed domain names carry out a high risk of implied affiliation with the Complainant's trademark. See section 2.5.1. [WIPO Overview 3.0](#). See also *Crocs, Inc. v. Client Care, Web Commerce Communications Limited*, WIPO Case No. [D2022-0029](#).

Under these circumstances the Panel looks at [WIPO Overview 3.0](#), section 2.1: "While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out 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".

However, the Respondent did not rebut the Complainant's allegations and evidence. That is to say, he did not produce evidence demonstrating his rights or legitimate interests in the disputed domain name.

Under these circumstances, the Panel finds that the Complainant has met the second requirement of the Policy.

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

The Panel looks at section 3.1. [WIPO Overview 3.0](#) where it states that: "bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark".

The Panel also notes that having registered the Respondent all the disputed domain names the same day and in connection to the same trademark, the Respondent was probably targeting the Complainant's well-known trademark. Further, the inclusion of the additional terms and the mere reproduction of the trademark in all the disputed domain names imply a connection to the services offered by the Complainant. Therefore, it is reasonable, on balance of probabilities, that the Respondent knew or should have known about the Complainant's trademarks when registering the disputed domain names.

With regard to the use of the disputed domain names <facebooklogin.cam>, <facebookmarketplace.cam>, <facebookmessenger.cam>, and <facebookstock.cam>, under the circumstances of this case, the redirection to PPC links and the Respondent's attempt to divert consumers to third parties unrelated to the Complainant and, purportedly obtaining revenues for this activity, is deemed to be in bad faith. See *AECI Limited v. Rick Matthews*, WIPO Case No. [D2022-1250](#). Accordingly, the Respondent's use of the disputed domain name falls under paragraph 4b(iv) of the Policy as evidence of the registration and use of a domain name in bad faith.

The non-use of the two remaining disputed domain names are also considered to be in bad faith under the passive holding doctrine, bearing in mind that (i) the Complainant's trademarks are distinctive and well known, (ii) the Respondent's failure to file any response, (iii) the use of false contact details by the Respondent since the courier was unable to deliver the Center's written communication to the contact details disclosed by the Registrar, and considering the above-mentioned, (iv) the implausibility of any good faith use to which the inherently misleading disputed domain names may be put (as previously mentioned, all the disputed domain names carry a high risk of implied affiliation when such relationship is not supported by the evidence).

Moreover, as set out in the factual background, the Respondent has engaged in a pattern of conduct within the meaning of paragraph 4(b)(ii) of the Policy. See *Reckitt Benckiser Group Plc, Reckitt & Colman (Overseas) Health Limited, and Reckitt Benckiser SARL v. Privacy Service Provided by Withheld for Privacy ehf / Rick Matthews*, WIPO Case No. [D2022-0815](#). In this respect, the Panel notes that the Respondent appears to have been involved in various other UDRP proceedings where bad faith was established (*FIL Limited v. Michal Restl c/o Dynadot Privacy*, WIPO Case No. [D2018-1685](#), *Allstate Insurance Company v. Michal restl c/o Dynadot Registrant*, WIPO Case No. [D2019-2206](#), *Caliber Home Loans, Inc. v. Super*

*Privacy Service LTD c/o Dynadot / Michal Restl*, WIPO Case No. [D2021-3230](#)).

Therefore, the Panel finds that the Complainant has satisfied the requirements 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 names, <facebookapp.cam>, <facebooklogin.cam>, <facebookmarketplace.cam>, <facebookmessenger.cam>, <facebooksearch.cam>, <facebookstock.cam> be transferred to the Complainant.

*/Manuel Moreno-Torres/*

**Manuel Moreno-Torres**

Sole Panelist

Date: November 7, 2022