

## **ADMINISTRATIVE PANEL DECISION**

### **Meta Platforms, Inc. v. Chit Moe Paing, CMP Asset Company Limited Case No. D2022-3728**

#### **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 Chit Moe Paing, CMP Asset Company Limited, Myanmar.

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

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

#### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 6, 2022. On October 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 7, 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 (Whois Privacy Protection Service by onamae.com, Japan) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 7, 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 October 10, 2022.

On October 7, 2022, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On October 10, 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 Japanese of the Complaint, and the proceedings commenced on October 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 9, 2022.

The Center appointed Masato Dogauchi as the sole panelist in this matter on November 21, 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**

Whereas the Respondent has not submitted any response, the following information from the Complaint is found to be the factual background of this case.

The Complainant is a company operating the "Facebook" social networking website and mobile application. Facebook has more than one billion daily active accounts and over two billion monthly active users from all over the world. Facebook's social networking services are provided in more than 70 languages.

The Complainant owns trademark registrations protecting the FACEBOOK in the United States and other jurisdictions, among others, as follows:

- United States trademark No. 3122052 for FACEBOOK, registered on July 25, 2006;
- United States trademark No. 3881770 for FACEBOOK, registered on November 23, 2010;
- United States trademark No. 4441540 for FACEBOOK, registered on November 26, 2013;
- European Union trademark No. 009776618 for FACEBOOK, registered on November 2, 2011; and
- Japan trademark No. 2010070533 for FACEBOOK, registered on July 8, 2011.

In addition, the Complainant operates domain names, which include the term "facebook", among others, as follows:

- <facebook.com>, created on March 29, 1997;
- <facebook.net>, created on April 1, 2004; and
- <facebook.org>, created on April 10, 2004.

The disputed domain name was registered on June 14, 2021. The disputed domain name currently does not resolve to any active website, however, it used to resolve to a commercial website featuring a social network platform, using a blue color scheme similar to that used by the Complainant and a variation of the Complainant's "f" logo design, as well as promoting services relating to currency trading and buying of shares.

#### **5. Parties' Contentions**

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

In respect of language of the proceeding, although the language of the Registration Agreement is Japanese, the Complainant requests that the Panel's discretion should be exercised and the proceeding be conducted in English on the basis of precedent.

In respect of subject matters, the Complainant's contentions are divided into three parts as follows:

First, the Complainant asserts that the disputed domain name is confusingly similar to its trademark. The disputed domain name consists of the geographical term "myanmar", followed by the term "facebook"

identical with the Complainant's FACEBOOK trademark, and the generic Top-Level Domain ("gTLD") ".com". The term "myanmar" does not obviate the confusing similarity between the disputed domain name and the FACEBOOK trademark. Further, on the basis of well-established authority, the gTLD, in this case ".com", should be disregarded in assessing confusing similarity.

Second, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant contends that the Complainant has neither licensed nor authorized the Respondent to use the Complainant's FACEBOOK trademark, nor does the Respondent have any legal relationship with the Complainant. Further, the Complainant contends that, according to the Whois data, the Respondent is not known as the disputed domain name. The Respondent is using the disputed domain name to provide a commercial website featuring a social network platform that competes with the Complainant's own social networking website and platform. The Respondent also uses the disputed domain name to promote services relating to currency trading and buying of shares, all of which indicate monetization of the disputed domain name. The Respondent does not demonstrate any of the factors that would support a right or legitimate interest in the disputed domain name. The Complainant contends that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services.

Third, the Complainant asserts that the disputed domain name has been registered and is being used in bad faith. The Complainant's FACEBOOK trademark is well known around the world. The date when the Respondent registered the disputed domain name was far later than the date when the Complainant's tradename is well known worldwide. There is no doubt that the Respondent registered the disputed domain name in bad faith. And, the Respondent has used the disputed domain name for making the Internet users mistakenly believe that the Respondent has some relationship with the Complainant. This shows that the disputed domain name is being used in bad faith by the Respondent.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Language of the Proceeding**

In respect of the language to be used in the administrative proceeding, in accordance with the Rules, paragraph 11(a), the language of the administrative proceeding shall be, in principle, the language of the registration agreement. However, the same provision allows the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In the present case, the Registrar has confirmed that the language of the Registration Agreement is Japanese.

The Panel determines that the language of this proceeding shall be English rather than Japanese on the following grounds:

- the Complainant's request to that effect;
- the Respondent did not reply to the Center's "Language of Proceedings" email or Notification of Complaint which were both sent in English and Japanese;
- the disputed domain name is in Latin script and not in Japanese script;
- the disputed domain name previously resolved to a website in English; and

- the use of Japanese language would produce undue burden on the Complainant and unnecessarily delay the proceeding in consideration of the absence of a Response from the Respondent.

## 6.2. Substantive Matters

In accordance with the Rules, paragraph 15(a), a panel shall decide a case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Since the Respondent has not made any arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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

The Panel finds that the Complainant has rights in the FACEBOOK trademark.

The disputed domain name includes the Complainant's FACEBOOK trademark in its entirety. Such inclusion is by itself enough to consider the disputed domain name being confusingly similar to the Complainant's FACEBOOK trademark. The addition of the geographical term "myanmar" prior to the Complainant's FACEBOOK trademark in the disputed domain name does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Further, the gTLD ".com" contained in the disputed domain name is typically irrelevant in the determination of the confusing similarity. See section 1.11.1 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

### B. Rights or Legitimate Interests

There is no evidence contrary to the Complainant's contention that the Respondent is commonly known by the name "facebook" or "myanmarfacebook", that the Respondent is not authorized or licensed to use the Complainant's FACEBOOK trademark, and that no *bona fide* offering of goods or services, or legitimate noncommercial or fair use has been made of the disputed domain name.

According to prior UDRP decisions, it is sufficient that the Complainant shows *prima facie* that the Respondent lacks rights or legitimate interests in the disputed domain name in order to shift the burden of production to the Respondent. The Respondent did not reply to the Complainant's *prima facie* contentions in this proceeding. Therefore, the Panel finds on the available record that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the nature of the disputed domain name, which incorporates the Complainant's FACEBOOK trademark in its entirety together with a geographical term, carries a risk of an implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Considering the above, and the Panel's findings below, the above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

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

It is obvious that the Complainant's FACEBOOK trademark is well known worldwide. Therefore, it is highly unlikely that the Respondent would not have known of the Complainant's right in the trademark at the time of registration of the disputed domain name. Nothing in the disputed domain name bears any reasonable relevance to the Respondent. There can be found no reasonable possibility of fortuity in the Respondent's registration of the disputed domain name.

With regard to the requirement that the Respondent is using the disputed domain name in bad faith, as the Complainant asserted, the use of the disputed domain name resolving to a commercial website featuring a social network platform, using a blue color scheme similar to that used by the Complainant and a variation of the Complainant's "f" logo design, which would make Internet users mistakenly believe that the Respondent has some relationship with the Complainant. This fact shows that the Respondent takes unfair advantage of or otherwise abuses the Complainant's FACEBOOK trademark. See section 3.1 of the [WIPO Overview 3.0](#). Further, the website has also promoted services relating to currency trading and buying of shares.

Since the Respondent did not reply to the Complaint in this proceeding, the Panel finds that the disputed domain name has been registered in bad faith and is being used in bad faith. The above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be satisfied.

### **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 <myanmarfacebook.com> be transferred to the Complainant.

/Masato Dogauchi/

**Masato Dogauchi**

Sole Panelist

Date: December 5, 2022