

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Chatri Ubonrat, Taradthai
Case No. D2022-4320

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 Chatri Ubonrat, Taradthai, Thailand.

2. The Domain Name and Registrar

The disputed domain name <facethai.net> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 14, 2022. On November 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 15, 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 information for the disputed domain name.

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 November 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 19, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on December 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

The Complainant is a United States social technology company, and operates Facebook, Instagram, Meta Quest (formerly Oculus), Portal, and WhatsApp. The Complainant's focus is to bring the metaverse to life and to help people connect, find communities and grow businesses. Its Facebook platform was founded in 2004 and is a leading provider of online social-media and social-networking services. Facebook rapidly developed considerable renown and goodwill worldwide, and had 2.27 billion users as of September 2018. In September 2022, it had 2.96 billion monthly active users and 1.98 billion daily active users on average worldwide, and its services are now provided in more than 70 languages. In 2022, the FACEBOOK brand ranked 17th in Interbrand's Best Global Brands report.

The Complainant is the owner of the following trademark registrations for the sign "FACE" (the "FACE trademark"):

- the European Union trademark FACE with registration No. 003852779, registered on October 3, 2006 for services in International Class 38;
- the Philippines trademark FACE with registration No. 12181, registered on September 10, 2007 for goods and services in International Classes 16, 25, 35, 38, 41 and 45; and
- the Australian trademark FACE with registration No. 1088856, registered on December 2, 2005 for goods in International Classes 16, 25, 35, 38, 41 and 45.

The Complainant is the owner of the following trademark registrations for the sign "FACEBOOK" (the "FACEBOOK trademark"):

- the United States trademark FACEBOOK with registration No. 3041791, registered on January 10, 2006 for services in International Classes 35 and 38;
- the International trademark FACEBOOK with registration No. 1075094, registered on July 16, 2010 for goods and services in International Classes 9, 35, 36, 38, 41, 42 and 45;
- the European Union trademark FACEBOOK with registration No. 005585518, registered on May 25, 2011 for services in International Classes 35, 41, 42 and 45;
- the Thai trademark FACEBOOK with registration No. 680059, registered on December 16, 2008 for services in International Class 38; and
- the Thai trademark FACEBOOK with registration No. 768190, registered on October 9, 2012 for goods and services in International Class 35.

The Complainant is the owner of the domain name <facebook.com> registered on March 29, 1997, which resolves to the Complainant's main website. The Complainant is also the owner of the domain names <facebook.biz>, <facebook.us>, facebook.ca>, <facebook.mx>, among others.

The disputed domain name was registered on December 3, 2018. It resolves to the login page of a Thai social network.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is confusingly similar to the FACE trademark, because it incorporates this trademark in its entirety, followed by the geographic term "thai". The combination does not prevent the confusing similarity with the FACE trademark, which remains clearly recognizable in the disputed domain name. The Complainant further submits that the disputed domain name is confusingly similar to its FACEBOOK trademark, which it incorporates in a modified form replacing "book" with "thai", which does not prevent the confusing similarity with this trademark. The Complainant adds that the many similarities between the content of the website at the disputed domain name and the Complainant's Facebook platform show the Respondent's *prima facie* intention is to target the Facebook platform with the disputed domain name.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not a licensee of the Complainant, is not affiliated with the Complainant, and is not commonly known by the disputed domain name. The Complainant notes that the disputed domain name resolves to the login page of a Thai social network, which has a very similar appearance to the Complainant's Facebook social-media platform owing to its blue and white color scheme, its blue banner, the font used, the layout of users' profile pages, the use of round thumbnails for users' profile pictures and the website source code, which contains a reference to "facebook". According to the Complainant, by using the disputed domain name in this manner, the Respondent seeks to create a competing social network, while taking advantage of a perceived connection with the Complainant and the goodwill and reputation attached to its trademarks, resulting from the confusing similarity between the disputed domain name and the Complainant's widely known FACEBOOK trademark.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, at the time of the registration of the disputed domain name in December 2018, the Complainant's Facebook social-media platform enjoyed significant reputation, with 2.32 billion monthly active users as of December 31, 2018. The Complainant maintains that the Respondent must have had knowledge of the Complainant's trademarks when it registered the disputed domain name, and this knowledge and the Respondent's intent to target the Complainant's FACEBOOK trademark are evident from the use of the disputed domain name for a website that offers a Thai-language social network under the name "Facethai", with a look, feel and functionality that copy the Complainant's Facebook platform, and that contains references to "Facebook" in the website's source code.

The Complainant states that the Respondent's use of the disputed domain name in connection with a competing social-media service creates confusion with the Complainant's Facebook platform and disrupts the Complainant's business, as Facebook users, particularly those located in Thailand or Thai speakers, are likely to be misled into believing that the services offered via the Respondent's website are provided or otherwise endorsed by the Complainant. The Complainant also submits that by using a domain name that is confusingly similar to the Complainant's trademarks for a website that attempts to copy the Complainant's branding, the Respondent seeks to attract Internet users to its website, for commercial gain by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

The Complainant states that on March 9, 2020, its representatives in Thailand sent a cease-and-desist letter to the Respondent. The letter referred to the disputed domain name as well as to the domain name <facethai.world>, which the Complainant had reason to believe was also registered by the Respondent, but no response was received to it or to the reminder emails sent to the Respondent. On May 14, 2020, the Complainant's representatives in Thailand sent a second cease-and-desist letter to the Respondent. On the same date, they received a response from a person who appeared to be named "Somchai Ubonrat" as follows: "Hello, What are you talking about? Is it about the website name facethai or what?" The Complainant's representatives in Thailand received no further reply to their cease-and-desist letters.

B. Respondent

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

6. Discussion and Findings

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the 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;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain-name holder) to retain registration and use of the disputed domain name [...]".

The Respondent however submitted no Response.

A. Identical or Confusingly Similar

The Complainant has provided evidence that it is the owner of the FACE and FACEBOOK trademarks and has thus established its rights in these trademarks for the purposes of the Policy.

The disputed domain name incorporates the FACE trademark and the "face" element of the FACEBOOK trademark with the addition of the geographical indication "thai". The FACE trademark and the dominant "face" element of the FACEBOOK trademark are easily recognizable in the disputed domain name. As discussed in sections 1.7 and 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), in cases where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing, and 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.

In view of the above, the Panel finds that the disputed domain name is confusing similar to the FACE and FACEBOOK trademarks in which the Complainant has rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it has not been affiliated to the Complainant or authorized by it to use the FACE and FACEBOOK trademarks, and is not known by the disputed domain name. According to the Complainant, the Respondent uses the disputed domain name for a Thai language social network with a very similar appearance to the Complainant's Facebook social-media platform, which exploits the goodwill of the FACE and FACEBOOK trademarks and confuses Internet users that the social network services offered by the Respondent is authorized by the Complainant. The Complainant has thus established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response. It has not denied the contentions of the Complainant and has not submitted any contrary evidence.

The disputed domain name is confusingly similar to the Complainant's FACE and FACEBOOK trademarks. The associated website has a very similar appearance to the Complainant's Facebook social-media platform and its source code contains a reference to "facebook". In the absence of any contrary evidence, this leads the Panel to accept as more likely than not the Complainant's contention that the Respondent, being aware of the success and popularity of the Complainant's Facebook platform and of the FACE and FACEBOOK trademarks, has registered and used the disputed domain name seeking to create a competing social network, while taking advantage of a perceived connection with the Complainant and the goodwill and reputation attached to its trademarks. The Panel therefore does not regard this conduct of the Respondent as a legitimate activity that may give rise to rights or legitimate interests of the Respondent in the disputed domain name under the Policy.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

The Panel notes that the Complainant's Facebook platform had billions of users in December 2018, when the Respondent registered the disputed domain name. The Respondent has not provided any explanation why it has registered the disputed domain name and does not deny that the associated website offers a social network and has an appearance that is very similar to the appearance of the Complainant's Facebook platform. The disputed domain name and the content of the associated website may well confuse Internet users that they are affiliated to the Complainant.

Taking the above into account, the Panel accepts that it is more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant and targeting the FACEBOOK trademark in an attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the FACEBOOK trademark as to the affiliation or endorsement of its website and of the services offered on it.

Therefore, the Panel finds that the disputed domain name was registered and is being used in bad faith.

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 <facethai.net> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: January 4, 2023