

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Whois Privacy Registrant, Private by Design, LLC /
Giovanni Niemann and Dangidi Dangido
Case No. DIO2022-0008

1. The Parties

Complainant is Meta Platforms, Inc., United States of America (“United States”), represented Hogan Lovells (Paris) LLP, France.

Respondent is Whois Privacy Registrant, Private by Design, LLC, United States / Giovanni Niemann and Dangidi Dangido, United States.

2. The Domain Names and Registrar

The disputed domain names <metaicosale.io>, <metapre-sale.io>, <metapresale.io>, <metatokenicosale.io>, and <metatokenpresale.io> (the “Domain Names”) are registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 25, 2022. On February 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On February 28, 2022, and March 1, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email to Complainant on March 2, 2022, providing the registrants and contact information disclosed by the Registrar, and requesting Complainant to amend the Complaint adding the Registrar-disclosed registrants as formal Respondents and provide relevant arguments or evidence demonstrating that all named Respondents are, in fact, the same entity and/or that all Domain Names are under common control; and/or file a separate complaint for any Domain Name for which it is not possible to demonstrate that all named Respondents are in fact the same entity and/or that all Domain Names are under common control and indicate (by short amendment or reply email) which Domain Names will no longer be included in the current Complaint.

The Complainant filed an amended Complaint on March 4, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain

Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on March 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 27, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 28, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on March 31, 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

According to Complainant:

“The Complainant, Meta Platforms, Inc., (Meta) is a United States social technology company, and operates, *inter alia*, Facebook, Instagram, Meta Quest (formerly Oculus), Novi, Portal, and WhatsApp. Meta’s focus is to bring the metaverse to life and to help people connect, find communities and grow businesses. The metaverse will feel like a hybrid of today’s online social experiences, sometimes expanded into three dimensions or projected into the physical world. It will let users share immersive experiences with other people even when they cannot be together — and do things together they could not do in the physical world.”

Facebook and Instagram are two world-famous social media services. Since 2018, Complainant has been developing a cryptocurrency and digital wallet services. On October 28, 2021, Complainant issued a press release introducing “Meta,” a “Social Technology Company”. The announcement that Complainant’s businesses were being consolidated under the brand META was widely reported in media throughout the world.

Complainant holds a number of trademark registrations for META, including United States Patent and Trademark Office Reg. No. 5,548,121, assigned to Complainant on October 26, 2021.

The Domain Name <metapresale.io> was registered on December 29, 2021. The other four Domain Names were registered within two weeks of the first one, with the last Domain Name being registered on January 11, 2022. None of the Domain Names currently resolves to an active website. Four of the Domain Names (all but <metapre-sale.io>) previously resolved to websites which, according to Complainant, impersonated Complainant with a view toward “engaging in a fraudulent advance-free cryptocurrency scheme”. It does not appear that the Domain Name <metapre-sale.io> has ever been put to any use.

According to Complainant, all five Domain Names are under common control, such that the five Domain Names should be consolidated in a single proceeding. Complainant asserts that the following factors, among others, support its contention that the five Domain Name registrants are either one and the same person or are under common control: (1) all five list the registrant’s town as “Alaska, Alabama” (a nonexistent town); (2) four of the five Domain Names (all but <metatokenpresale.io>) list “Giovanni Niemann” as the registrant; (3) four of the five Domain Names (all but <metatokenpresale.io>) list the same nonexistent (according to Google Maps) street address; (4) all five Domain Names were registered with the same registrar using a privacy service; (5) all five Domain Names were registered within a two-week period; and (6) all five Domain Names have the Top-Level Domain “.io”.

None of the registrants (if, indeed, there is more than one registrant) has come forward to dispute the contention in the Complaint that the Domain Names were in fact registered by the same person and/or are under common control. The Panel agrees with Complainant that, based on the evidence presented and the

lack of any denial in the record, all five Domain Names are, at a minimum, under common control. Accordingly, the Panel hereafter will refer to the five purported registrants in the singular as Respondent and will treat them as a single person.

As noted above, four of the five Domain Names used to resolve to websites impersonating Complainant. These four sites are substantively and graphically very similar, they all use Complainant's trademark liberally (including the design logo), they feature a photo of Complainant founder Mark Zuckerberg (also the founder of Facebook), and they all seek to invite investors to sign up for presale of "META Tokens" and related cryptocurrency investments.

According to Complainant, Respondent has no authorization from Complainant to use the META trademark in a Domain Name or otherwise, nor any authorization to set up websites soliciting investors to purchase "META Tokens" and similar items. According to Complainant, Respondent's websites were fraudulent. Respondent has not denied this allegation.

5. Parties' Contentions

A. Complainant

Complainant contends that it has established all three elements required under the Policy for a transfer of each of the Domain Names.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to each of the Domain Names:

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

As noted above, the Panel concludes that all five Domain Names are under common control, and therefore the Panel grants Complainant's request to decide all five Domain Names in a single proceeding.

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the trademark META through registration and use demonstrated in the record.

The Panel also concludes that each of the Domain Names is confusingly similar to the META mark. Each Domain Name entirely incorporates the META trademark, and the additional words ("sale," "presale," and the like) do not overcome the fact that META is clearly recognizable within each Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

For each of the Domain Names, pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

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

With respect to four of the five Domain Names, Complainant has plausibly alleged, and supported with evidence, that Respondent targeted Complainant's META trademark to set up websites impersonating Complainant for the purpose of engaging in a fraudulent cryptocurrency scheme. Respondent has not come forward to deny these plausible and serious allegations. Respondent's conduct is clearly illegitimate. One of the Domain Names has never been put to any use. The Domain Names currently do not resolve to an active website.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Names.

The Panel concludes that Complainant has established Policy paragraph 4(a)(ii).

C. Registered or Used in Bad Faith

For each of the Domain Names, paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration or use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered or used each of the Domain Names in bad faith. As noted above, the Panel finds that Respondent clearly targeted Complainant and its META trademark, with a view toward duping Internet users for commercial gain. This misconduct runs afoul of the above-quoted Policy paragraph 4(b)(iv). The fact that one of the Domain Names has never been put to any use and that the Domain Names currently do not resolve to any active website does not prevent a finding of bad faith.

Complainant has established Policy paragraph 4(a)(iii).

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 Domain Names <metaicosale.io>, <metapre-sale.io>, <metapresale.io>, <metatokenicosale.io>, and <metatokenpresale.io> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: April 5, 2022