

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. aidan molloy

Case No. D2023-1949

1. The Parties

The Complainant is Meta Platforms, Inc., United States of America (“United States”), represented by Greenberg Traurig, LLP, United States.

The Respondent is aidan molloy, United Kingdom (“UK”).

2. The Domain Name and Registrar

The disputed domain name <facebookagencyaccounts.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 29, 2023. On May 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 1, 2023, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 2, 2023, 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 amendment to the Complaint on May 2, 2023.

The Center verified that the Complaint together with the amendment to 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 May 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 28, 2023. The Center received informal emails from the Respondent on May 9, 2023 and May 11, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on June 2, 2023. 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, formerly known as Facebook, Inc., is a United States social technology company that operates Facebook, Instagram, and WhatsApp. The Complainant's Facebook platform was founded in 2004 and today is one of the leading providers of online social media and social networking services, having its FACEBOOK brand ranked 17th in Interbrand's 2022 Best Global Brands report.

The Complainant is the owner, amongst several others throughout the world, of the United States trademark registration No. 3,041,791 for FACEBOOK, registered on January 10, 2006, successively renewed (Annex 10 to the Complaint).

The disputed domain name was registered on October 18, 2022, and has been used in connection to a website that purports to manage advertisements on Facebook, TikTok, Snapchat, and Google. Presently, when attempting to access the webpage referring to the disputed domain name browsers block the access in view of potentially fraudulent activities.

5. Parties' Contentions

A. Complainant

The Complainant asserts to be the world's leading provider of online social media and social networking services, actively promoting and using the FACEBOOK trademark.

The disputed domain name is, according to the Complainant, confusingly similar to the Complainant's trademark, creating a likelihood of confusion, given that the disputed domain name incorporates the Complainant's FACEBOOK entirely trademark together with the addition of the terms "agency" and "accounts", what does not prevent a finding of confusing similarity thereof.

The Complainant further states that the disputed domain name was registered using a privacy service, however the Respondent's name is Aidan Molloy and, according to the Terms and Conditions on the website available at the disputed domain name it would be managed by the company facebookagencyaccounts.com ltd. The Complainant further asserts to have located a company in the UK under the name FACEBOOKAGENCYACCOUNTS.COM LTD, which was registered with the Companies House on November 18, 2022 (Annex 17 to the Complaint), a month after the disputed domain name was registered, whose company director is named as Aidan Molloy. The Complainant contends that it has been unable to definitively confirm whether or not this company is linked to the Respondent.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name given that:

- (a) the Respondent is not a licensee of the Complainant, nor have they been otherwise allowed by the Complainant to make any use of the FACEBOOK trademark;
- (b) the Respondent has not acquired, nor applied for a trademark registration for "Facebook Agency Accounts", or any variation thereof as reflected in the disputed domain name;
- (c) the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy, given that the disputed domain name is being used in connection with a website that purports to manage advertisements on

Facebook, TikTok, Snapchat, and Google, therefore leveraging the fame and goodwill associated with the Complainant's FACEBOOK brand to divert consumers for commercial gain to a multitude of services on third-party social media platforms unrelated to the Complainant or the Complainant's famous FACEBOOK trademark, what would fail the widely accepted test postulated in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), given that the Respondent does not use its website to only offer services related to the Complainant and its famous FACEBOOK trademark, but also TikTok, SnapChat, and Google; and

- (d) the Respondent does not prominently disclose their relationship with the Complainant, given that the disclaimer found at the footer of the Respondent's website landing page states in small letters: "This site is not a part of the Facebook website or Facebook Inc. Additionally. This site is NOT endorsed by Facebook in any way. FACEBOOK is a trademark of FACEBOOK, Inc.", being such disclaimer, under the Complainant's view, very likely to be overlooked by Internet users and therefore insufficient to dispel confusion as to authorization or endorsement of the Respondent by the Complainant.

As to the registration of the disputed domain name in bad faith, the Complainant asserts that the Respondent's intention to target the Complainant may be inferred from the content available at the disputed domain name. In addition to that, the Respondent's use of a privacy registration service at the time of registration of the disputed domain name is another indication of the Respondent's bad faith and their intent to use the disputed domain name in a way which may be abusive or otherwise detrimental to the Complainant and its rights.

The Complainant further submits that the disputed domain name, which targets the Complainant's famous FACEBOOK trademark, resolves to a website that purports to manage ads on Facebook, but also on TikTok, Snapchat, and Google, stating that "You get TikTok Agency Accounts for FREE when as part of our Facebook Agency Accounts package", and also " We also provide TikTok, Snapchat, and Google agency accounts upon request, but these are limited and only available to clients with a history of high spending". Therefore, the Respondent is using the disputed domain name to exploit the goodwill and reputation attached to the Complainant's trademark for commercial gain by attracting Internet users to its website and offering them services not only related to the Complainant but also its competitors.

Lastly, the Complainant claims to have sought to contact the Respondent directly and through the Registrar and hosting provider on numerous occasions between October and December 2022 requesting the website available at the disputed domain name to be suspended (Annex 16 to the Complaint). The Respondent failed to answer and/or remove the content found at the disputed domain name.

B. Respondent

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

On May 9, 2023, the Respondent sent a first email message to the Center merely stating "Im not using it anymore, and haven't been for ages", followed by a second and last e-mail message on May 11, 2023 stating that "Hey, I've stopped using the above mentioned domain and haven't used it for 6 months. I will stop using this email also, in the process."

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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.

The Complainant must prove in this administrative proceeding that each of the aforementioned three elements are present in order to obtain the transfer of the disputed domain name.

A. Identical or Confusingly Similar

The Complainant has established rights in the FACEBOOK trademark which is duly registered in several countries around the world.

The Panel finds that the disputed domain name reproduces the Complainant's mark in its entirety. The addition of the terms "agency" and "accounts" does not prevent a finding of confusing similarity. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. The first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate the Respondent's rights to or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice 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, in spite of not having acquired 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.

The Panel notes that given the Factual Background and Parties' Contentions set out above, the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

The Respondent, in not formally responding the Complaint, nor the cease-and-desist letter sent by the Complainant prior to the beginning of this procedure, has failed to invoke any of the circumstances which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any inferences from such default as it considers appropriate, pursuant to paragraph 14(b) of the Rules.

In that sense, the Complainant has indeed stated that the Respondent has not been authorized or allowed by the Complainant to make any use of the FACEBOOK trademark, nor have they been commonly known by the disputed domain name.

Furthermore, and according to the evidence submitted by the Complainant, the Respondent has indeed not used the disputed domain name in connection with a *bona fide* offering of goods or services given the webpage that previously resolved from the disputed domain name offered services not only in connection with the Complainant's platform but also other competing social networks and platforms, thus creating a misleading impression of association with the Complainant.

The disclaimer included at the bottom of the webpage does not alter the Panel's finding, given the composition of the disputed domain name, any use is not likely to be considered "fair" due to the risk of implied affiliation to the Complainant.

Lastly, while it appears that the Respondent may have registered a business name in the United Kingdom under the name of the disputed domain name, under the circumstances of this case, the business name does not confer rights or legitimate interests upon the Respondent, particularly given that the registration of the business name came after the registration and use of the inherently misleading disputed domain name to allegedly offer advertising services relating to the Complainant's and other third-party platforms.

Therefore, the Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name. The second element of the Policy has also been met.

C. Registered and Used in Bad Faith

This case presents the following circumstances which indicate bad faith registration and use of the disputed domain name:

- a) the Complainant's trademark is registered worldwide and is well known;
- b) the Respondent's choice to retain a privacy protection service;
- c) the Respondent's lack of reply to the cease-and-desist letter sent prior to this procedure;
- d) the Respondent's commercial use of the disputed domain name to offer advertising services relating to both the Complainant's and other third party platforms;
- e) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed domain name; and
- f) the nature of the disputed domain name (reproducing the entirety of the Complainant's trademark plus the terms "agency" and "accounts"), along with the Respondent's willingness to transfer the disputed domain name, and the implausibility of any good faith use to which the disputed domain name may be put.

Further, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

For the reasons above, the Respondent's conduct has to be considered, in this Panel's view, as bad faith registration and use of the disputed domain name.

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, <facebookagencyaccounts.com>, be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: June 16, 2023