

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Russell Balch
Case No. D2024-2510

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 Russell Balch, Germany.

2. The Domain Name and Registrar

The disputed domain name <downloaderforfb.com> is registered with Internet Domain Service BS Corp (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 19, 2024. On June 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 21, 2024, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 1, 2024, 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 July 5, 2024.

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 July 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2024. The Respondent sent an email communication to the Center on July 11, 2024. The Center sent the Possible Settlement email to the Parties on July 12, 2024. However, the Complainant did not wish to request suspension for settlement talks. On July 26, 2024, the Center commenced the appointment of the panel.

The Center appointed Shwetasree Majumder as the sole panelist in this matter on July 30, 2024. 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 social technology company and operates, inter alia, Facebook, Instagram and WhatsApp. The Complainant's platform Facebook is a leading provider of online social-media and social-networking services. The Complainant owns registrations for its marks FACEBOOK and FB in several countries and details of few of such registrations are as below:

- European Union Trade Mark No. 008981383, for the mark FB, registered on August 23, 2011;
- European Union Trade Mark No. 018146501, for the mark FB, registered on July 11, 2020; and
- United States Trademark Registration No. 4659777, for the mark FB, registered on December 23, 2014.

The Complainant owns several domain names including <fb.com> which redirects to its website "facebook.com"

According to the Whois records, the disputed domain name was registered on July 12, 2022. At the time of filing the Complaint, the disputed domain name resolved to the website entitled "Video Downloader for Facebook" that purports to offer a tool that enables Internet users to download video content from Facebook. However as on the date of this decision, the Respondent's website "downloaderforfb.com", is inactive and cannot be reached.

As disclosed by the Registrar, the Respondent is based in Germany. Otherwise, no information is known about the Respondent.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that disputed domain name is confusingly similar to its mark FB. The Complainant contends that the term FB commonly refers to Facebook. To support this contention, the Complainant has produced press articles from international publications and extracts from online dictionaries. The Complainant argues that its mark FB is reproduced identically and is recognizable in the disputed domain name and hence the first element is satisfied. The Complainant states the terms "downloader" and "for" in the disputed domain name do not prevent a finding of similarity under the first element. The Complainant has cited and relied on past UDRP decisions where its mark FB was found confusingly similar to the domain names <fblikefordownload.com> (*Meta Platforms, Inc. v. Stefano Grossi, Grossi Consulting LLC*, WIPO Case No. [D2022-2715](#)) and <myfbdownloader.com> (*Meta Platforms, Inc. v. Saida Yakubova*, WIPO Case No. [D2023-1029](#)) under the first element.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Complainant states that the Respondent is not using the disputed domain name in connection with any bona fide offering of goods and services. The Complainant states that the Respondent is marketing its own ancillary services actions by using the Complainant's mark FB in the disputed domain name and the website, respectively. Further, such a service of providing a tool to download

content from Facebook, cannot be viewed as bona fide offering of goods and services. The Complainant has highlighted that the Respondent's website does not feature a disclaimer disclosing the Respondent's lack of relationship with the Complainant. Owing to these factors, the Complainant argues that the Respondent fails to meet the criteria set in the "Oki Data test", *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

The Complainant argues that given the recognition and long use of its mark FB, the Respondent knew or should have known of Complainant's existence at the time the disputed domain name was registered. The Complainant contends the Respondent registered the disputed domain name with a view to attracting Internet users to its website resulting from a perceived association between the disputed domain name, the Respondent's website, and the Complainant's marks FB and FACEBOOK.

The Complainant argues that the Respondent's website provides a tool which circumvents the inability of users to download other users' Facebook content, and such a tool violates the Complainant's policies and facilitates breach of its Facebook's terms of service. The Complainant has also relied on past UDRP decisions which have held that the unauthorized downloading of content from Complainant's platforms may place the privacy and security of users of such platforms at risk and that use of such domain names amounts to bad faith under the third element.

B. Respondent

The Respondent did not reply to the Complainant's contentions. The Respondent sent an email communication to the Center on July 11, 2024 stating that "Following your complaint I disable the website, the domain name and the extension. Thank you for the information and have a good day."

6. Discussion and Findings

As per paragraph 5(f) of the Rules where a respondent does not submit a formal response, in the absence of exceptional circumstances, the panel may decide the dispute based upon the Complaint. The Panel does not find any exceptional circumstances in this case preventing it from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a formal response. A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

It remains incumbent on the Complainant to make out its case in all respects under paragraph 4(a) of the Policy. Under paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements required under by a preponderance of evidence:

- 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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#) section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the terms “downloader” and “for” may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Respondent is providing an unauthorized Facebook downloader tool on its website. Additionally, Respondent’s website does not feature a disclaimer which discloses the lack of relationship with the Complainant. The Panel finds that Respondent’s unauthorized downloader tool can put the security of Facebook’s users at risk and hence Respondent cannot be considered as a bona fide service provider.

Panels have held that the use of a domain name for illegal activity such as passing off can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

In absence of a formal response from the Respondent, the Panel cannot see how the Respondent can have rights or legitimate interests in the disputed domain name.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent is using the disputed domain name misleadingly to divert Internet users to the Respondent’s website for commercial gain and to falsely create an association with the Complainant. The Panel is of the view that registration of the disputed domain name is an intentional attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark FB.

Panels have held that the use of a domain name for illegal activity, such as passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Further, the Complainant's mark FB is a popular mark and hence, the Respondent knew or should have known of the Complainant's mark, at the time of registering the disputed domain name. Further, the Panel concurs with past UDRP decisions that the Respondent's website which facilitated the unauthorized downloading of content from the Complainant's platforms may place the privacy and security of users of such platforms at risk. Therefore, registration and use of the disputed domain name amounts to bad faith under the third element.

The Panel finds that the Complainant has established the third element 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 name <downloaderforfb.com> be transferred to the Complainant.

/Shwetasree Majumder/

Shwetasree Majumder

Sole Panelist

Date: August 13, 2024