

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. D S
Case No. D2022-2773

1. The Parties

Complainant is Meta Platforms, Inc., United States of America (“United States”), represented by Tucker Ellis, LLP, United States.

Respondent is D S, United States.

2. The Domain Name and Registrar

The disputed domain name <facebookscryptos.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 July 28, 2022. On July 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 29, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

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 Respondent of the Complaint, and the proceedings commenced on August 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 20, 2022.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on September 26, 2022. On the same date, Respondent sent an email communication to the Center asking what steps it was expected to take. 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

Complainant is owner of registration for the word service mark FACEBOOK on the Principal Register of the United States Patent and Trademark Office (“USPTO”), registration number 3,122,052, registration dated July 25, 2006, in international classes (“IC”) 35 and 38, covering, *inter alia*, online chat room and social network services. Complainant is owner of registration for the word trademark FACEBOOK on the register of the European Union Intellectual Property Office (“EUIPO”), registration number 009776618, registration dated November 2, 2011, in ICs 9, 16, 35 and 36, covering magnetically encoded giftcards, printed matter, incentive award programs and gift card services, as further specified. Complainant is owner of registration as an International Trademark under the Madrid System of the figurative trademark FACEBOOK, registration number 1075094, registration dated July 16, 2010, in ICs 9, 35, 36, 38, 41, 42 and 45, covering, *inter alia*, computer software, advertising and marketing services, financial affairs, providing Internet chat rooms and telecommunication services, educational information, entertainment information, recreation information, providing Internet search engines and related services, social introduction, networking and dating services. Complainant has provided evidence of additional registrations of the FACEBOOK trademark in the United States and other countries.

Complainant is a technology company based in the United States providing a range of primarily social networking and advertising services on the Internet, as well as providing third parties with access to consumer information. Complainant operates various social networking-related services, including under the FACEBOOK trademark (as well as, *e.g.*, under the Instagram trademark). Complainant operates a commercial website at “www.facebook.com” and directs a substantial number of FACEBOOK-formative domain names to that website location. Complainant has more than 2 billion monthly active users. Complainant makes available a software application (or “app”) for mobile devices that consistently ranks among the most widely downloaded and used mobile apps. Although Complainant has recently changed its corporate name to Meta Platforms, Inc., it continues to use FACEBOOK in its commercial operations.

According to the Registrar’s verification, Respondent is registrant of the disputed domain name. According to that verification, the record of registration of the disputed domain name was created on July 24, 2021. There is no indication on the record of this proceeding that any party other than Respondent has been registrant of the disputed domain name since its creation date.

5. Parties’ Contentions

A. Complainant

Complainant alleges that it owns rights in the trademark FACEBOOK and that the disputed domain name is confusingly similar to that trademark.

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Complainant has not licensed or otherwise authorized Respondent to use Complainant’s trademark in the disputed domain name; (2) Respondent has not been commonly known by Complainant’s trademark or the disputed domain name; (3) Respondent appears to use the disputed domain name for abusive activity; (4) Respondent is not making a *bona fide* offering of goods or services, nor has it demonstrably prepared to do so, and; (5) Respondent is not making legitimate noncommercial or fair use of the disputed domain name.

Complainant argues that Respondent registered and is using the disputed domain name in bad faith because: (1) Respondent has been block listed for use in connection with spam, malware or other domain name abuse; (2) Respondent’s registration of the disputed domain name incorporating Complainant’s well-known trademark suggests bad faith, and; (3) there are no circumstances under which Respondent’s use of the disputed domain name could plausibly be in good faith.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

B. Respondent

Respondent did not formally reply to Complainant's contentions.

6. Discussion and Findings

The registration agreement between Respondent and the Registrar subjects Respondent to dispute settlement under the Policy. The Policy requires that domain name registrants submit to a mandatory administrative proceeding conducted by an approved dispute resolution service provider, one of which is the Center, regarding allegations of abusive domain name registration and use (Policy, paragraph 4(a)).

It is essential to UDRP proceedings that fundamental due process requirements be met. Such requirements include that a respondent have notice of proceedings that may substantially affect its rights. The Policy and the Rules establish procedures intended to ensure that respondents are given adequate notice of proceedings commenced against them and a reasonable opportunity to respond (see, e.g., Rules, paragraph 2(a)).

The Center formally notified the Complaint to Respondent at the email and physical address provided in its record of registration. Courier delivery was successful, and there is no indication of problems with the transmission of email to Respondent. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) 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.

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

A. Identical or Confusingly Similar

Complainant has provided evidence of rights in the trademark FACEBOOK, including by registration at the USPTO and EUIPO, by registration as an International Trademark, and by use in commerce. Respondent has not challenged Complainant's assertion of rights. The Panel determines that Complainant owns rights in the trademark FACEBOOK.

The disputed domain name directly and fully incorporates Complainant's FACEBOOK trademark. This is sufficient to establish confusing similarity under the Policy. The addition of "scryptos" to Complainant's trademark does not prevent a finding of confusing similarity. The Panel determines that the disputed domain name is confusingly similar to Complainant's FACEBOOK trademark

Complainant has established that it owns rights in the trademark FACEBOOK, and that the disputed domain name is confusingly similar to that trademark.

B. Rights or Legitimate Interests

Complainant's allegations to support Respondent's lack of rights or legitimate interests in the disputed domain name are outlined above, and the Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests in the disputed domain name.

Respondent has not substantively replied to the Complaint and has not attempted to rebut Complainant's *prima facie* showing of lack of rights or legitimate interests.

There is no evidence that Respondent used the disputed domain name in connection with an active website. There is no evidence that Respondent used (or prepared to use) the disputed domain name in connection with a *bona fide* offering of goods or services. There is no evidence that Respondent has been commonly known by the disputed domain name, or that it has established any trademark rights in FACEBOOK. There is no evidence that Respondent is making a legitimate noncommercial or fair use such as to establish rights or legitimate interests, and Respondent has not attempted to justify registration and apparent non-use of the disputed domain name for some legitimate noncommercial or fair use purpose.

Complainant has provided circumstantial evidence that Respondent might have used the disputed domain name in connection with some form of abusive activity. In particular, Complainant has furnished a screenshot of an MXToolbox monitoring query result showing the disputed domain name blacklisted (on one of 91 known blacklists) for spam (NameRATS Spam blacklist).¹ The Complaint does not provide sufficient information regarding the factual significance of the listing of the disputed domain name by MXToolbox for the Panel to draw firm conclusions. For present purposes, it suffices for the Panel to observe that this is a factual allegation to which Respondent might have replied but did not.

Complainant established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent had the opportunity to provide a legitimizing explanation for its registration and use of the disputed domain name, including by asserting rights or legitimate interests. Respondent did not.

The Panel determines that Complainant has established that Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In order to prevail under the Policy, Complainant must demonstrate that the disputed domain name "has been registered and is being used in bad faith" (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy states that "for the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith". These include that, "(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location".

Respondent recently registered the disputed domain name. Respondent's physical address in its record of registration for the disputed domain name is in the United States. Complainant has long been active with its FACEBOOK services in the United States, and its trademark is well known among the public. Entering Complainant's FACEBOOK trademark in a search engine such as Google will return myriad results

¹ The MXToolbox describes itself as a tool to help Internet users determine whether they are on an email blacklist, and why. This may be the result of a number of factors. See, e.g., <https://mxtoolbox.com/problem/blacklist/#:~:text=A%20blacklist%2C%20also%20known%20as,send%20may%20never%20be%20delivered.>

identifying Complainant. Respondent must have known of Complainant and its trademark when it registered the disputed domain name.

Putting aside the reference by Complainant to the results of an MXToolbox query, discussed following, there is no evidence in this proceeding of active use by Respondent of the disputed domain name. Nonetheless, there are elements raising a presumption that Respondent registered and is using the disputed domain name in bad faith.

Complainant's trademark is very well known in the United States (and other countries), and Respondent must have known it was adopting Complainant's trademark in the disputed domain name.

Respondent added an "s" to Complainant's trademark, followed by the term "cryptos", resulting in the Second Level Domain "facebookscryptos". By the time the disputed domain name was registered in 2021, Complainant was widely reported to have been working on some form of digital currency, and the Second Level Domain used by Respondent appears in one way or another to be directed toward this line of business.² Although other explanations are conceivable, Respondent's adoption of the term "cryptos" associated with Complainant's trademark and its reported activity heightens the risk that the disputed domain name could be used to confuse Internet users regarding a financial instrument or investment in it that would appear associated with Complainant. This inclines the Panel toward taking a precautionary approach in respect to the element of bad faith.

Complainant has provided an MXToolbox screenshot showing that the disputed domain name is on a blacklist identifying domains that have been used in connection with "spam".³ (See discussion above on rights or legitimate interests). There are technical reasons, such as a configuration error, why one or another service might block a particular email address. Complainant has provided a one-page sheet indicating that disputed domain name is on one of 91 potential blacklists that it tracks. This is "interesting information", but the Panel is reluctant to give it a decisive significance. There are too many uncertainties involved. While this evidence does not bear substantial weight against Respondent, it does not help; particularly noting other circumstances of this case, such as for example the composition of the disputed domain name.

Respondent registered the disputed domain name using only the initials "D S", yet listed its physical address to allow delivery of the Written Notice by courier. While Respondent's registration information may not be "complete", the inclusion of a genuine physical address is not typical of those providing "false" contact information. The incomplete contact information does not weigh strongly against Respondent but, on balance, neither does it support a good faith explanation of Respondent's registration and use of the disputed domain name.

Taking the evidence on the whole, the Panel considers that Complainant has demonstrated that Respondent registered and is using the disputed domain name in bad faith. Respondent incorporated Complainant's well-known trademark in the disputed domain name, added a term that refers to a financial instrument or investment, and failed to provide an explanation for why its registration and use might have a legitimate purpose. Complainant has provided some evidence of a spam blacklisting, and an incomplete registrant name, and these factors lean toward an absence of good faith registration and use.

Taking into account the current Internet environment and the high risks posed by use of deceptive email domains for abusive purposes, the Panel finds that Respondent registered and is using the disputed domain name in bad faith within the meaning of paragraph 4(b) of the Policy, which is a non-exhaustive list of potential bad faith elements.

² *Facebook's cryptocurrency venture to wind down and sell tech assets* – WSJ, Reuters, January 27, 2022,

<https://www.reuters.com/technology/facebook-cryptocurrency-venture-wind-down-sell-tech-assets-wsj-2022-01-27/>, Panel visit, September 30, 2022.

³ According to Wikipedia on "Email Spam", "Email spam, also referred to as junk email, spam mail, or simply spam, is unsolicited messages sent in bulk by email (spamming)." https://en.wikipedia.org/wiki/Email_spam

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, <facebookscryptos.com>, be transferred to Complainant.

/Frederick M. Abbott/

Frederick M. Abbott

Sole Panelist

Date: October 10, 2022