

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. xiao ling yang
Case No. D2022-3800

1. The Parties

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

Respondent is xiao ling yang, China.

2. The Domain Name and Registrar

The disputed domain name <facebookdu.com> is registered with DropCatch.com LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 11, 2022. On October 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 October 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 8, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 14, 2022.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on November 24, 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

Complainant is a company organized under the laws of the United States that operates the well-known “Facebook” social networking website and mobile application.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to its former company name and brand FACEBOOK, *inter alia*, but not limited to the following:

- word mark FACEBOOK, United States Registration (United States Patent and Trademark Office), registration number: 3,122,052, registration date: July 25, 2006, status: active;
- word/design mark FACEBOOK, International Registration (World Intellectual Property Office) including in China, registration number: 1075094, registration date: July 16, 2010, status: active.

Moreover, Complainant has demonstrated to own and to operate numerous domain names relating to its FACEBOOK trademark, *e.g.* since April 10, 2004, the domain name <facebook.com> used to run Complainant’s “Facebook” website at “www.facebook.com”.

Respondent, according to the Whois information for the disputed domain name, is a resident of China who registered the disputed domain name on December 11, 2021. Complainant has evidenced that, at some point before the filing of the Complaint, the disputed domain name resolved to a Chinese language/character website at “www.facebookdu.com”, which displayed adult material, namely pornographic content.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties’ Contentions

A. Complainant

Complainant submits to have used its FACEBOOK trademark for over 17 years throughout the world and that, due to substantial investment of time, effort, and expense therein, the FACEBOOK trademark is meanwhile unquestionably famous and recognized around the world as signifying high-quality authentic goods and services provided by Complainant.

Complainant contends that the disputed domain name is confusingly similar to its FACEBOOK trademark as it incorporates the latter in its entirety, along with the letters “du” (which might be “diu” and colloquially means “to copulate” in Cantonese). Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant has neither licensed nor authorized Respondent to use Complainant’s FACEBOOK trademark, and Respondent does not have any other legal relationship with Complainant that would entitle Respondent thereto, (2) Complainant, who monitors use of its FACEBOOK trademark, has no reason to believe that Respondent should be known by the disputed domain name, (3) Respondent uses the disputed domain name to direct to a website with adult-oriented and pornographic content, none of which relates in any way to Complainant, and (4) the disputed domain name is on at least one blacklist for use in relation to spam, malware, or other domain name abuse. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Respondent has registered the disputed domain name on December 11, 2021, which postdates the registration and use of the FACEBOOK trademark by many years, (2) the disputed domain name is confusingly similar to Complainant’s FACEBOOK trademark and hosts adult-oriented content, and (3) given the fame of Complainant’s FACEBOOK trademark, there are no circumstances under which Respondent’s use of the disputed domain name could plausibly be in good faith under the Policy.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

The Panel concludes that the disputed domain name is confusingly similar to the FACEBOOK trademark in which Complainant has rights.

The disputed domain name incorporates the FACEBOOK trademark in its entirety. Numerous UDRP panels have recognized that where a domain name incorporates a trademark in its entirety, or 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 trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7). Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists (see [WIPO Overview 3.0](#), section 1.8), that the addition of other terms (whether e.g. geographic or otherwise) would not prevent the finding of confusing similarity under the first element of the UDRP. Accordingly, the addition of the term "du" does not prevent the confusing similarity arising from the incorporation of Complainant's entire FACEBOOK trademark in the disputed domain name.

Therefore, Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent has not been authorized to use Complainant's FACEBOOK trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the famous term "Facebook" on its own. Moreover, Complainant has demonstrated that, at some point before the filing of the Complaint, the disputed domain name resolved to a Chinese language/character website at "www.facebookdu.com", which displayed adult material, namely pornographic content. Given that the disputed domain name incorporates Complainant's FACEBOOK trademark in its entirety, and given the undisputed worldwide reputation that is being connected to such trademark, it must be held that the disputed domain name carries, as such, the high risk of implied affiliation with Complainant's FACEBOOK trademark (see e.g. [WIPO Overview 3.0](#), section 2.5.1). Therefore, using the disputed domain name to display pornographic content, without any apparent reason as to why Respondent should rely on the term "Facebook" other than to point at Complainant's well-known FACEBOOK trademark without permission to do so, cannot constitute *bona fide* or fair use within the meaning of the Policy.

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Having done so, the burden of production shifts to Respondent to come forward with appropriate evidence demonstrating such rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has defaulted, it has not met that burden.

Therefore, the Panel finds that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

The circumstances to this case leave no reasonable doubt that Respondent was fully aware of Complainant's rights in the FACEBOOK trademark when registering the disputed domain name and that the latter is clearly directed thereto. Not only is Complainant's FACEBOOK trademark undisputedly famous worldwide. Also, the term "Facebook" – as it is reflected in the disputed domain name – lacks any direct or indirect connection to pornographic content as it had been temporarily put in place by Respondent on the website under the disputed domain name, and such website was set up in Chinese language/characters, and not in English, from which language the term "Facebook" in the disputed domain name derives. Such circumstances are clear enough indications that Respondent aimed at taking unfair advantage of Complainant's FACEBOOK trademark, and, more concretely, intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's FACEBOOK trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website, and so serve as evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

In this context, it also carries weight in the eyes of the Panel that (1) the disputed domain name apparently is on at least one blacklist for use in relation to spam, malware, or other domain name abuse and (2) Respondent obviously provided false or incomplete contact information in the WhoIs register for the disputed domain name since the Written Notice on the Notification of Complaint dated October 19, 2022, could not be delivered to Respondent due to an invalid address. Such circumstances throw a light on Respondent's behavior which supports the Panel's bad faith finding.

Therefore, the Panel holds that Complainant has also satisfied the third element under the Policy as set forth by 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 disputed domain name <facebookdu.com> be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: December 7, 2022