

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc. v. Lazaro Sears

Case No. D2022-4314

### **1. The Parties**

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

The Respondent is Lazaro Sears, Kyrgyzstan.

### **2. The Domain Name and Registrar**

The disputed domain name <fbmeta-updates.com> (the “Domain Name”) is registered with Nicenic International Group Co., Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 12, 2022. On November 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 15, 2022, the Registrar transmitted by email to the Center its verification response, confirming that the 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 the Respondent of the Complaint, and the proceedings commenced on November 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 27, 2022.

The Center appointed Olga Zalomiya as the sole panelist in this matter on January 12, 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, Meta Platforms, Inc., (Meta) is a United States social technology company, and operates, *inter alia*, Facebook. The Complainant, formerly known as Facebook Inc., announced its change of name to Meta Platforms Inc on October 28, 2021, which was publicized worldwide.

The Complainant owns numerous trademark registrations for the META and the FB trademarks in many jurisdictions throughout the world, such as:

- the United States trademark No. 5548121, META, assigned to the Complainant on October 26, 2021;
- Andorran trademark No. 43626, META, registered on January 3, 2022;
- Monaco trademark No. 2200039, META, registered on February 8, 2022;
- the European Union Trademark No. 008981383, FB, registered on August, 23 2011;
- the United States Trademark No. 4659777, FB, registered on December 23, 2014.

The Respondent registered the Domain Name on May 27, 2022. The Domain Name currently points to a webpage warning that the associated website has been reported for containing phishing threats which may try to steal personal or financial information.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant's contentions can be summarized as follows:

The Complainant submits that the Domain Name is confusingly similar to the trademarks in which it has rights. The Complainant argues that the fact that the Domain Name incorporates the Complainant's FB and META trademarks in their entirety is sufficient to establish confusing similarity between the Domain Name and the Complainant's trademarks. The Complainant contends that it is generally accepted that the generic Top-Level Domain ("gTLD") suffix, such as ".com", is irrelevant when assessing whether a domain name is identical or confusingly similar to a trademark as it is a functional element.

The Complainant submits that the Respondent has no rights or legitimate interests in the Domain Name for the following reasons: 1) the Respondent is not a licensee of the Complainant; 2) the Respondent is not affiliated with the Complainant; 3) the Complainant has not granted any authorization for the Respondent to make use of its META and FB trademarks, in a domain name or otherwise; 4) the Respondent cannot conceivably claim that he is commonly known by the Domain Name because his name, Lazaro Sears, bears no resemblance to the Domain Name; 5) the Respondent has not secured or attempted to secure any trademark rights for FB or META; and 6) the Respondent's passive holding of the Domain Name does not support any reasonable claim of being commonly known by the Domain Name, nor can it amount to any legitimate noncommercial or fair use of the Domain Name.

The Complainant asserts that the Domain Name was registered and is being used in bad faith. The Complainant that the Respondent could not plausibly argue that he did not have knowledge of its FB and META trademarks when he registered the Domain Name in 2022 because the Complainant's trademarks are well-known, which constitutes evidence of bad faith. The Complainant further submits that the Respondent has engaged in a pattern of conduct by registering not only the Domain Name but also another domain name targeting a third-party trademark. The Complainant asserts that the Domain Name does not resolve to any active website, which would not prevent a finding of bad faith use under the doctrine of passive holding given the overall circumstances of the case.

##### **B. Respondent**

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

## 6. Discussion and Findings

Pursuant to paragraph 4(a) of the UDRP, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

### A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the UDRP, the Complainant must prove that the Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

The submitted evidence shows that the Complainant owns several trademark registrations for the FB and META trademarks. Pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), this satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

"Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element." Section 1.8, [WIPO Overview 3.0](#). It is well-established that the applicable gTLD should be disregarded under the confusingly similarity test as a standard registration requirement. Section 1.11.1, [WIPO Overview 3.0](#).

The Domain Name consists of the Complainant's FB and META trademarks, a hyphen, the word "updates" and the gTLD ".com". Because the Complainant's FB and META trademarks are recognizable within the Domain Name, the addition of the word "updates" and the hyphen do not prevent a finding of confusing similarity. The gTLD ".com" is disregarded as a standard registration requirement. Therefore, the Domain Name is confusingly similar to the Complainant's FB and META trademarks.

The Complainant has satisfied the first element of the UDRP.

### B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on the evidence, shall demonstrate a respondent's rights or legitimate interests to a domain name for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice of the dispute, the respondent's 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) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is 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.

To succeed under the second UDRP element, the Complainant must make out a *prima facie*<sup>1</sup> case in respect of the lack of rights or legitimate interests of the Respondent.

The Panel finds that the Complainant satisfied its burden of production for the following reasons. First, the evidence on file shows that the Respondent has not been commonly known by the Domain Name. Second, the Complainant contends, and the Respondent does not dispute that the Complainant did not authorize or license Respondent's use of the Complainant's trademark, nor are they affiliated. Third, the Respondent's use of the Domain Name does not satisfy requirements of *bona fide* offering of goods and services. The Domain Name used to resolve to a deceptive website and currently does not resolve to an active website. Prior UDRP panels have found that the non-use of a domain name does not amount to use of the domain name in connection with any *bona fide* offering of goods or services.<sup>2</sup> Fourth, the Respondent is not making any substantive use of the Domain Name because the passive holding of a domain name cannot amount to any legitimate noncommercial or fair use of the domain name.

Based on the foregoing, the Panel finds that the Complainant has made out the *prima facie* case and the burden of producing evidence demonstrating it has rights or legitimate interests in the Domain Name has shifted to the Respondent.<sup>3</sup> Because the Respondent failed to present any rebutting evidence, the Complainant is deemed to have satisfied the second element of the UDRP.

### **C. Registered and Used in Bad Faith**

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must prove that the Domain Name was registered and is being used in bad faith.

"Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or 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."<sup>4</sup> The Complainant's FB trademark, which is commonly used to refer to Facebook, has acquired considerable goodwill and renown worldwide. Despite the relatively recent re-naming of the Complainant's company as "Meta Platforms, Inc.", the Complainant's META trademark is already well known throughout the world and closely associated with the Complainant's goods and services because the Complainant's renaming having attracted significant international media attention. The evidence shows that the combined terms "FB META" are associated with the Complainant. The Respondent is, therefore, presumed to have registered and used the Domain Name in bad faith.

The Complainant's submitted evidence that the Respondent has engaged in a pattern of conduct by registering not only the Domain Name, but also another domain name targeting a third-party trademark which further indicates bad faith.<sup>5</sup>

The Respondent's non-use or passive holding of the Domain Name also constitutes evidence of the Respondent's bad faith. It is well-established that non-use of a domain name would not prevent finding of bad faith.<sup>6</sup> The Respondent's failure to submit a response, its registration of the Domain Name incorporating the distinctive Complainant's trademarks and the Respondent's engagement into a pattern of abusive domain name registration have all been found to support finding of bad faith by prior panels.

Therefore, the totality of circumstances of this case indicate that the Respondent has registered and is using the Domain Name in bad faith.<sup>7</sup>

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<sup>1</sup> Section 2.1, [WIPO Overview 3.0](#).

<sup>2</sup> See *Instagram, LLC v. Zafer Demir, Yok*, WIPO Case No. [D2019-1072](#).

<sup>3</sup> Section 2.1, [WIPO Overview 3.0](#).

<sup>4</sup> Section 3.1.4, [WIPO Overview 3.0](#).

<sup>5</sup> Section 3.1.2, [WIPO Overview 3.0](#).

<sup>6</sup> Section 3.3, [WIPO Overview 3.0](#).

<sup>7</sup> *Id.*

The Complainant has satisfied the third element of the UDRP.

## **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 Name <fbmeta-updates.com> be transferred to the Complainant.

*/Olga Zalomiy/*

**Olga Zalomiy**

Sole Panelist

Date: January 25, 2023