

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Rajesh Kushwaha, eshop24.in
Case No. D2022-4870

1. The Parties

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

The Respondent is Rajesh Kushwaha, eshop24.in, India.

2. The Domain Name and Registrar

The disputed domain name <facebookvideodownloader.com> is registered with BigRock Solutions Ltd.. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 19, 2022. On December 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 21, 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 January 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 24, 2023.

The Center appointed William A. Van Caenegem as the sole panelist in this matter on January 27, 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 operates the Facebook social networking website and mobile application, which enable its users to create their own personal profiles and connect with each other on their electronic devices. Facebook has more than one billion daily active accounts and over two billion monthly active users and offers a video download feature.

The Complainant owns registrations for FACEBOOK trademarks in the United States and around the world, including FACEBOOK U.S. Registration No 3,122,052, registered on July 25, 2006; FACEBOOK U.S. Registration No 3,881,770, registered on November 23, 2010; FACEBOOK U.S. Registration No 4,441,540, November 26, 2013; FACEBOOK European Union Registration No 009151192, registered on December 17, 2010; and FACEBOOK European Union Registration No 009776618, registered on November 2, 2011.

The Complainant also owns and operates domain names consisting of the FACEBOOK trademark in combination with various generic and country code Top-Level Domain extensions, including <facebook.org> and <facebook.net>.

The disputed domain name was registered on July 28, 2021 and resolves to a page that asserts no website can be reached.

5. Parties' Contentions

A. Complainant

The Complainant points out that the disputed domain name incorporates its exact registered trademark and adds the descriptive terms "video" and "downloader" and is thus confusingly similar to the FACEBOOK trademark. According to the Complainant, the disputed domain name misappropriates sufficient textual components of its FACEBOOK trademark, such that an ordinary Internet user who is familiar with the latter would think an affiliation exists with the Complainant and/or its FACEBOOK trademark. Numerous prior panels have held that the addition of a descriptive term to a complainant's mark fails to distinguish a disputed domain name from the mark. The Complainant maintains that the descriptive words do not remove the confusing similarity between the domain name and the mark, especially as they are descriptive of and relevant to the Complainant's services.

The Complainant says that pursuant to section 2.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), once it asserts a *prima facie* case against the respondent, the latter bears the burden of proving that it has rights or legitimate interests in the disputed domain name. A Complainant establishes a *prima facie* case by showing that a respondent is not authorized to use the marks, and is not known by a Complainant's marks. The Complainant says that it has not licensed or authorized the Respondent to use its FACEBOOK trademark, and the Respondent does not have any legal relationship with the Complainant that would entitle it to use that trademark. Further, neither the Whois data for the disputed domain name nor the corresponding website available at the disputed domain name establish that the Respondent is known by the disputed domain name. The disputed domain name is not currently used in connection with a *bona fide* offering of goods or services, as it resolves to a page that indicates the site cannot be reached, and the Complainant points out that such non-use or "passive holding" is not a use in connection with a *bona fide* offering of goods or services pursuant to the Policy, paragraph 4(c)(i). The Complainant says that there is also no evidence of the Respondent's use of, or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services.

Further, the Complainant maintains that given what it refers to as the fame of its FACEBOOK trademark, and the exact replication of that mark in the disputed domain name, there are no circumstances under which the Respondent's use of the disputed domain name could plausibly be in good faith under the Policy. The Complainant says that the Respondent does not appear to be commonly known by the disputed domain name. The Whois data for the disputed domain name identifies the Respondent as Rajesh Kushwaha which

bears no resemblance to the Complainant's FACEBOOK trademark nor to the disputed domain name. Non-use is not a legitimate noncommercial or fair use under paragraph 4(c)(iii) under the Policy.

The Complainant asserts that it is well settled that the non-use of a domain name that is confusingly similar to a Complainant's trademark constitutes use in bad faith, and also that the registration of a confusingly similar domain name that is obviously connected with a particular trademark owner by someone with no connection with the trademark owner suggests bad faith.

The Complainant points out that in this case, the Respondent registered the disputed domain name on July 28, 2021, which postdates the registration and use of the FACEBOOK trademarks of the Complainant by many years. There can be no doubt, the Complainant infers, that the Respondent was well aware of the Complainant's trademark rights at the time of registration. The registration and passive holding of the disputed domain name by the unconnected Respondent, incorporating as it does the FACEBOOK trademark, supports a finding of bad faith under the Policy. The Complainant concludes by pointing out that there are no circumstances under which the Respondent's registration and use of the disputed domain names could plausibly be in good faith under the Policy.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The disputed domain name is not identical to the FACEBOOK trademark of the Complainant. However, the latter is immediately recognizable in the disputed domain name. It is included in its entirety, and the additional terms "videodownloader" do not prevent a finding of confusing similarity.

Therefore, the Panel holds that the disputed domain name is confusingly similar to the FACEBOOK trademarks of the Complainant

B. Rights or Legitimate Interests

The Respondent has not replied to any of the contentions of the Complainant. There is no indication before the Panel that the Respondent is known by the disputed domain name or the highly distinctive FACEBOOK trademark. The Complainant has not authorized the use of its mark in any way and has no existing legal or commercial relationship with the Respondent. The disputed domain name is not currently being put to any use, and passive holding of this kind does not give rise to rights or legitimate interests in a disputed domain name.

Therefore the Panel holds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Given the distinctive nature and the reputation attaching to the Complainant's FACEBOOK registered trademark, and the exact replication of that mark in the disputed domain name, it is difficult to imagine any circumstances under which the Respondent's use of the disputed domain name could be in good faith under the Policy. When the disputed domain name was registered the reputation of the Complainant and its FACEBOOK trademark was already well established on a global basis. The Respondent received no authority to use the Complainant's marks in any way. Given that the disputed domain name is inactive and there is no indication of any preparation for its legitimate employment, everything points to the Respondent's purpose being to take advantage of the suggestion of a connection with the Complainant inherent in the

disputed domain name. The non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3 of the [WIPO Overview 3.0](#).

Therefore, the Panel holds that the disputed domain name was registered and used in bad faith.

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 <facebookvideodownloader.com> be transferred to the Complainant.

/William A. Van Caenegem/

William A. Van Caenegem

Sole Panelist

Date: February 10, 2023