

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Whois Agent, Domain Protection Services, Inc. /
Ahmad Butto
Case No. D2022-0471

1. The Parties

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

The Respondent is Whois Agent, Domain Protection Services, Inc., United States / Ahmad Butto, Israel.

2. The Domain Name and Registrar

The disputed domain names <fb.news>, <fb.today>, and <fb.video> are registered with Name.com, Inc. (Name.com LLC).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 10, 2022. On February 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 14, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 15, 2022, 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 February 18, 2022.

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 February 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 14, 2022. The first Response was filed with the Center on February 25, 2022. A second and third Responses were filed with the Center on March 1, 2022, and March 10, 2022. The Complainant made a Supplemental Filing on March 18, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on March 30, 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

The Complainant operates Facebook, which was founded in 2004 and is one of the most famous businesses on the planet, with over one billion daily users worldwide by 2012 and over two billion in 2018. In 2020, the Complainant's "Facebook" brand was ranked 13th in Interbrand's "Best Global Brands" report. According to information company Alexa, the Complainant's website at "www.facebook.com" is currently ranked as the seventh most visited website in the world.

The Complainant's Facebook mark is commonly referred to by the acronym "FB", including in national newspapers, and the Complainant is traded under the NASDAQ stock ticker "FB". The Complainant owns many domain names reflecting its FB mark including <fb.com>.

The Complainant owns a number of registered trade marks for FB worldwide including United States trade mark No. 4659777, filed on July 14, 2008, registered on December 23, 2014, in class 35.

The disputed domain name <fb.today> was registered on October 10, 2015, and the disputed domain names <fb.news> and <fb.video> were registered on October 24, 2016.

As of February 10, 2022, the three disputed domain names all resolved to web pages offering the respective disputed domain names for sale.

As of the same date, all three of the disputed domain names were listed for sale on the domain name sales platform "Sedo.com" with an asking price of GBP 5 million. The seller's location was listed as "Israel". When clicking on the "make an offer" button, the following text appeared:

"domain official for facebook
name fb.[respective gTLD]/ no trademark
my offer 7 [million] \$
The future of the domain over 50 [million] \$
Reason of sale
I need money
note domain fb.co sold 35 [million] \$
fb.news
fb.video
fb.today
for sale"

On or about March 10, 2022, the Respondent applied under no. 349847 for an Israeli figurative trade mark, whose textual components comprised the letters "FB", in class 38.

The Respondent is currently offering the domain name <leumi.org> for sale on "Sedo.com" for GBP 50,000. The Respondent also owns or owned the domain names <googl.live>, <googl.social>, <twitter.mn> and <telegram.support>.

In *Instagram, LLC v. Whois Agent, Domain Protection Services, Inc. / Ahmad Butto*, WIPO Case No. [D2021-0754](#), the Respondent was found to have registered and used the domain name <xn--Instagrm-fza.com> in bad faith.

5. Parties' Contentions

A. Complainant

The following is a summary of the Complainant's contentions.

The Complainant has developed considerable reputation and goodwill worldwide in its services and brands including its FB mark.

The disputed domain names, which comprise the Complainant's FB trade mark in its entirety, are identical to the Complainant's trade mark.

The Respondent lacks rights or legitimate interests in the disputed domain names.

The Respondent has not authorised the Complainant to use its trade mark.

The disputed domain names have not been used for a *bona fide* offering of goods or services.

The listing of the disputed domain names for sale does not amount to a *bona fide* offering, notwithstanding that they comprise only two letters at the second level given that the Complainant's FB trade mark is internationally known and that the Respondent has not used the disputed domain names in connection with any descriptive meaning of the letters "FB" but rather to target the Complainant, with a view to selling the disputed domain names to the Complainant for substantial profit as evidenced by the listings on Sedo.com.

The Respondent cannot credibly claim to be known by the disputed domain names. The registrant names are entirely different and there is no evidence that the Respondent has applied for any relevant trade mark.

Nor can the Respondent claim that it has made legitimate non-commercial or fair use of the disputed domain names. The Respondent's registration and use of the disputed domain names is commercial in nature as the disputed domain names are listed for sale with an asking price of GBP 5 million per domain name. Furthermore, the disputed domain names carry a high risk of implied affiliation with the Complainant.

The disputed domain names were registered and are being used in bad faith.

Given the strength and renown of the Complainant's FB mark, the Respondent could not credibly argue that it had no prior knowledge of the Complainant's marks at the time of registration of the disputed domain names. In any case, the Respondent's intent to target the Complainant through the disputed domain names may be inferred from the content of the Sedo.com listings.

As evidenced by the Sedo.com listings, Respondent registered or acquired the disputed domain names primarily for the purpose of selling, renting, or otherwise transferring the disputed domain names to the Complainant who is the owner of the FB trade mark, or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's out-of-pocket costs, in bad faith pursuant to paragraph 4(b)(i) of the Policy.

The Respondent also set out to prevent the Complainant from reflecting its FB trade mark in corresponding domain names under the ".news", ".today", and ".video" Top-Level Domains ("TLDs"), in bad faith pursuant to paragraph 4(b)(ii) of the Policy.

B. Respondent

The following is a summary of the Respondent's contentions.

The Respondent bought the disputed domain names in 2015 – 2016. “It already known that you cannot buy any brand name.”

The Respondent acquired the domain names for a major project called “future baby”, which is due for launch in 2023 and comprises an app and website that will be used to share videos, news and daily diaries from children around the world.

The Respondent applied a few days ago to register a trade mark in Israel for “fb”, denoting “future baby”.

This case is an attempt to legally steal the disputed domain names, and the Respondent will go to court in Israel if it fails here.

The Respondent is located in Israel and subject to Israel trade mark law. There are no registered trade marks in Israel that prevent the Respondent from using the name “FB”. The Complainant does not have an Israeli registered trade mark. Legal advice confirms that anyone can register “FB” as a trade mark.

The Respondent’s project will be a local one limited to Israel only and the Respondent will block access from any other country.

The website at Sedo.com is not affiliated with the Respondent and the Respondent takes no responsibility for it. The Respondent is only responsible for his own official website. In any case, the entire project is for sale, not just the disputed domain names.

The Complainant has not explained why no notice has been provided to the Respondent about this issue, despite the first disputed domain name having been registered in 2015. The reason is that the Complainant wants to control the world “and destroy emerging projects”.

The Respondent has not operated websites at the disputed domain names since acquisition in 2015, and has no intention of using the disputed domain names for anything related to the Complainant. The Respondent’s project is entirely different from the Complainant’s business.

There are many fields unrelated to the Complainant in respect of which the abbreviation “FB” could legitimately be used, including “foxbox”, “fullback”, “fine business”, “federal building”, and many others.

The Complainant purchased <fb.co> many years ago “[a]nd you didn’t do that”.

If the case is not stopped, the Respondent will sell the project with the disputed domain names to a third party in Panama within 72 hours. The Respondent has received an offer of USD 10 million for the project and disputed domain names. The Complainant can resolve the dispute by submitting an offer to purchase the entire project. The disputed domain names cost the Respondent over USD 3 million, and the Respondent has documents and transfers proving this that date back to 2015 – 2016.

C. Complainant’s Supplemental Filing

The Complainant asserts that the Respondent’s trade mark application cannot confer rights or legitimate interests because it has not yet matured to registration and, in any case, it was designed to circumvent the application of the UDRP and to prevent the Complainant’s exercise of its rights. The Complainant submits that in fact the Respondent’s application, which was made some two weeks after notification of the Complaint, is further of evidence of the Respondent’s bad faith.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain names are identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- the disputed domain names have been registered and are being used in bad faith.

A. Preliminary Issue – Informal Response

The Response is in the form of a number of emails to the Center, which do not comply with the formal requirements set out in paragraph 5 of the Rules. For example, there is no statement of truth. The Panel has nonetheless decided to admit the Response in accordance with its powers under paragraph 10(d) of the Rules but to bear in mind the Response's non-compliance with the Rules, including in particular the absence of a statement of truth, when weighing up the Respondent's assertions in this case.

B. Preliminary Issue – Supplemental Filing

The Complainant has made an unsolicited supplemental filing.

Section 4.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that UDRP panels have repeatedly affirmed that the party submitting an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response, *e.g.*, owing to some "exceptional" circumstance.

In this case, the Panel has decided to admit the supplemental filing because it relates solely to a trade mark application that was filed by the Respondent some two weeks after the Complaint was filed, and which the Complainant could not therefore have addressed in its primary submission.

C. Identical or Confusingly Similar

The Complainant has established registered rights in the mark FB, as well as unregistered trade mark rights deriving from the Complainant's extensive use of that mark.

The Respondent objects that the Complainant does not own a registered trade mark for FB in Israel, where the Respondent is located. However, section 1.1.2 of [WIPO Overview 3.0](#) explains that, given the global nature of the Internet and the domain name system, the jurisdiction where the trade mark is valid is not considered relevant to panel assessment under this first element.

Disregarding the respective TLD suffixes, each of the disputed domain names is identical to the Complainant's trade mark. Accordingly, the Panel finds that the Complainant has established the first element of paragraph 4(a) of the Policy.

D. Rights or Legitimate Interests

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, the Respondent has not actively used the disputed domain names, other than to offer them for sale, but claims that he still intends to use the disputed domain names for an

alleged project called “future baby” – hence selection of domain names comprising “fb” – which is due for launch in 2023 and which will involve use of an app and website to share videos, news, and daily diaries from children around the world.

As explained in section 2.2 of [WIPO Overview 3.0](#), where a respondent relies on future plans, clear contemporaneous evidence of *bona fide* pre-complaint preparations is required. While, depending on the circumstances, such evidence may not need to be particularly extensive, it must go beyond a mere statement of a claimed intention. Also, because business plans and operations can take time to develop, panels have not necessarily required evidence of intended use to be available immediately after registration of a domain name, but the passage of time may be relevant in assessing whether purported demonstrable preparations are *bona fide* or pretextual.

Here, the Respondent has provided no evidence at all in support of his alleged intended use of the disputed domain names, despite some seven years having passed since registration of the disputed domain names and despite the Respondent claiming to possess “documents and transfers” proving that he has spent over USD 3 million on the disputed domain names since 2015 – 2016.

Accordingly, the Panel considers that the Respondent has failed to establish demonstrable preparations for a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy.

Nor does use of the disputed domain names for websites offering the disputed domain names for sale constitute a *bona fide* offering in the circumstances outlined in section 6E below, whereby the Panel has concluded that the Respondent registered the disputed domain names for the purpose of sale to the Complainant or a competitor.

Furthermore, there is no evidence that paragraphs 4(c)(ii) or (iii) of the Policy apply in the circumstances of this case.

The Respondent also relies on his application for an Israeli figurative trade mark whose textual components comprised the letters “FB”. However, not only has this trade mark not yet been registered, section 2.12 of [WIPO Overview 3.0](#) explains that a respondent’s registration of a trade mark corresponding to the disputed domain name will not suffice to establish rights or legitimate interests if the overall circumstances demonstrate it was obtained primarily to circumvent the application of the UDRP or otherwise prevent the complainant’s exercise of its rights even if only in a particular jurisdiction. In this case, the Panel considers that the trade mark was indeed applied for to circumvent the UDRP, given that it was filed some two weeks after the Complaint was notified to the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

E. Registered and Used in Bad Faith

For the following reasons, the Panel does not find the Respondent’s explanation of his purpose in registering the disputed domain names to be credible:

1. As discussed in section 6.D. above, the Respondent has provided no evidence of support of his assertion that he registered the disputed domain names for his alleged “future baby” project, despite claiming to possess documents evidencing the alleged expenditure of over USD 3 million on the disputed domain names, and despite some seven years having elapsed since the project was allegedly conceived. Nor has the Respondent explained why it has taken so long to bring the alleged project to fruition. The Respondent’s assertion that the alleged project will be limited to Israel, which contradicts his separate claim that the project is designed to enable sharing of children-related content “from around the world”, casts further doubt on the authenticity of the project, as does the Respondent’s belated and defensive trade mark application.

2. The Respondent claims that he is offering the entire alleged project for sale, not just the disputed domain

names, but the Panel notes that the “Sedo.com” listings refer only to the disputed domain names, and not to any accompanying project. Nor has the Respondent has provided any other proof that the project is up for sale – including as to the alleged offer by a third party to buy both the project and the disputed domain names for USD 10 million.

3. The Respondent attempts to disclaim responsibility for the listings on Sedo.com on the basis that he is not affiliated with Sedo.com. However, the Respondent does not deny that he listed the disputed domain names for sale on “Sedo.com” or that he was the person who created the text of the listings which purport to be written by the owner of the disputed domain names. Those listings, each of which describes “fb” as being Facebook’s official domain name, strongly indicate that the Respondent registered the disputed domain names by reference to the Complainant’s FB brand.

4. The Respondent has not denied the Complainant’s assertion that he is currently offering the domain name <leumi.org>, denoting one of Israel’s major banks, for sale on “Sedo.com” for GBP 50,000. Nor has he disputed that he was found to have registered and used in bad faith a domain name incorporating the mark “Instagram”, another brand owned by the Complainant’s group. See *Instagram, LLC v. Whois Agent, Domain Protection Services, Inc. / Ahmad Butto*, WIPO Case No. [D2021-0754](#). Or that he owns domain names which misspell or reflect the names of other well-known technology companies such as Google, Twitter and Telegram.

5. While it is theoretically possible that someone could legitimately register a domain name comprising the letters “FB” as an acronym for words beginning with “F” and “B” unrelated to the Complainant – and the Response provides some examples of these – the evidence in this case, including the listings of the disputed domain names on “Sedo.com”, points overwhelmingly towards the likelihood that the Respondent registered the disputed domain names because they reflected the Complainant’s well-known mark and not for an independent legitimate purpose.

In the above circumstances, the Panel has little difficulty in concluding that the Respondent acquired the disputed domain names primarily for the purpose of sale to the Complainant or competitor in accordance with paragraph 4(b)(i) of the Policy.

The Panel also considers that the Respondent set out to prevent the Complainant from reflecting its FB trade mark in corresponding domain names under the “.news”, “.today”, and “.video” TLDs, and has engaged in a pattern of such conduct, pursuant to paragraph 4(b)(ii) of the Policy.

The Panel would add that the fact that the Complainant does not own a trade mark for FB in Israel does not assist the Respondent. Under this third element of the Policy, the Panel is not concerned with the Respondent’s infringement or otherwise of any Israeli or other trade mark of the Complainant but, rather, with whether nor not the Complainant has established on the balance of probabilities that the Respondent registered and used the disputed domain name in bad faith *vis-à-vis* the Complainant. For the reasons explained above, the Panel considers that the Complainant has indeed done so.

Nor is it relevant – if it be the case – that for whatever reason the Complainant has not previously taken any action in relation to the disputed domain names in the seven or years or so since the first disputed domain name was registered. Section 4.17 of [WIPO Overview 3.0](#) explains that panels have widely recognised that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits. Amongst other things, panels have noted that trade mark owners cannot reasonably be expected to permanently monitor for every instance of potential abuse, nor to instantaneously enforce each such instance they may become aware of. While there are limited circumstances where delay may make it more difficult for a complainant to establish its case on the merits, particularly where the respondent can show detrimental reliance on the delay, there is no evidence that such a scenario applies here.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) 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 names, <fb.news>, <fb.today>, and <fb.video> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: April 13, 2022