

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Le Tien Thanh, Tran Van Hoa, Le Duc Nam, Hudson Pham, luu thi mai, Cong ty Co phan Dau tu va Cong nghe Ninja, Thang Ho, Ninja Team
Case No. D2023-3729

1. The Parties

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

The Respondents are Le Tien Thanh, Viet Nam, Tran Van Hoa, Viet Nam, Le Duc Nam, Viet Nam, Hudson Pham, China, luu thi mai, Viet Nam, Cong ty Co phan Dau tu va Cong nghe Ninja, Viet Nam, and Thang Ho, Ninja Team, Viet Nam.

2. The Domain Names and Registrars

The disputed domain names <banhangfacebook.net>, <marketingfacebook.net>, <ninjafacebook.com>, <ninjafacebook.net>, <phanmembanhangfacebook.com>, <phanmemfbninja.com>, <phanmemninjafacebook.com>, <phanmemquangcaofb.com>, and <phanmemquangcaofb.net> are registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “First Registrar”).

The disputed domain name <facebookninja.net> is registered with P.A. Viet Nam Company Limited (the “Second Registrar”).

The disputed domain names <phanmembanhangfacebook.net> and <phanmemquangcaofacebook.com> are registered with OnlineNic, Inc. d/b/a China-Channel.com (the “Third Registrar”).

The disputed domain names <phanmemchamsocfacebook.com>, <phanmemfacebook.com>, <phanmemfacebookninja.com>, <phanmemketbarfacebook.com>, <phanmemquangcaofacebook.net>, and <phanmemquanlyfacebook.net> are registered with GoDaddy.com, LLC (the “Fourth Registrar”).

The disputed domain name <phanmemfacebook.net> is registered with Mat Bao Corporation (the “Fifth Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on September 5, 2023. On September 6, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On September 7, 2023, September 8, 2023, and September 11, 2023, the Registrars transmitted by email to the Center their 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 September 12, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint in English on September 23, 2023.

On September 12, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On September 12, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondents did not comment on the language of the proceeding.

The Center verified that the Complaint together with 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 in English and Japanese of the Complaint, and the proceedings commenced on October 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondents’ default on October 30, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on November 23, 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 is a United States social technology company that operates, *inter alia*, Facebook, Instagram, and WhatsApp. The Complainant’s Facebook platform was founded in 2004 and today is one of the leading providers of online social media and social networking services, being its <facebook.com> domain name (and corresponding website) and application (“app”) constantly ranked amongst the most visited websites and most downloaded apps in the world.

The Complainant’s Facebook social network is commonly referred to as “FB” (as can be seen in international publications such as The New York Times, “Generation FB”, dated June 23, 2011). In addition, the Complainant was traded under the NASDAQ stock ticker “FB” until June 2022.

The Complainant is the owner, amongst others, of the following trademark registrations (Annex 9 to the Complaint):

- United States Trademark Registration No. 3,041,791 for FACEBOOK, filed on February 24, 2005, registered on January 10, 2006, subsequently renewed, in classes 35 and 38;
- Viet Nam Trademark Registration No. 4-0128158-000 for FACEBOOK, registered on June 26, 2009, in classes 9, 35, 38, 41, 42, and 45; and

- United States Trademark Registration No. 4,659,777 for FB, filed on July 14, 2008, registered on December 23, 2014, in class 35.

The disputed domain names are the following:

Disputed Domain Name	Registration Date	Present Use
<banhangfacebook.net>	May 4, 2019	Redirects to <phanmembanhangonline.net/>.
<facebookninja.net>	August 2, 2017	Redirects to <ninjamarketing24h.com/>.
<marketingfacebook.net>	May 4, 2019	Redirects to <phanmemmarketingninja.net/>.
<ninjafacebook.com>	September 20, 2018	Redirects to <marketingninjaatool.com/>.
<ninjafacebook.net>	September 20, 2018	Redirects to <banhangonlinepro.com/>.
<phanmembanhangfacebook.com>	September 20, 2018	Redirects to <phanmembanhangpro.com/>.
<phanmembanhangfacebook.net>	July 29, 2014	Redirects to <phanmemmarketingvn.com/>.
<phanmemchamsocfacebook.com>	May 31, 2018	Redirects to <phanmemmarketing24h.com/>.
<phanmemfacebook.com>	September 26, 2019	Redirects to <phanmemquangcao24h.com/>.
<phanmemfacebook.net>	May 4, 2017	Redirects to <phanmembanhang24h.com/>.
<phanmemfacebookninja.com>	July 22, 2014	Redirects to <phanmemnuoinick.net>.
<phanmemfbninja.com>	September 20, 2018	Redirects to <phanmemmarketingpro.com/>.
<phanmemketbanfacebook.com>	May 31, 2018	Redirects to <phanmemquangcaoonline.com/>.
<phanmemninjafacebook.com>	September 20, 2018	Redirects to <phanmemmarketingninja.com>.
<phanmemquangcaofacebook.net>	September 7, 2018	Redirects to <phanmemdangbai.net/>
<phanmemquangcaofb.com>	April 10, 2019	Redirects to <phanmemquangcaoninja.com/>.
<phanmemquangcaofb.net>	September 20, 2018	Redirects to <phanmemquangcaopro.com/>.
<phanmemquanlyfacebook.net>	May 31, 2018	Redirects to <phanmemninjagroup.com/>.

All of the webpages to which the disputed domain names redirect Internet users are of similar content, written in Vietnamese and purport to offer Ninja-branded marketing solutions, displaying the same postal address (*i.e.*, 62 Nguyen Huy Tuong, Thanh Xuan District, Hanoi) and refer to “Ninja Investment and Technology Corporation” (“CÔNG TY CỔ PHẦN ĐẦU TƯ VÀ CÔNG NGHỆ NINJA” in Vietnamese) at the bottom of the homepage or display the same “Ninja” logo on the top left hand corner of the screen.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

The Complainant submits that the disputed domain names are subject to common control by either the same person or connected parties and for reasons of fairness, equity and efficiency, the Complainant requests consolidation of the Respondents to the same Complaint, given that: (i) all of the disputed domain names resolve to websites displaying highly similar content, targeting the Complainant’s FACEBOOK and FB trademarks; (ii) all but two of the disputed domain names share the same name “Tran Van Hoa” (as the registrant or the Admin / Tech contact) as well the same telephone number or the same email address.

Notably, the Complainant contends that the marketing solutions being offered at the webpages available at the disputed domain names clearly violate or enable Facebook users to breach the Complainant’s terms and policies. As examples, the Complainant quotes the “Ninja Add Friend” software which helps users to automatically make friends with the target audience on Facebook by automatically scanning the User Identifiers of potential customers and bulk sending friend requests, as well as the “Ninja Care” software which allows users to manage their multiple Facebook accounts by automatically posting and interacting with

friends effectively, and the “Ninja Seeding” software which enables users to increase Facebook post “likes” and auto-comment comments in bulk for all Facebook posts (Annex 10 to the Complaint)..

The Complainant further asserts that the product catalogue displayed on the websites evidences the Respondent’s use of the Complainant’s trademarks and logos notably in the product names and on product packaging as well as webpages promoting the marketing software “Ninja Add Friend”, “Ninja Care”, and “Ninja Seeding” (Annex 11 to the Complaint).

Furthermore, the Complainant states to have sent on September 8, 2022, a cease-and-desist letter in Vietnamese to the Respondents, asserting the Complainant’s trademark rights and requesting, *inter alia*, transfer of 15 of the disputed domain names, to which the Complainant claims to never have received a reply.

Moreover, the Complainant asserts that the Respondents have no rights or legitimate interests in respect of the disputed domain names given that:

- (a) the Respondents are not licensees of the Complainant, nor have they been otherwise authorised or allowed by the Complainant to make any use of its trademarks, in a domain name or otherwise;
- (b) the Respondents have not used the disputed domain names in connection with a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy nor have the disputed domain names been used for legitimate noncommercial or fair use purpose in accordance with paragraph 4(c)(iii) of the Policy given the use of the disputed domain names in connection with websites that promote marketing software via the Facebook platform, also targeting other social media platforms and not accurately and prominently disclosing the lack of relationship with the Complainant;
- (c) the Respondents cannot credibly claim to be commonly known by the disputed domain names, or a name corresponding to the disputed domain names; and
- (d) the Respondents are not making a legitimate noncommercial or fair use of the disputed domain names.

As to the registration of the disputed domain names in bad faith, the Complainant asserts that the Respondents knew or should have known of the Complainant’s trademark rights at the time of the registration of the disputed domain names considering that it has acquired considerable reputation and goodwill worldwide. Further, the Respondents’ intent to target the Complainant through the disputed domain names may also be inferred from the contents of the websites to which Internet users are redirected, which make explicit references to Facebook as well as prominent use of the Complainant’s trademarks, in order to promote marketing software targeting Facebook users.

B. Respondents

The Respondents did not reply to the Complainant’s contentions.

6. Discussion and Findings

6.1. Procedural Matter - Language of the Proceedings

In accordance with paragraph 11 of the Rules, the Panel has the authority to determine the language of proceedings. Considering the circumstances of this case and the fact that the Respondents did not formally reply to any of the communications sent by the Center, both in English and in Japanese, this Panel does not consider it prejudicial to the Respondent if English were adopted as the language of the proceeding, especially in view of the fact that English words are used in some of the disputed domain names as well as in the webpages to which the disputed domain names are redirected. The proceeding would be unduly

delayed if the Complaint had to be translated into Japanese. Accordingly, the Panel accepts the Complainant's request for English to be the language of this proceeding.

6.2. Procedural Matter - Consolidation of Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple registrants pursuant to paragraph 10(e) of the Rules.

The Respondents did not comment on the Complainant's request. Paragraph 3(c) of the Rules states that a complaint may relate to more than one disputed domain name, provided that the disputed domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that all of the disputed domain names redirect Internet users to webpages of similar content, written in Vietnamese, purportedly offering Ninja-branded marketing solutions, displaying the same postal address (*i.e.*, 62 Nguyen Huy Tuong, Thanh Xuan District, Hanoi), and referring to "Ninja Investment and Technology Corporation" ("CÔNG TY CỔ PHẦN ĐẦU TƯ VÀ CÔNG NGHỆ NINJA" in Vietnamese) at the bottom of the homepage or display the same "Ninja" logo on the top left hand corner of the screen.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

This Panel is satisfied, in view of the evidence submitted and on the balance of probabilities that the disputed domain names are indeed subject to a common control and that consolidation would be fair and equitable to all Parties.

6.3. Substantive Matter

Paragraph 4(a) of the Policy sets forth three requirements, which have to be met for this Panel to order the transfer of the disputed domain names to the Complainant:

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

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain names.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the marks are reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (“banhang”, “ninja”, “marketing”, “phanmem”, “chamsoc”, “ketban”, “quangcao”, and “quanly”) may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lack rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent that the Respondent has not been commonly known by the disputed domain names, and there is no connection or affiliation between the Complainant and the Respondent. Also, the Complainant indeed states it has not licensed nor authorized the Respondent to use the Complainant’s trademarks, nor does the Respondent have any legal relationship with the Complainant that would entitle the Respondent to use the Complainant’s trademark.

Furthermore, the Panel concludes that the Respondent has indeed not used the disputed domain names in connection with a *bona fide* offering of goods or services. The Respondent has used the disputed domain names, which incorporate the Complainant’s trademark entirely with terms descriptive of the industry and services provided by the Complainant (i.e., “marketing”, “Phần mềm” that translates to “software”), in order to mislead and redirect unsuspecting Internet users, expecting to find the Complainant, to third party commercial websites offering marketing services to be used in the Complainant’s platform which in addition to violating the Complainant’s Terms of Use, do not make a single disclaimer of the lack of relationship between the Parties or endorsement thereof.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the use of the disputed domain names to redirect to third party commercial websites characterizes the Respondent's likely intent of commercial gain by profiting from the Complainant's notorious trademarks. Similarly, the incorporation of the Complainant's well-known trademarks not only in the composition of the dispute domain name, but also the website content to which the disputed domain names resolves, reflects the Respondent's awareness of, and intent to target, the Complainant.

For the reasons above, the Panel find that the Respondents have registered and used the disputed domain names in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element 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, <banhangfacebook.net>, <facebookninja.net>, <marketingfacebook.net>, <ninjafacebook.com>, <ninjafacebook.net>, <phanmembanhangfacebook.com>, <phanmembanhangfacebook.net>, <phanmemchamsocfacebook.com>, <phanmemfacebook.com>, <phanmemfacebook.net>, <phanmemfacebookninja.com>, <phanmemfbninja.com>, <phanmemketbanfacebook.com>, <phanmemninjafacebook.com>, <phanmemquangcaofacebook.com>, <phanmemquangcaofacebook.net>, <phanmemquangcaofb.com>, <phanmemquangcaofb.net>, and <phanmemquanlyfacebook.net>, be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: December 7, 2023