

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc v. Chirdon Mohamed Houssein
Case No. D2022-1156

1. The Parties

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

The Respondent is Chirdon Mohamed Houssein, Djibouti.

2. The Domain Name and Registrar

The disputed domain name <facebooksecure.live> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 2, 2022. On April 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on April 11, 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 April 13, 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 April 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 19, 2022. On June 12, 2022, the Respondent sent a supplemental filing in French purported identity theft, offering to settle the case and asking for an extension to file a complete response. Considering that no evidence has been provided in this regard and the mentioned filing has been submitted late, the Panel has not accepted the supplemental filing.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on May 27, 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, a social networking website and mobile application. The services are provided in more than 70 languages through <facebook.com>. The Complainant also owns the domain name <facebook-security.com>, which redirects to a webpage where the Complainant updates users about how to protect their information.

The Complainant owns numerous registrations protecting its FACEBOOK trademark around the world. As such, in the United States Patent and Trademark Office: registration No. 3,122,052 registered on July 25, 2006 in Classes 35, and 38 or registration No. 3,881,770 registered on November 23, 2010 in Classes 35, 38, 41, 42, and 45.

FACEBOOK trademark is to be considered well-known for the purposes of the UDRP. The Complainant contacted the Respondent through the concerned Registrar on January 24, 2022 by its online contact form. No answer was received.

The Respondent registered the disputed domain name on May 27, 2020 and resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name reproduces the Complainant's FACEBOOK trademark except for the misspelling of adding the vowel "e". The Complainant also asserts that the disputed domain name adds the descriptive term "secure" to the Complainant's FACEBOOK trademark. However, the addition of a descriptive term to the Complainant's mark fails to distinguish the disputed domain name from the mark.

Further, the addition of a generic Top-Level Domain ("gTLD") has no distinguishing value in the Policy.

With regard to the second requirement, the Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name. For such, the Complainant asserts that it has not licensed nor authorized the Respondent to use FACEBOOK, nor does the Respondent have any legal relationship with the Complainant that would entitle him to use the trademark. Further, neither the Whois data for registration of the disputed domain name, nor the corresponding website available supports that the Respondent is known by the disputed domain name.

Besides, the Complainant contends that non-use or "passive holding" of a domain name is not an use in connection with a *bona fide* offering of goods or services pursuant to Policy, paragraph 4(c)(i). Accordingly, the absence of use does not confer or mounts to rights or legitimate interests on the Respondent.

The Complainant also refer to the passive holding of the disputed domain name to allege that such non-use is not a legitimate noncommercial or fair use under the Policy, paragraph 4(c)(iii).

The Complainant affirms that the Respondent registered and is using the disputed domain name in bad faith. According to the Complainant, the non-use of a domain name that is confusingly similar to a complainant's mark constitutes use in bad faith. Moreover, 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. For example, in *Facebook, Inc. v. Domain Asset Holdings*, WIPO Case No. [D2011-0516](#).

The Complainant contacted the Respondent through the concerned registrar's online contact form. The form indicated that the Complainant was contacting the Respondent because the disputed domain name was "infringing on a trademark or violating local laws or regulations". The Respondent did not answer.

B. Respondent

The Respondent did not reply to the Complainant's contentions. On June 12, 2022, the Respondent sent an supplemental filing in French purported identity theft.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

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

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there from as it considers appropriate". This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

A. Identical or Confusingly Similar

The Panel notes that the disputed domain name consist in an obvious misspelling of the FACEBOOK trademark. Adding a vowel "e" to the disputed domain name does not provide any distinctiveness since the relevant trademark is sufficiently recognizable within the disputed domain name. Further, the addition of the descriptive term "secure" would not prevent a finding of confusing similarity under the first element. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.8.and 1.9.

It is well established that gTLDs are generally irrelevant to the consideration of identity or confusing similarity between a trademark and a domain name.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to FACEBOOK trademark in which the Complainant has rights and, therefore, the Panel finds that the first requirement is met.

B. Rights or Legitimate Interests

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP paragraph 4(c) include the following:

- (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.

As noted above, the Respondent did not answer the Complaint and the Complainant rightly refers to [WIPO Overview 3.0](#), section 2.1. “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 domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element [of the Policy]”.

The Panel finds that a *prima facie* case proving has been met by the Complainant under the following reasoning and the corresponding evidence: The Complainant did not authorized or licensed the Respondent to use FACEBOOK trademark. Neither the parties have any legal relationship which would have entitled the Respondent to use the trademark. Moreover, the Panel accepts that there is no indication as to the Respondent being know by the disputed domain name. Likewise, the lack of use of the disputed domain name does not mount with a *bona fide* offering of goods or services pursuant to paragraph 4(c)(i) of the Policy neither the lack of use cannot be understood as noncommercial or fair use of the disputed domain name pursuant to paragraph 4(c)(iii) of the Policy.

While the Complainant has carried out its burden in accordance to paragraph 4(a)(ii) of the Policy, the Respondent did not answer the Complaint although he has been duly notify by the Center.

Under these circumstances, the Panel is convinced that the second element of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

For the purposes of the Policy, a complainant must establish that the domain name was registered and used in bad faith by the respondent.

In assessing whether the Respondent’s registration may be in bad faith the Panel takes into account the nature of the disputed domain name. Indeed, by incorporating the misspelled famous FACEBOOK trademark and the term “secure” in the disputed domain name, the Respondent is showing accurate knowledge of the mark at the moment of the registration. Thus, the Panel finds that the disputed domain name was registered in bad faith. See *Telefonaktiebolaget LM Ericsson v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2022-0851](#).

The Panel also looks at *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) to apply the “passive holding doctrine”. While FACEBOOK is well-known, the registration of the mark took place years ago before the registration of the disputed domain name and, no evidence has been produced to demonstrate a legitimate use in any manner by the Respondent, the Panel accepts that there is no use in good faith.

Accordingly, the third element of the Policy set up in paragraph 4(a)(iii) is met.

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 <facebooksecure.live> be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: June 10, 2022