

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc., WhatsApp, LLC v. 黄霖生 (huanglinsheng)
Case No. D2022-1865

1. The Parties

The Complainants are Meta Platforms, Inc., United States of America (“United States” or “US”) and WhatsApp, LLC, United States, represented by Hogan Lovells (Paris) LLP, France.

The Respondent is 黄霖生 (huanglinsheng), China.

2. The Domain Names and Registrar

The disputed domain names <diem-facebook.info>, <diem-facebook.net>, <diem-facebook.top>, <diem-facebook.vip>, <facebook-diem.net>, <facebook-diem.vip>, and <whatsappbot.vip> are registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 24, 2022. On May 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 26, 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 May 27, 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 in English on May 30, 2022.

On May 27, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 27, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceeding commenced on June 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 22, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 23, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on July 6, 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

A. Complainants

The Complainant Meta Platforms, Inc., (formerly Facebook Inc.) is a company founded in the US in 2004, and one of the world's leading providers of online social networking services, under the trade mark FACEBOOK.

The Complainant WhatsApp, LLC is a wholly-owned subsidiary of the Complainant Meta Platforms, Inc., founded in the US in 2009, and the operator of one of the world's most popular communication applications, with over two billion active monthly users worldwide, under the trade mark WHATSAPP.

The Complainant Meta Platforms, Inc.'s "www.facebook.com" website is currently ranked the third most visited website in the world according to information company Alexa, and the Complainants' Facebook and WhatsApp apps are ranked among the top mobile applications in the world.

The Complainants are the owners of numerous registrations in jurisdictions worldwide for their FACEBOOK and WHATSAPP trade marks (the "Trade Mark(s)"), including:

(i) Chinese registration No. 5251162 for the Trade Mark FACEBOOK, registered on September 21, 2009; US registration No. 3041791 for the Trade Mark FACEBOOK, registered on January 10, 2006; and International registration No. 1280043 for the Trade Mark FACEBOOK, registered on December 23, 2014; and

(ii) Chinese registration No. G1085539 for the Trade Mark WHATSAPP, registered on May 24, 2011; US registration No. 3939463 for the Trade Mark WHATSAPP, registered on April 5, 2011; and International registration No. 1085539 for the Trade Mark WHATSAPP, registered on May 24, 2011.

The Complainants are the owners of numerous domain names comprising the Trade Marks, under various generic Top-Level Domains ("gTLDs") and country code Top-Level Domains ("ccTLDs"), including <facebook.com>, <whatsapp.com>, and <facebook.cn>.

The Complainants' websites are inaccessible in mainland China, but the Complainants and their Trade Marks have received widespread coverage in Chinese press (including in China's state media People's Daily).

The Complainant Meta Platforms, Inc. was also one of the founder member organizations of the DIEM blockchain payment network, operated via the website "www.diem.com" (the "Diem Association") and under the trade mark DIEM (the "DIEM Trade Mark").

B. Respondent

The Respondent is apparently an individual resident in China.

C. The Disputed Domain Names

The disputed domain names <facebook-diem.net> and <facebook-diem.vip> were registered on May 22, 2021.

The disputed domain names <diem-facebook.info>, <diem-facebook.net>, <diem-facebook.top>, <diem-facebook.vip>, and <whatsappbot.vip> were registered on May 28, 2021.

D. The Websites at the Disputed Domain Names

The disputed domain names <diem-facebook.net> and <facebook-diem.net> were previously resolved to English language websites impersonating the Diem Association, reproducing text and images from the official website for the Diem payment network and purporting to offer cryptocurrency-related services, in an apparent phishing scam.

At the time of filing of the Complaint, the disputed domain name <diem-facebook.net> was resolved to what appeared to be a Chinese language login webpage for a storage company; and none of the other disputed domain names was resolved to active websites.

As at the date of this Decision, none of the disputed domain names resolves to an active website.

5. Parties' Contentions

A. Complainants

The Complainants contend that the disputed domain names are confusingly similar to the Trade Marks, the Respondent has no rights or legitimate interests in respect of the disputed domain names, and the disputed domain names were registered and are being used in bad faith.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

6.1. Preliminary Issue: Consolidation of Complainants

Paragraph 10(e) of the Rules provides as follows:

"A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules."

Past UDRP decisions suggest that a complaint may be brought by multiple complainants where (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion; and (ii) it would be equitable and procedurally efficient to permit the consolidation (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.1).

In the present proceeding, the Complainants have requested consolidation, due to their common legal and business interest in the Trade Marks; and their specific common grievance against the Respondent.

The Respondent has not made any submissions on this issue.

The Panel finds that the Complainants, as related entities sharing the same principal place of business, have common grievances against the Respondent, and the Respondent has engaged in common conduct that has affected the Complainants' rights in a similar fashion.

The Panel also finds that it would be procedurally efficient and equitable for the Complainants to be consolidated.

In all the circumstances, the Panel therefore determines, under paragraph 10(e) of the Rules, that there be consolidation of the Complainants in this proceeding.

6.2. Preliminary Issue: Language of the Proceeding

The language of the Registration Agreement for the disputed domain names is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burden being placed on the parties and undue delay to the proceeding.

The Complainants made the following submissions in support of its language request:

- (i) the disputed domain names <diem-facebook.net> and <facebook-diem.net> previously resolved to English language websites, supporting the inference that the Respondent has a good understanding of English such that to allow the proceeding to go ahead in English will not have an unfairly prejudicial effect;
- (ii) the disputed domain names are composed of Latin script (not Chinese characters) and identically reproduce the Complainants' Trade Marks; and
- (iii) the Complainants are US corporations, whose main operating language is English. To require the Complainants to translate the Complaint into Chinese would cause them to incur substantial additional costs, and would cause unwarranted delay.

The Respondent did not file a Response and did not file any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time, and costs (see [WIPO Overview 3.0](#), section 4.5.1).

The Panel finds there is sufficient evidence to suggest the likely possibility that the Respondent is conversant in the English language.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.3 Substantive Elements of the Policy

The Complainants must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A. Identical or Confusingly Similar

The Panel finds that the Complainants have rights in the Trade Marks acquired through use and registration.

Disregarding the relevant gTLD, the disputed domain names <diem-facebook.info>, <diem-facebook.net>, <diem-facebook.top>, <diem-facebook.vip>, <facebook-diem.net>, and <facebook-diem.vip> incorporate the entirety of the FACEBOOK Trade Mark (see [WIPO Overview 3.0](#), section 1.7) together with the DIEM Trade Mark, separated by a hyphen.

Disregarding the gTLD, the disputed domain name <whatsappbot.vip> incorporates the entirety of the WHATSAPP trade mark, together with the word "bot".

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain names are confusingly similar to the relevant Trade Marks.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed 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 disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainants have not authorised, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Marks. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain names or that the disputed domain names have been used in connection with a *bona fide* offering of goods or services.

To the contrary, two of the disputed domain names have previously used for phishing scams, and the rest have not been resolved to active websites.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names.

There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

In all the circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

The Panel finds that, on the evidence herein, the Respondent has engaged in a pattern of conduct of registering disputed domain names comprising the Complainants' Trade Marks in order to prevent the Complainants from reflecting their marks in corresponding domain names. Accordingly, the Panel finds that bad faith has been made out under paragraph 4(b)(ii) of the Policy.

The Panel finds there are further grounds for a finding of bad faith registration and use in light of the evidence of the prior use of two of the disputed domain names in respect of phishing websites; and of one of the disputed domain names in respect of what appears to have been a Chinese language login webpage for a storage company.

Moreover, the present passive holding of the disputed domain names does not prevent a finding of bad faith.

The Panel further finds that, in light of the worldwide repute of the Trade Marks, and in light of the widespread media coverage obtained by the Complainants in mainland China, it is inconceivable that the Respondent was not aware of the Complainants and of their rights in the Trade Marks at the time of registration of the disputed domain names.

The Panel also finds that, in light of the repute of the Trade Marks, and on the evidence herein, there cannot be any actual or contemplated good faith use of the inherently misleading disputed domain names by the Respondent.

For all the foregoing reasons, the Panel concludes that the disputed domain names have been registered and are being used in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, and noting that the owner of the DIEM Trade Mark has provided its written consent to the transfer of the relevant disputed domain names to the Complainants, the Panel orders that the disputed domain names <diem-facebook.info>, <diem-facebook.net>, <diem-facebook.top>, <diem-facebook.vip>, <facebook-diem.net>, <facebook-diem.vip>, and <whatsappbot.vip> be transferred to the Complainants.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: July 20, 2022