

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc. v. Stefano Grossi, Grossi Consulting LLC  
Case No. D2022-2715

### **1. The Parties**

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

Respondent is Stefano Grossi, Grossi Consulting LLC, United States.

### **2. The Domain Names and Registrar**

The disputed domain names <facebook-download-app.com>, <facebookdownloadapp.com>, <facebooklikefordownload.com>, and <fblikefordownload.com> are registered with IONOS SE (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 25, 2022. On July 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 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 Complainant on July 27, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on July 29, 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 Respondent of the Complaint, and the proceedings commenced on August 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 23, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on August 24, 2022.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on August 29, 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**

Complainant is owner of registration for the word service mark FACEBOOK on the Principal Register of the United States Patent and Trademark Office ("USPTO"), registration number 3,122,052, registration dated July 25, 2006, in international class ("IC") 38, covering, *inter alia*, online chat room and social network services. Complainant is owner of registration for the word service mark FACEBOOK on the register of the European Union Intellectual Property Office ("EUIPO"), registration number 005585518, registration dated May 25, 2011, in ICs 35, 41, 42 and 45, covering advertising, education, scientific and technological services, and personal and social services rendered by others, as further specified. Complainant is owner of registration as an International Trademark under the Madrid System of the figurative trademark and service mark FACEBOOK, registration number 1075094, registration dated July 16, 2010, in ICs 9, 35, 36, 38, 41, 42 and 45, covering, *inter alia*, computer software, business advertising and marketing services, financial affairs, providing Internet chat rooms and telecommunication services, educational information, entertainment information, recreation information, providing Internet search engines and related services, social introduction, networking and dating services. Complainant is owner of registration for the word service mark FB on the Principal Register of the USPTO, registration number 4,659,777, registration dated December 23, 2014, in IC 35, covering promoting the goods and services of others over the Internet. Complainant is owner of registration for the word service mark FB on the register of the EUIPO, registration number 008981383, registration dated August 23, 2011, in IC 45, covering social networking services.

Complainant is a technology company based in the United States providing a range of primarily social networking and advertising services on the Internet, as well as providing third parties with access to consumer information. Complainant operates various social networking-related services, including under the FACEBOOK service mark (as well as, *e.g.*, under the Instagram service mark). Complainant operates a commercial website at "www.facebook.com" and directs a substantial number of FACEBOOK-formative domain names to that website location. Complainant has approximately 2.94 billion monthly active users and 1.96 billion daily active users on average worldwide (as of March 2022). Complainant makes available a software application (or "app") for mobile devices that consistently ranks among the most widely downloaded and used mobile apps. Complainant uses the service mark FB as a shorthand reference for FACEBOOK. As evidenced by various media references, Complainant's services are also known by the public as FB. Although Complainant has recently changed its corporate name to Meta Platforms, Inc., it continues to use FACEBOOK and FB in its commercial operations.

According to the Registrar's verification, Respondent is registrant of the disputed domain names. According to that verification, the records of registration of each of the disputed domain names was created on December 19, 2012. According to that verification, since their creation date no party other than Respondent has been registrant of the disputed domain names. The Registrar's verification indicates that registration of each of the disputed domain names is presently scheduled to expire on December 19, 2022.

There is no evidence that Respondent has used the disputed domain names <facebook-download-app.com>, <facebookdownloadapp.com>, <facebooklikefordownload.com> in connection with an active website(s). These disputed domain names resolve to landing pages that request the Internet user to accept cookies, upon acceptance of which they are redirected to a webpage stating “The content of the page cannot be displayed”. The disputed domain name <fblikefordownload.com> resolves to a presumably Pay-Per-Click (“PPC”) parking page including links identifying some subject matter associated with the type of services provided by or related to Complainant, e.g., “top social media marketing platforms” and “online conference app”. The only trademark that appears on the parking page screenshot furnished by Complainant is “Google”.

## **5. Parties’ Contentions**

### **A. Complainant**

Complainant alleges that it owns rights in the trademarks FACEBOOK and FB, and that the disputed domain names are confusingly similar to one or more of those trademarks.

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain names because: (1) Respondent is not licensed by or affiliated with Complainant, and has not received any authorization from Complainant to use its trademarks in the disputed domain names or otherwise; (2) Complainant’s effective non-use of three of the disputed domain names constitutes passive holding that does not establish rights or legitimate interests; (3) use of the FB-formative disputed domain name in association with a PPC parking page with links to subject matter associated with Complainant’s services is not a *bona fide* offering of goods or services; (4) there is no evidence that Respondent has made demonstrable preparations to use the disputed domain names in connection with a genuine business; (5) Respondent is not commonly known by the disputed domain names, and there is no evidence that Respondent has trademark rights in “facebook” or “fb”, and; (6) Respondent is not making legitimate noncommercial or fair use of the disputed domain names.

Complainant argues that Respondent registered and is using the disputed domain names in bad faith because: (1) Complainant’s trademarks are distinctive and well-known throughout the world; (2) Respondent did not reply to a cease-and-desist letter from Complainant’s counsel; (3) Respondent used a privacy service to conceal its identity; (4) the disputed domain names carrying a risk of implied affiliation with Complainant, and there is no clear evidence of use to which Respondent could use the disputed domain names without misleading Internet users; (5) with respect to the FB-formative disputed domain name, its use in connection with a PPC parking page with links to subject matter associated with Complainant’s business constitutes attracting Internet users for commercial gain by capitalizing on the goodwill and reputation associated with Complainant, and; (6) Respondent’s simultaneous registration of four disputed domain names incorporating Complainant’s well-known trademarks evidences an abusive pattern of domain name registration targeting Complainant that further evidences bad faith.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain names to Complainant.

### **B. Respondent**

Respondent did not reply to Complainant’s contentions.

## 6. Discussion and Findings

The registration agreement between Respondent and the Registrar subjects Respondent to dispute settlement under the Policy. The Policy requires that domain name registrants submit to a mandatory administrative proceeding conducted by an approved dispute resolution service provider, one of which is the Center, regarding allegations of abusive domain name registration and use (Policy, paragraph 4(a)).

It is essential to Policy proceedings that fundamental due process requirements be met. Such requirements include that a respondent have notice of proceedings that may substantially affect its rights. The Policy and the Rules establish procedures intended to ensure that respondents are given adequate notice of proceedings commenced against them and a reasonable opportunity to respond (see, e.g., Rules, paragraph 2(a)).

The Center formally notified the Complaint to Respondent at the email, fax, and physical address provided in its record of registration. Courier and fax transmission were successful, and there is no indication of problems with the transmission of email to Respondent. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

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

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

### A. Identical or Confusingly Similar

Complainant has provided evidence of rights in the trademarks FACEBOOK and FB, including by registration at the USPTO and EUIPO, and in the case of FACEBOOK by registration as an International Trademark. Complainant has provided evidence of use of FACEBOOK and FB in commerce. Respondent has not challenged Complainant's assertion of rights. The Panel determines that Complainant owns rights in the trademarks FACEBOOK and FB.

Three of the disputed domain names, <facebook-download-app.com>, <facebookdownloadapp.com>, and <facebooklikefordownload.com>, directly and fully incorporate Complainant's FACEBOOK trademark. This is sufficient to establish confusing similarity under the Policy. The addition of the terms "-download-app", "downloadapp", and "likefordownload", respectively, does not prevent a finding of confusing similarity. The Panel determines that the disputed domain names <facebook-download-app.com>, <facebookdownloadapp.com>, and <facebooklikefordownload.com> are confusingly similar to Complainant's FACEBOOK trademark.

The disputed domain name <fblikefordownload.com> directly and fully incorporates Complainant's FB trademark. Because of the ubiquity of two letter combinations, the incorporation of Complainant's two-letter trademark raises a question whether the presumption that direct and full incorporation of a trademark establishes confusing similarity. In the circumstances of this proceeding, the FB trademark is recognizable for the purposes of the first element of the Policy, the presumption holds, and Respondent's addition of the term "likefordownload" in the disputed domain name does not prevent a finding of confusing similarity. The Panel determines that the disputed domain name <fblikefordownload.com> is confusingly similar to Complainant's FB

trademark.

Complainant has established that it owns rights in the trademarks FACEBOOK and FB, and that the disputed domain names are confusingly similar to those trademarks.

### **B. Rights or Legitimate Interests**

Complainant's allegations to support Respondent's lack of rights or legitimate interests in the disputed domain names are outlined above, and the Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests in the disputed domain names.

Respondent has not replied to the Complaint and has not attempted to rebut Complainant's *prima facie* showing of lack of rights or legitimate interests.

There is no evidence that Respondent used the three FACEBOOK-formative disputed domain names in connection with an active website. There is no evidence that Respondent used (or prepared to use) these disputed domain names in connection with a *bona fide* offering of goods or services. There is no evidence that Respondent has been commonly known by the disputed domain names, or that it has established any trademark rights in FACEBOOK. The non-use of the disputed domain names does not constitute a legitimate noncommercial or fair use such as to establish rights or legitimate interests, and Respondent has not attempted to justify registration and non-use of these three disputed domain names for some legitimate noncommercial or fair use purpose. The Panel declines to speculate regarding whether a legitimate noncommercial or fair use might have been possible. Respondent's non-use of these three disputed domain names does not otherwise manifest rights or legitimate interests.

Respondent's use of the FB-formative disputed domain name to direct Internet users to an apparent PPC parking page with links to subject matter that in several instances is associated with the subject matter of Complainant's business does not establish rights or legitimate interests in favor of Respondent. Respondent was not authorized by Complainant to use its FB trademark to attract Internet users, and its use by Respondent in the disputed domain name takes unfair commercial advantage of Complainant's trademark rights. It is not a *bona fide* offer of goods or services, nor a legitimate noncommercial or fair use of Complainant's FB trademark. Respondent has not attempted to justify its registration or use of this disputed domain name. Respondent's use of the FB-formative disputed domain name does not otherwise manifest rights or legitimate interests.

The Panel determines that Complainant has established that Respondent lacks rights or legitimate interests in the disputed domain names.

### **C. Registered and Used in Bad Faith**

In order to prevail under the Policy, Complainant must demonstrate that the disputed domain name "has been registered and is being used in bad faith" (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy states that "for the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith". These include that, "(ii) [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or [...] (iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location".

Respondent registered the disputed domain names nearly a decade ago and, with the exception of a PPC parking page associated with one, there is no evidence that they have been used. This does not preclude a finding of bad faith registration and use. There is no doctrine of laches associated with the Policy.<sup>1</sup> It seems reasonable to note that if Respondent had a “genuinely nefarious” purpose when registering the disputed domain names, that purpose probably would have manifest itself by now. That said, the Policy does not demand genuinely nefarious bad faith. Bad faith can be of a more passive kind.

It appears evident that Respondent was familiar with Complainant and its trademarks when it registered the disputed domain names since: (a) the terms added to the trademarks relate to subject matter associated with Complainant’s business, and (b) Respondent’s registration of both FACEBOOK and FB, the latter being distinctively associated with Complainant, is unlikely to have been coincidental. In any event, by 2012 Complainant’s social networking service business was well established and widely known in the United States, where Respondent is located.

Three of the disputed domain names have not been used by Respondent notwithstanding registration nearly a decade ago. However, the circumstances in this case argue against finding that non-use rebuts Complainant’s contention that Respondent registered and is using them in bad faith. Trademarks may in appropriate circumstances be used in domain names for legitimate noncommercial purposes, such as in association with critical commentary platforms. However, if that were Respondent’s purpose with respect to the disputed domain names, it has given no indication of it after a long time, and Respondent has not suggested that. More important from an evidentiary standpoint is the substantive content of the three non-used disputed domain names. These are <facebook-download-app.com>, <facebookdownloadapp.com>, and <facebooklikefordownload.com>. Each of these extended alphanumeric strings refer to the possibility of downloading some type of application program, which appears to reference some operational purpose rather than any type of speech-related purpose. Therefore, assuming solely for the sake of argument that Complainant’s trademark could legitimately be used for some speech-related noncommercial purpose, the specific disputed domain names registered by Respondent do not convey or suggest such purpose. They convey more plausibly an operational, perhaps commercial, purpose.

Given that Complainant’s FACEBOOK trademark is well-known, and that operational-appearing domain names would likely be associated by Internet users with Complainant, the Panel is disinclined to treat Respondent’s registration and use of those disputed domain names as sufficiently benign to leave those disputed domain names in Respondent’s hands.

Moreover, as Complainant has pointed out, Respondent registered three disputed domain names incorporating its FACEBOOK trademark. If Respondent acted with a legitimate noncommercial or fair use purpose, it would not seem that registering three disputed domain names incorporating Complainant’s well-known trademark would be necessary or appropriate. This seems more a pattern of seeking to capitalize on Complainant’s valuable brand, as Complainant has suggested.

The Panel does not consider Respondent’s use of a privacy service a material factor. Such services are widely marketed by registrars to prevent domain name registrants from being the target of unwanted solicitations, and they are in common use. The provision of false contact information when registering domain names is a more serious matter in pointing to bad faith, but Respondent does not appear to have provided false contact information in its records of registration. Delivery of the Complaint to Respondent’s fax and physical addresses was successful.

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<sup>1</sup> See, e.g., *Tom Cruise v. Network Operations Center / Alberta Hot Rods*, WIPO Case No. [D2006-0560](#).

The Panel considers that based on the evidence taken as a whole, Respondent registered and is using the three disputed domain names incorporating the FACEBOOK trademark in bad faith because of: (1) the well-known character of Complainant's trademark, (2) the substantive meaning of the terms in the disputed domain names that argue against a potential legitimate noncommercial or fair use, (3) the registration of multiple disputed domain names incorporating Complainant's trademark, and (4) the lack of a Response from Respondent that might justify its actions.

Respondent has used the disputed domain name incorporating FB to direct Internet users to an apparently PPC parking page that includes links to subject matter that is within Complainant's lines of business. Such use constitutes registering and using the disputed domain name for commercial gain by creating Internet user confusion regarding Complainant as source, sponsor, affiliate, or endorser of Respondent's website.

The Panel determines that the four disputed domain names that are the subject of this proceeding were registered and are being used in bad faith within the meaning 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, <facebook-download-app.com>, <facebookdownloadapp.com>, <facebooklikefordownload.com>, and <fblikefordownload.com>, be transferred to Complainant.

*/Frederick M. Abbott/*

**Frederick M. Abbott**

Sole Panelist

Date: September 12, 2022