

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Yuriy Zagurskyy
Case No. D2022-3055

1. The Parties

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

The Respondent is Yuriy Zagurskyy, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <facebook-help.live> (the “Domain Name”) 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 August 11, 2022. On August 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 19, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 August 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 15, 2022.

On August 27, 2022, the Respondent sent email communications in response to which the Center informed about the current status of the proceedings and the next procedural steps. On August 30, 2022, the Respondent sent additional email communications in response to which the Center noted that the due date for Response was September 15, 2022 and referred the Respondent to the Response filing guidelines.

The Respondent did not submit a formal Response. Accordingly, the Center sent the Notification on the Commencement of Panel Appointment Process on September 26, 2022.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on October 3, 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.

On October 3, 2022, the Respondent submitted an additional email communication to the Center.

4. Further Procedural Considerations

In accordance with paragraph 10(b) of the Rules in all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case. In the present case, the Respondent's disclosed location appears to be in Ukraine, which is subject to an international conflict at the date of this Decision. Given that this circumstance may impact case notification, the Panel shall consider whether the proceeding should continue.

Having considered all the circumstances of the case, this Panel finds that the present proceeding should continue.

First, the Panel notes that the Center has notified the Respondent of the Complaint in accordance with the Rules. The Center sent the Notification of Complaint by email to the Respondent at the email addresses registered with the Registrar and to the postmaster email addresses as specified by the Rules.

Second, the Panel notes that the Respondent has sent several email communications between August 27, 2022 and October 3, 2022 in response to email communications sent by the Center in this proceedings. This circumstance indicates that the Respondent is aware of the present proceedings and would have been able to formulate and file a Response had it wished to do so.

Third, the Panel notes that the Complainant has submitted in the Complainant that any challenge made by the Respondent to any decision to transfer or cancel the Domain Names shall be referred to the jurisdiction of the courts at the location of the principal office of the concerned registrar. In this case, the principal office of GoDaddy.com, LLC is in the United States.

Fourth, the Panel notes that, for the reasons which are set out later in this Decision, the Panel has no doubt that the Respondent registered and has used the Domain Names in bad faith.

Thus, taking these circumstances into account, the Panel finds that the Parties have been given a fair opportunity to present their case and the Panel will proceed to rendering a Decision accordingly.

5. Factual Background

The Complainant is a social technology company. It operates an online platform Facebook which provides the online social-media and social-networking services. Facebook was founded in 2004. Currently, it has approximately 1.97 billion daily active users on average worldwide (as of June 30, 2022).

The Complainant is the owner of numerous FACEBOOK trademark registrations, including:

- the United States Trademark Registration FACEBOOK No. 3041791 registered on January 10, 2006;
- the European Union Trade Mark Registration FACEBOOK No. 005585518 registered on May 25, 2011;

- the International Trademark Registration FACEBOOK No. 1075094 registered on July 16, 2010.

The Complainant's primary domain name incorporating its FACEBOOK trademark is <facebook.com>.

The Domain Name was registered on June 9, 2022.

The Complaint contains evidence that at the time the Complaint was filed, the Domain Name resolved to an inactive website. As of the date of this Decision, the Domain Name still resolves to an inactive website.

6. Parties' Contentions

A. Complainant

The Complainant requests that the Domain Name be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Name is confusingly similar to the FACEBOOK trademark in which the Complainant has rights.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant submits that the Domain Name was registered and is being used in bad faith.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. However, the Center received the several email communications from the Respondent, between August 27, 2022 and October 3, 2022. These communications were brief and largely limited to derogatory remarks about the Complainant and the present proceedings, but made no reply to the Complainant's contentions nor any explanation for the registration and use of the Domain Name.

7. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

(i) the 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 the Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence". See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the Domain Name is identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant holds valid FACEBOOK trademark registrations which precede the registration of the Domain Name. The Domain Name incorporates this trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The addition of the term “-help” in the Domain Name does not prevent a finding of confusing similarity between the Domain Name and the Complainant’s FACEBOOK trademark. UDRP panels have consistently held that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms, whether descriptive, geographical, pejorative, meaningless, or otherwise, would not prevent a finding of confusing similarity under the first element. See section 1.8, [WIPO Overview 3.0](#).

The generic Top-Level Domain (“gTLD”) “.live” in the Domain Name is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Name is confusingly similar to the Complainant’s trademark. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name.

The respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made 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 prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it intends to make a legitimate, noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the Complainant’s FACEBOOK trademark registrations predate the Respondent’s registration of the Domain Name. There is no evidence in the record that the Complainant has licensed or otherwise permitted the Respondent to use the FACEBOOK trademark or to register the Domain Name incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name.

Moreover, it does not result from the evidence in the record that the Respondent makes use of the Domain Name in connection with a *bona fide* offering of goods or services, or it makes a legitimate, noncommercial or fair use of the Domain Name without intent for commercial gain. In fact, it does not result from the evidence in the record that Domain Name has been used in any active way to date.

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate,

pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant's *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

The third requirement the Complainant must prove is that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name were registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the FACEBOOK trademark predate the registration of the Domain Name. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration of the Domain Name, as it has been proven to the Panel's satisfaction that the Complainant's FACEBOOK trademark is well known and unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of products and services under this trademark. In sum, the Respondent in all likelihood registered the Domain Name with the expectation of taking advantage of the reputation of the Complainant's FACEBOOK trademark.

Moreover, it does not result from the evidence in the record that the Domain Name has been used in any active way to date. As indicated above, at the time of submitting the Complaint, the Domain Name resolved to an inactive website. As of the date of this Decision, the Domain Name still resolves to an inactive website. In the overall circumstances of this case, the Panel finds that the Respondent's passive holding of the Domain Name supports the finding of bad faith. As numerous UDRP panels have held, passive holding, under the totality of circumstances of the case, can constitute a bad faith use under the Policy. Here, given the Respondent's failure to provide any evidence of good faith use of the Domain Name and the implausibility that any good faith use to which the Domain Name could be put, the Panel agrees with the above.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under paragraph 4(a)(iii) of the Policy.

8. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <facebook-help.live> be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: October 17, 2022