

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc. v. Sam Fortenbaugh  
Case No. D2022-3653

### **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 Sam Fortenbaugh, United States.

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

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

### **3. Procedural History**

#### **A. Initial Proceedings**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 30, 2022. On October 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 4, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 18, 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 October 28, 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 November 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 21, 2022. The Response was filed with the Center on November 21, 2022.

On November 25, 2022, the Complainant submitted a supplemental filing with the Center. On November 28, 2022, the Respondent sent an email to the Center regarding the Complainant's supplemental filing.

The Center appointed William F. Hamilton as the sole panelist in this matter on December 5, 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.

## **B. Ruling on the Complainant's Supplemental Filing**

The Panel may in its discretion accept supplemental filings. In this case, the supplemental filing achieves fundamental fairness. The disputed domain name does not resolve to an active website and nothing in the disputed domain name would have immediately suggested to the Complainant when the Complaint was filed that the Respondent would assert in the Response that the disputed domain name was registered with the intent to resolve to a yet-to-be constructed parody website. The Complainant's supplemental filing principally addresses this issue, and the Panel accepts and will consider the supplemental filing limited to the issue of "fair use." See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.7 (supplemental filing is appropriate "where fairness calls for an opportunity for a party to respond to certain (unforeseeable) allegations or submissions by the other party.")

## **C. The Panel's Administrative Procedural Orders**

On January 12, 2023, the Panel issued Administrative Panel Procedural Order No. 1 ("Panel Order No. 1") that requested the Respondent to submit by January 17, 2023, any additional specific evidence (pre-dating the submission of the Complaint) the Respondent might have regarding the planned launch and content of the Respondent's claimed parody website. Without limitation, and merely by way of example, the Respondent was asked to provide specific evidence that might include: (1) a description of the website's structure and architecture, (2) draft images or sketches of what the various pages would look like, (3) examples of anticipated specific content, (4) the navigational structure of the planned website, (5) a mock-up or prototype of the website, and/or (6) an implementation schedule. The Panel requested that any such evidence be accompanied by proof (e.g., a time stamp) that it pre-dates the submission of the Complaint.

On January 12, the Respondent requested an extension of time to respond to Panel Order No. 1. The Panel granted the Respondent's time to respond to Panel Order No. 1 to January 20, 2023. On January 20, 2023, the Respondent filed a Submission of Additional Information with Annexes (the "Submission").

On January 23, 2023, the Panel issued Administrative Procedural Order No. 2 ("Panel Order No. 2") which permitted the Complainant to respond to the Respondent's Submission by January 27, 2023. On January 26, 2023, the Complainant filed its Reply to Panel Order No. 2 (the "second Reply").

## **4. Factual Background**

The Complainant is a United States technology company that operates numerous online platforms including Facebook. Facebook was founded in 2004 and has become one of the world's largest online social networking services.

The Complainant owns the trademark FACEBOOK which is registered alone and in various combinations with other words and logos in many jurisdictions around the world, including but not limited to:

- United States Trademark Registration No. 3041791 registered on January 10, 2006
- United States Trademark Registration No. 3122052 registered on July 25, 2006, and
- International Registration No. 1075094 registered on July 16, 2010.

The Respondent registered the disputed domain name on June 3, 2011.

## 5. Parties' Contentions

### A. Complainant

The Complainant asserts the disputed domain name is confusingly similar to the Mark because the disputed domain name merely adds the prefix "meta" to the Complainant's famous Mark.

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant asserts that the Complainant has never authorized the Respondent to use the disputed domain name, that the Respondent is not generally known by the disputed domain name, and that the Respondent has never engaged in any *bona fide* commercial activity in connection with the disputed domain name. Additionally, the Complainant asserts that because the disputed domain name prominently features the Mark persons encountering the disputed domain name will falsely assume that the disputed domain name will resolve to a website affiliated, sponsored, or associated with the Complainant.

The Complainant disputes the Respondent's claim of "fair use" of the Mark in the disputed domain name. The Complainant asserts that the Respondent never constructed the contemplated parody website. The Complainant notes that the Respondent purchased a website hosting plan from WordPress that remained devoid of any content, much less parody content about Facebook, except for a WordPress generated "Hello Word" page for 18 months after the registration of the disputed domain name. Since then, the disputed domain name has not resolved to any website. The Complainant notes that the Respondent's various exhibits purporting to show the planning and development of a parody website scarcely mention Facebook and consist of modest sketches, partial skits, and short videos about random irrelevant topics.

The Complainant asserts that the Respondent's passive holding of the disputed domain name for over a decade constitutes bad faith registration and use of the disputed domain name.

### B. Respondent

The Respondent asserts that the disputed domain name is not confusingly similar to the Mark because the term "metafacebook" has an established independent meaning and connotation similar to how the word "metaphysics" has a meaning different than "physics."

The Respondent asserts rights and legitimate interests in the disputed domain name based on the Respondent's intended use of the disputed domain name to resolve to a website offering "comic commentary on the effect of social media on society." The Respondent asserts that the Respondent has been "preparing" to launch his comedic website for the past ten years as evidenced by the exhibits submitted by the Respondent in the Response and the Submission. The Respondent references his other websites to support his contention. The Respondent's other websites identified in the Response are [www.colonialcomedian.com](http://www.colonialcomedian.com), "[www.girlfriendpointing.com](http://www.girlfriendpointing.com)", "[www.worldofcondiments.com](http://www.worldofcondiments.com)", and "[www.snoozysermon.com](http://www.snoozysermon.com)".

The Respondent asserts that the disputed domain name was registered and (intended to be) used in good faith as a social media commentary or parody website.

## 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.

## A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's Mark.

The disputed domain name adds the prefix "meta" to the Complainant's famous Mark. (The Complainant also owns trademark registrations mark META. META was registered and used by the Complainant after the Respondent's registration of the disputed domain name. The Complainant's ownership of the META mark is thus not implicated here.)

A domain name which incorporates a clearly identifiable component or dominant portion of a complainant's registered mark, or the mark itself as is the case here, may create confusingly similarity for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8 ("where the relevant trademark is recognizable with the disputed domain name, the additions of other terms (whether descriptive, geographic, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element"); *Nomura International Plc. v. Name Redacted*, WIPO Case No. [D2021-0654](#). The use of the word "meta" as a prefix to the Mark in the composition of the disputed domain name supports a finding of confusing similarity between the Mark and the disputed domain name.

The Respondent's claim that the prefix "meta" attached to the Mark creates a new word "metafacebook" with its own distinct meaning and connotation that will not cause confusion with the Mark is not relevant under the first element and is moreover unpersuasive. "Meta" used as a prefix in the English language typically points to and highlights the substantive root word or morpheme. The prefix "meta" in the disputed domain name highlights and points to the Mark rendering the disputed domain name confusingly similar to the Mark.

Unlike the word "metaphysics" provided by the Respondent as an example of a word that notwithstanding its origins may have acquired a dictionary meaning distinct and separate from "physics." The Panel notes that "metafacebook" is not a dictionary word with any recognized meaning. Moreover, the Respondent's implied contention is that attaching "meta" to any registered trademark creates would a domain name that is not confusingly similar to the registered trademark. Such a conclusion is clearly erroneous (even if it may potentially bear on the second or third UDRP elements).

The Panel thus rejects the Respondent's argument that "metafacebook" is a distinct word with its own meaning and that the attachment of "meta" to the Mark somehow alerts Internet users that the disputed domain name will resolve to a website that is not affiliated, sponsored, or associated with the Complainant. To the contrary, the Panel finds that the disputed domain name is confusingly similar to the Mark, and that the disputed domain name suggests that it is affiliated, sponsored, or associated with the Complainant. Unlike websites such as <[company]sucks.com>, there is nothing in the disputed domain name that might alert an unsuspecting Internet user that the disputed domain name will resolve to a third-party or parody website.

The Complainant has met its burden under paragraph 4(a)(i) of the Policy.

## B. Rights or Legitimate Interests

The Complainant has specifically disavowed providing the Respondent with permission to use the disputed domain name or the Mark. The Respondent is not affiliated with the Complainant in any way and does not have any business relationship with the Complainant. The Complainant has thus established a *prima facie* case in its favor which shifts the burden of production of evidence on this point to the Respondent.

As discussed above, the Panel finds that nothing about the disputed domain name suggests that it will resolve to a Facebook parody website. For example, the disputed domain name is not a "[mark]sucks" website which suggests non-affiliation with the targeted company. Internet users will likely believe that the disputed domain name resolves to a website that is affiliated, sponsored, or associated with the Complainant.

The Respondent, nonetheless, asserts that Facebook is a popular social media service and “meta” in the disputed domain name was chosen because the disputed domain name was intended to resolve to a website featuring comedic commentary about social media, and that therefore the Respondent’s use of the Mark in the disputed domain name is protected under the fair use doctrine.

“The Respondent ... had planned and intended to use the domain name with a *bona fide* offering of services. The Respondent further asserts that the respondent (sic) made demonstrable preparations to use the domain name in connection with said services.” Response ¶ 10.

The Panel is thus called upon to assess whether the Respondent has rebutted the Complainant’s *prima facie* case. Normally, a panel in assessing a respondent’s fair use claim considers whether the claimed website (i) supports a respondent’s claimed purpose of (e.g., for referential use, commentary, criticism, praise, or parody), (ii) is not misleading as to source or sponsorship, and (iii) is not a pretext for tarnishment or commercial gain. [WIPO Overview 3.0](#), section 2.5.2.

Here, the Respondent’s rebuttal fails because the Respondent failed to either build an actual parody website that the Panel might examine to test the Respondent’s claim of fair use, or even to provide satisfactory evidence of demonstrable preparations to do so. The Respondent has attempted to mask this deficiency by arguing that the Respondent for the past decade engaged in sporadic preparations to build his social media parody website. The Respondent supported this claim in the Response with exhibits that purported to show that the Respondent over the decade has occasionally been thinking about his comedic website, drafting potential content, and talking to friends about it. However, the Respondent’s Response exhibits are few, fragmentary, inconclusive, and of marginal evidentiary value.

**The Response exhibits are of two types: (A) two short letters from friends, and (B) six emails.**

- A. Two friends of the Respondent have provided letters which assert that the letter writer had some unspecified number of communications at unspecified times with the Respondent regarding Facebook and the Respondent’s plans for social media parody website. The Panel finds little evidentiary value in these letters. The details are scant. At best, the submitted letters establish a few periodic random, casual conversations with about Facebook and/or social media platforms sometime during the ten years between the registration of the disputed domain name and this proceeding.
- B. The six emails – most from the Respondent to himself – contain URLs of articles about Facebook. At most, these emails by themselves only establish that the Respondent found the URL topics interesting for some unknown reason and unknown purpose. For example, a URL cited in the emails refers to articles about trolls using Facebook accounts.

The Panel was not persuaded that the Response established a “fair use” defense. However, noting that the Respondent had appeared in this proceeding without legal counsel and to assure that the Respondent had the opportunity to present all relevant evidence supporting his contentions, the Panel issued Administrative Order No. 1 that provided the Respondent an opportunity to submit additional probative evidence.

The Respondent filed the Submission in response to Panel Procedural Order No. 1. Subsequently, as permitted in the Panel’s Procedural Order No.2, the Complainant submitted the second Reply.

**The Panel now addresses the Respondent’s Submission.**

- 1. The Respondent asserts that the Respondent purchased a hosting plan for the disputed domain name on January 4, 2012. The Submission’s Annex 1 Submission a screenshot from the Wayback Machine of an initial “www.MetaFacebook.com” page saying “Hello World” autogenerated by the website host WordPress, Inc. (“WordPress”). This “Hello World” screenshot, however, does not demonstrate any use or intended use of the disputed domain name as a parody website.

2. The Respondent claims that the Respondent had “webpages of the disputed domain name on the Internet at least through December 23, 2013.” The Respondent’s claim lacks probative value. That a page saying “Hello World” was available for 18 months establishes nothing regarding Respondent’s fair use defense. Presumably, the Respondent would have provided additional screenshots from the Wayback Machine if there were active pages of the Respondent’s website other than the “Hello World” page. A website composed of a single page stating “Hello World” is not a parody website.
3. The Respondent claims that the WordPress plan establishes that he “did build and publish a website using the disputed domain name.” The Respondent’s claim elevates form over content. The issue is not whether the Respondent registered and used the disputed domain name. The registered disputed domain name admittedly and intentionally appropriates the Complainant’s Mark. It is for the Respondent to show that the disputed domain name resolves to a genuine parody website. The Respondent’s screenshot evidence from the Wayback Machine fails to meet this burden because the message “Hello World” is not evidence of a parody website.
4. The Respondent attempts to bolster this evidence by reference to the Submission’s Annex 2 which consists of a series of cryptic emails auto forwarded by WordPress to the Respondent consisting of apparently random comments posted to the website such as “ok i get it” and “you really should try some social signals to boost your blog.” The Annex 2 emails do not demonstrate that the disputed domain name will resolve to a parody website.
5. The Respondent again asserts that the Respondent “did build and publish a website using the domain name www.Metafacebook.com.” The Panel, however, finds no evidence that this essentially empty website was a parody website.
6. The Respondent claims that Annex 3, which contains a few collections of communications and postings taken from the accounts of apparently random Facebook users, shows that he intended to use Facebook content as parody in his intended website. These random communications consist of posts saying, for example, “I am telling you that Jay Welsh annoys me,” “I’m tellin ya I know. It’s getting into a duel everytime you talk to him,” and “Thank you for your support and advice.” The Panel finds nothing in these “conversations” that demonstrate content of a parody website.
7. The Respondent next offers a three page “comedic sketch” script which the Respondent describes as “The Venture” written by the Respondent to show “Facebook and social media has changed our world to make everything an Internet start-up.” Nothing in “The Venture” contains parody about Facebook.
8. The Respondent next asserts in his Submission that he intended to place videos on the website about “how relationships have changed as a result of social media.” The titles of these videos include: “shaking hands,” “Seeing People,” “Breaking News,” “bringing chicken,” and “finding tuna in the freezer.” The videos are about social media generally.
9. Another video concerns “how the pandemic and virtual socializing made people fearful of actual social interacting.” The series is called “Six Feet Apart”. The Panel has viewed the video which consists of two masked men sitting on a concrete bench six feet from each other with masks on talking about their life during the pandemic. The Panel finds that the Respondent’s video material does not rise to the level of a Facebook parody.
10. In Annex 7, the Respondent asserts that he planned a comic video series on “the way a marriage proposal which change. The series was to be called “Privacy Settings or I won’t marry you till you get off Facebook.” The script written for the video in 2014 has only an introduction. The focus of the script is the general impact of social media on human relationships not Facebook.
11. Next, the Respondent asserts that he had a plan for the “structure of the updated intended website” by using a template from another website the Respondent had developed. The Respondent supports this claim with Annex 8 which consists of two undated sheets of paper labelled “Home/Initial Page” with

various hand drawn rectangular blocks containing the words “Image,” “Videos,” “Colonial Humor,” and “Connect Social Media & Email” and a “Video Page” with rectangular blocks bearing labels such as “Colonial Comedian” and “Jest of the Week.” Nothing In Annex 8 is about Facebook or unique to a Facebook parody website. The pages were designed for the Respondent’s website at “www.colonialcomedian.com”.

The Panel finds that that the Respondent’s Reply and Submission fail to establish the Respondent’s demonstrable preparations to construct a genuine parody website about Facebook (let alone a “comic commentary on the effect of social media on society”). The Respondent may have literary ambitions to write about the contemporary impact of social media and may wish to express his insights as parody or comedy, but such ambitions alone do not entitle the Respondent to use the Complainant’s Mark in the disputed domain name.

The overall analysis required of the Panel is therefore clear. The Complainant has established a *prima facie* case. The burden of production of evidence then shifts to the Respondent to demonstrate fair use of the Mark. A website seeking fair use protection “must be active, genuinely noncommercial, and clearly distinct from any official complainant site.” [WIPO Overview 3.0](#), section 2.7.1. The Panel’s analysis is two-pronged. First, did the Respondent build (or show evidence of demonstrable reparations to do so) a website about Facebook? If so, did the Respondent build a genuine parody website about Facebook?

A Facebook parody website with actual parody content has never been built by the Respondent. Even if the Respondent for the past ten years off-and-on entertained the idea of creating a social media parody website, the Respondent’s failure to construct even the “bare bones” of such an actual live website precludes the Panel from performing the necessary analysis to determine whether the Respondent created a *bona fide* parody website that would permit the fair use of the disputed domain name. This is not a case where the Respondent recently registered the disputed domain name and has shown the Panel evidence of imminent website construction. The Respondent has failed to provide any implementation schedule or even suggest when such a website might be constructed – even after notice of the present dispute. The Respondent has not constructed an actual website after more than ten years following the registration of the disputed domain name.

Additionally, even had the plans, such as they may be called, in the Respondent’s Response and Submission come to fruition, at best it could be said that the Respondent may have vaguely intended to build a website to foray into social media culture. The Panel finds that the Respondent’s interest in human relations in a digitally networked world does not support a claimed fair use of the disputed domain name. The Respondent may have much to say about the impact of social media generally and how human relations may have changed because of the virtual environments of today’s culture. The Respondent is free to undertake such an endeavor. What the Respondent is not permitted to do is to use the Complainant’s famous Mark in the disputed domain name.

The Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

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

Under paragraph 4(b) of the Policy, bad faith may be established by any one of the following scenarios:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or
- (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

- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line 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.

The Panel finds that the Respondent adopted and used the Complainant's Mark in the disputed domain name with the goal of attracting Internet users to the Respondent's website. The Respondent admits to knowingly adopting the Complainant's Mark. See Section 6.B above. Nothing about the disputed domain name would immediately suggest that the disputed domain name would resolve to a parody website. See above.

Given the Respondent's clear technical capabilities, the Respondent's failure to construct his website since registering the disputed domain name ten years ago raises doubts about the Respondent's stated purpose of building a social media parody website, much less a Facebook specific parody website. The Respondent has not provided any reason why the website has not been built for over a decade – again, even following notice of this proceeding. Absent any explanation, the lack of any construction of the Respondent's website for over ten years when the Respondent knew he had appropriated the Complainant's famous Mark creates an inference against the Respondent's stated plans. This conclusion is buttressed by the Respondent's own exhibits analyzed in Section 6.B above, which analysis is incorporated by reference into this Section.

Considering the arguments and exhibits presented in the Complaint, the Response, the Reply, the Submission, and the second Reply, the Panel finds the Complainant has met its burden under paragraph 4(a)(iii) 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 name <metafacebook.com> be transferred to the Complainant.

*/William F. Hamilton/*

**William F. Hamilton**

Sole Panelist

Date: February 6, 2023