

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. hai zhu fang
Case No. D2022-4371

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 hai zhu fang, China.

2. The Domain Name and Registrar

The disputed domain name <facebook-sex.com> is registered with DropCatch.com 815 LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 16, 2022. On November 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 18, 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 November 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 12, 2022.

The Center appointed Gareth Dickson as the sole panelist in this matter on December 19, 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 the Facebook social networking website and mobile app, which is one of the most downloaded apps in the world. The Complainant is based in the United States and changed its name from Facebook, Inc. on October 28, 2021.

The Complainant is the owner of a number of trade mark registrations around the world comprising or incorporating FACEBOOK (the “Mark”), including:

- United States trade mark registration number 3,122,052, registered on July 25, 2006; and
- European Union trade mark registration number 009151192, registered on December 17, 2010.

The disputed domain name was registered on May 11, 2022. It has in the past directed Internet users to a webpage featuring adult-orientated and pornographic content. It is currently inactive, at least insofar as a webpage is concerned, but is listed on block lists as having been associated with spam, malware or some other domain name abuse.

5. Parties’ Contentions

A. Complainant

The Complainant argues that it has rights in the Mark by virtue of its ownership of various trade mark registrations for the Mark around the world. It contends that the disputed domain name is confusingly similar to the Mark since it incorporates the Mark (which is recognisable within the disputed domain name) with the addition of a hyphen and the word “sex”, under the generic Top-Level Domain (“gTLD”) “.com”.

The Complainant confirms that the disputed domain name was registered by the Respondent without its permission and that the Respondent is not a licensee of the Complainant. It alleges that the Respondent has not complied with the Complainant’s brand guidelines on the use of the Mark, which are freely available online, and has been using the disputed domain name to direct Internet users to pornographic content, and possibly also to engage in spam or the distribution of malware.

The Complainant submits that there is no evidence that the Respondent: has been commonly known by the disputed domain name; is making, or intends to make, a legitimate noncommercial or fair use of it (the content offered on the Respondent’s website, accessible via the disputed domain name, having been commercial in nature); or has ever used or demonstrated preparations to use it in connection with a *bona fide* offering of goods or services.

The Complainant submits that the Respondent must have known of the Complainant and the Mark when it registered the disputed domain name. The Mark, according to the Complainant, is distinctive and well known. The Respondent’s own use of the disputed domain name to provide access to pornographic material is said to be evidence of bad faith use of the disputed domain name, as is the appearance of the disputed domain name on block lists reserved for domain names involved in spam, malware or other domain name abuses.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant bears the burden of proving that:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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 has been registered and is being used in bad faith.

These criteria are cumulative. The failure of the Complainant to prove any one of these elements means the Complaint must be denied.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant is the owner of, and therefore has rights in, the Mark. Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)) provides that: “[I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”. Section 1.8 of the [WIPO Overview 3.0](#) further provides 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”.

The Panel therefore finds that the disputed domain name is confusingly similar to the Mark, since the disputed domain name incorporates the Mark in its entirety. The addition of a hyphen and the word “sex” in the disputed domain name does not prevent a finding of confusing similarity, nor does the addition of the gTLD “.com”.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Although a complainant is required to demonstrate that a respondent has no rights or legitimate interests in respect of the domain name, as explained in section 2.1 of the [WIPO Overview 3.0](#), the consensus view of previous UDRP panels is that where a complainant establishes 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.

In the current proceeding, the Complainant has established its *prima facie* case. The evidence before the Panel is that the Mark is distinctive and well known, and the Panel accepts that evidence. That makes coincidental adoption of the Mark in the disputed domain name highly unlikely. The Complainant states that it has not given the Respondent permission to use the Mark, in a domain name or otherwise, and submits that the Respondent has not been commonly known by the disputed domain name.

There is no evidence that the Respondent has acquired any common law rights to use the Mark, is commonly known by the Mark or is making any use of the disputed domain name that would establish rights or legitimate interests as a result of a legitimate noncommercial or fair use of it, certainly not while using the disputed domain name to provide access to pornographic content.

By not participating in these proceedings, the Respondent has failed to refute the Complainant's *prima facie* case that it has met its burden under the second UDRP element.

As clearly stated in section 2.1 of the [WIPO Overview 3.0](#), "a panel's assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed". Having reviewed and weighed the available evidence, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel notes that the disputed domain name was registered many years after the Mark was registered and accepts that the disputed domain name was chosen by reference to the Mark.

As a result, and in the absence of evidence from the Respondent that the similarity of the disputed domain name to the Mark is coincidental or permitted, the Panel must conclude that the Respondent knew of the Complainant's rights in the Mark when he registered the disputed domain name.

The Panel therefore finds that the Respondent's registration of the disputed domain name was in bad faith since it attempted to appropriate for the Respondent, without the consent or authorisation of the Complainant, rights in the Complainant's Mark.

The disputed domain name has also been used in bad faith, namely for a commercial purpose that involves redirecting Internet users (in particular those seeking the Complainant) to pornographic content.

Although that particular bad faith use of the disputed domain name by the Respondent appears to have now ceased, it does not alter the Panel's findings above and the Panel finds that the disputed domain name is being used in bad faith under the doctrine of passive holding. Section 3.3 of the [WIPO Overview 3.0](#) states that relevant factors to finding bad faith in cases of passive holding include: "(i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity [...], and (iv) the implausibility of any good faith use to which the domain name may be put."

The Panel notes that the Mark is distinctive of the Complainant and further notes that the Respondent has not participated in these proceedings or sought to explain his registration and use of the disputed domain name, and that there is no conceivable use of the disputed domain name by the Respondent that would not be illegitimate. It is not necessary for the Panel to reach any conclusion regarding the appearance of the disputed domain name on block lists said to be related to spam, malware and other domain name abuses, and the Panel declines to do so.

Therefore, and on the basis of the information available to it, the Panel finds that the disputed domain name is also being used in bad faith.

The Panel finds that the Respondent has registered and is using the disputed domain name in bad faith.

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 <facebook-sex.com> be transferred to the Complainant.

/Gareth Dickson/

Gareth Dickson

Sole Panelist

Date: January 9, 2023