

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc. v. Andre Schencke

Case No. D2022-4555

### **1. The Parties**

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

The Respondent is Andre Schencke, United States of America.

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

The disputed domain name <metatoken.sale> is registered with Porkbun LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 29, 2022. On November 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 30, 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 (Whois Privacy, Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 9, 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 December 13, 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 December 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 12, 2023.

The Center appointed Ezgi Baklacı Gülkökar as the sole panelist in this matter on January 19, 2023. 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, Meta Platforms, Inc., (Meta) is a United States based social technology company and operates, *inter alia*, Facebook, Instagram and Meta Quest. In addition, from 2017 until January 2022, the Complainant was also involved with blockchain technology to develop a simple global payment system.

The Complainant uses their trademark and trade name Meta since its official change of name, which was recorded and publicly announced on October 28, 2021.

The Complainant is also the owner of various domain names including its META trademark going back to October 28, 2021. Complainant uses its domain names as well as its social media presence to provide services to its global network of consumer.

The Complainant owns numerous trademarks registered across the world, consisting of or including the terms META. *Inter alia*, the Complainant owns the following registrations: META (United States registration No. 5548121) assigned to the Complainant on October 26, 2021; META (Andorra registration No. 43626) registered on January 3, 2022, META (Monaco registration No. 2200039) registered on February 8, 2022.

The disputed domain name was registered on February 22, 2022. As of the date of this Decision, the disputed domain name is resolving to an inactive website. However, the disputed domain previously resolved to a website, which impersonated the Complainant.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy is satisfied in the present case, as follows:

##### **Identical or confusingly similar**

The Complainant argues that the disputed domain name is confusingly similar to the Complainant's registered META mark because it consists of its trademark in its entirety together with the word "token" and the generic Top-Level Domain ("gTLD") ".sale".

##### **Rights or legitimate interests**

The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name. Further, the Complainant submits that the Respondent is not licensed or authorized to use the Complainant's trademark. Therefore, the Respondent has no rights to any trademark consisting of or incorporating the Complainant's mark, or to the disputed domain name.

Further, the Complainant argues that currently the disputed domain name does not resolve to an active website; however, earlier the Respondent have used the disputed domain name in a manner which impersonated the Complainant.

Also, the Complainant contends that the Respondent has not been commonly known by or associated with the disputed domain name.

The disputed domain name was registered and used in bad faith.

The Complainant claims that its META trademarks are well-known and the Respondent is aware of the Complainant and its well-known trademarks. Further the Complainant argues that the fact that the Respondent acquired the disputed domain name and created a misleading impression of an association with the Complainant aims a fraudulent online scheme targeting the Complainant's users in order to purchase fictitious "Meta Tokens" from the Respondent.

Further the Complainant contends that the use of the trademark META together with the descriptive term "token" and the gTLD "sale" gives a misleading impression that the Complainant has affiliation with the Respondent.

In summary, the Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to the trademarks or service marks in which the Complainant has rights; and
- (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.

### **A. Identical or Confusingly Similar**

The disputed domain name <metatoken.sale> consists of the registered trademark META and the term "token". The Panel finds that the disputed domain name is confusingly similar to the registered trademark META (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#), section 1.7)).

The element "token" in the disputed domain does not prevent the finding of confusingly similarity as the Complainant's trademark META remains clearly recognizable ([WIPO Overview 3.0](#), section 1.8).

Moreover, the gTLD ".sale" is disregarded in the confusing similarity test, as it does not form part of the comparison as it is a standard registration requirement for technical reasons ([WIPO Overview 3.0](#), section 1.11.1).

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks and that the first element of paragraph 4(a) of the Policy is satisfied.

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

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. While the overall burden of proof in UDRP proceedings is on the complainant, previous UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of proving a negative, *i.e.*, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out 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 ([WIPO Overview 3.0](#), section 2.1).

As of the date of this decision the disputed domain name <metatoken.sale> does not resolve to an active website. However, the evidence submitted by the Complainant indicates that, the disputed domain name, earlier has been used in a fraudulent attempt to obtain gain from Internet users, by pretending there was an affiliation with the Complainant. Previous UDRP panels have categorically held that the use of a domain name for illegal activity, including impersonation or other types of fraud can never confer rights or legitimate interests on a respondent ([WIPO Overview 3.0](#), section 2.13.1).

The use of the disputed domain name cannot amount to a *bona fide* offering of goods and services or a legitimate noncommercial or fair use.

The Panel notes that there is no evidence showing that the Respondent holds any rights in the term “Meta”. The Panel also notes that there is no evidence showing that the Respondent is authorized or licensed to use the Complainant’s trademark META.

Therefore, the Panel finds that the Respondent does not have rights or any legitimate interests in the disputed domain name within the meaning of Policy, paragraph 4(a)(ii).

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

Paragraph 4(a)(iii) of the Policy provides that a complainant must demonstrate that the disputed 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 trademark ([WIPO Overview 3.0](#), section 3.1).

The Panel finds that at the time the disputed domain name was registered the Respondent more likely than not was aware of the trademark META as the Complainant’s trademark registrations predate the registration date of the disputed domain name. The Respondent knew or should have known about the Complainant’s rights, and such information can be reached by a quick online search (see *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)).

The disputed domain name does not resolve to an active website as of the date of this decision. However, the evidence submitted by the Complainant indicates that, the disputed domain name, earlier has been used in a fraudulent attempt to obtain gain from Internet users or customer, by creating the misleading image that there is an affiliation with the Complainant. Considering the evidence provided at Annex 14 of the Complaint the Panel is in the view that the disputed domain name may lead Internet users to believe that the source of the disputed domain name, and the website to which said domain name name resolves, is the Complainant.

In addition, previous UDRP panels have held that the mere registration of a domain name that is confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#), section 3.1.4). The Panel finds that the Respondent’s impersonation of the Complainant by use of the trademark META in the disputed domain name, as well as of similar colours, typefaces, background graphics and images to those used by the Complainant’s website constitutes bad faith.

Further the disputed domain name does not resolve to an active website. The Panel finds that the current inactive status of the disputed domain name does not prevent the finding of bad faith ([WIPO Overview 3.0](#), section 3.3).

Finally, Respondent’s use of a privacy services and the false or inaccurate contact details provided by the registrar also suggests the interference of a bad-faith.

In the circumstances, the Panel finds that the Respondent registered and has been using the disputed domain name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

## **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 <metatoken.sale> be transferred to the Complainant.

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**Ezgi Baklaci Güلكokar**

Sole Panelist

Date: January 30, 2023