

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Gregory Mogged
Case No. D2023-0098

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 Gregory Mogged, United States.

2. The Domain Name and Registrar

The disputed domain name <facebookcrypto.com> 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 January 9, 2023. On January 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 11, 2023, 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 January 12, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amended Complaint. The Complainant filed an amended Complaint on January 16, 2023.

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 January 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 6, 2023.

The Respondent sent an informal communication on January 17, 2023 to which the Center acknowledged receipt. Accordingly, the Center notified the Commencement of Panel Appointment Process on February 7, 2023.

The Center appointed Dennis A. Foster as the sole panelist in this matter on February 13, 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 is a United States company that was founded in 2004 and is a global leader in online social media and networking services. The Complainant's famous FACEBOOK service mark hosts an online platform used by billions of people internationally and is registered with authorities around the world, including with the United States Patent and Trademark Office ("USPTO") (e.g., Registration No. 3041791; registered on January 10, 2006).

The disputed domain name was registered by the Respondent on December 22, 2021. The disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

- Launched in 2004, the Complainant is a United States social technology company that provides extensive online social media and networking services on a worldwide basis. The Complainant's platform operating under its FACEBOOK service mark provides online services throughout the world to nearly 2 billion Internet users on a daily basis and nearly 3 billion users on a monthly basis. In 2019, the Complainant announced its plans to develop a cryptocurrency product/service, but the rights and assets relating thereto have since been sold.
- The disputed domain name is confusingly similar to the Complainant's FACEBOOK service mark. The mark is fully contained as the first element of the disputed domain name. The addition of the descriptive term, "crypto," is insufficient to distinguish the disputed domain name from the mark. Also, the additional ".com" generic Top-Level Domain ("gTLD") must be disregarded in this comparison.
- The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not a licensee of or affiliated with the Complainant, and has not been authorized to use the FACEBOOK mark for a domain name or otherwise. The disputed domain name resolves to an inactive website, so the Respondent is not using the disputed domain name for a *bona fide* offering of goods or services. Moreover, evidence is lacking that the Respondent has made demonstrable preparations to use the disputed domain name in that manner. Also, there is no evidence to suggest that the Respondent is commonly known as the disputed domain name. Finally, the Respondent's non-use of the disputed domain name is inconsistent with any legitimate noncommercial or fair use of the disputed domain name.
- The Respondent registered and is using the disputed domain name in bad faith. The Complainant's FACEBOOK service mark is famous throughout the world, and thus the Respondent certainly knew of it and registered the disputed domain name in bad faith. The Respondent's use of a privacy service to register the disputed domain name is further evidence of bad faith registration. Non-use of the disputed domain name does not protect the Respondent from a finding of bad faith usage. Furthermore, the Respondent failed to respond to the Complainant's effort to establish contact (in order to resolve the matter at hand), which is more evidence of bad faith.

B. Respondent

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

6. Discussion and Findings

In accordance with Policy paragraphs 4(a)(i) - (iii), the Panel may find for the Complainant and grant a transfer of the disputed domain name, <facebookcrypto.com>, should the Complainant prove that:

- The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- The disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel determines that the Complainant's registration of its FACEBOOK service mark with the USPTO establishes rights in that mark for the purposes of Policy paragraph 4(a)(i). See, *LO 337 IP Holding, LLC v. John Williams, J Entertainment ATL / John Williams, J Entertainment Productions*, WIPO Case No. [D2019-2339](#) ("The Panel concludes that Complainant has rights in the mark WORLD STAR HIP HOP through registration with the USPTO."); and *The Schneider Group, Inc. v. Jack Mann*, WIPO Case No. [D2010-0448](#) ("The Panel finds that Complainant has established rights in the PROTEK mark under Policy paragraph 4(a)(i) through its registration with the USPTO.").

The disputed domain name includes the Complainant's entire FACEBOOK service mark. The disputed domain name adds the term, "crypto," so the disputed domain name is not identical to the service mark. However, in the Panel's opinion, this addition does not prevent a finding of confusion between the disputed domain name and the mark. Moreover, the addition of the ".com" gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See, *BlockFi Inc. v. Jackson Oliver*, WIPO Case No. [D2022-2700](#) (finding <blockficrypto.com> to be confusingly similar to the BLOCKFI mark); and *Varengold Bank AG v. Privacy service provided by Withheld for Privacy ehf / Sergey Frolov*, WIPO Case No. [D2022-0723](#) (finding <varengoldcrypto.com> to be confusingly similar to the VARENGOLD mark).

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

B. Rights or Legitimate Interests

Previous UDRP panels have established that a complainant need submit only a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name and that the burden of production shifts to respondent to come forward with relevant evidence demonstrating rights or legitimate interests. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1; and *Wal-Mart Stores, Inc. v. WalMart Careers, Inc.*, WIPO Case No. [D2012-0285](#).

In addition to showing that the disputed domain name is confusingly similar to the FACEBOOK service mark, the Complainant has asserted clearly that the Respondent was given no authorization or license by the Complainant to use that mark in any manner. Consequently, the Complainant has satisfied the minimum standard necessary to sustain a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name.

As the Respondent has failed to file a Response, the Panel will review the record for pertinent evidence that the Respondent has rights or legitimate interests in the disputed domain name, accepting as true any reasonable contentions submitted in the Complaint. See *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("...the Panel's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply."); and *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#) ("Given Respondent's failure to submit a substantive answer in a timely fashion, the Panel accepts as true all of the allegations of the complaint.").

Evidence presented in the Complaint shows the Panel that the disputed domain name leads to an inactive website. Moreover, in the absence of a filed Response, the Panel has no reason to believe that the Respondent has any current preparations to modify that website to create commerce directed at Internet users. The Panel therefore finds that the disputed domain name is not being used in connection with “a *bona fide* offering of goods or services” pursuant to Policy paragraph 4(c)(i). See, *Meta Platforms, Inc. v. Registration Private, Domains By Proxy, LLC / Tim Ordonez*, WIPO Case No. [D2022-2409](#) (“Prior UDRP panels have found that the passive holding (non-use) of a domain name can support a finding of a lack of any *bona fide* offering of goods or services.”); and *Instagram, LLC v. Zafer Demir, Yok*, WIPO Case No. [D2019-1072](#) (“The passive holding of the disputed domain name does not amount to use or preparations to use it in connection with a *bona fide* offering of goods and services.”).

With respect to Policy paragraph 4(c)(ii), the Panel can find no reason to believe that the Respondent, Gregory Mogged, is commonly known by the disputed domain name, <facebookcrypto.com>.

The Respondent’s non-use of the disputed domain name also causes the Panel to conclude that he is failing to make “a legitimate noncommercial or fair use” of the disputed domain name per paragraph 4(c)(iii) of the Policy. See, *Instagram, LLC v. Zafer Demir, Yok, supra* (“Nor does a passive holding of the disputed domain name comprise a legitimate noncommercial or fair use of it.”).

Furthermore, the composition of the disputed domain name, which incorporates the Complainant’s FACEBOOK mark in its entirety together with the term “crypto”, a product/service offering in which the Complainant was recently involved, cannot constitute fair use as it effectively suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel finds that the Complainant has proved that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Policy paragraph 4(b) provides four rationales to support a finding of bad faith registration and use of a disputed domain name, but it has been recognized by prior UDRP panels that the Policy allows a bad faith finding to be based on other circumstances. See, *Adobe Inc. v. Jun Yin*, WIPO Case No. [DCO2022-0027](#) (“The UDRP paragraph 4(b) provides non-exclusive scenarios that constitute evidence of a respondent’s bad faith.”); and *Mothers Polishes Waxes Cleaners Incorporated v. WIS Inc.*, WIPO Case No. [D2020-2903](#) (“The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found.”).

In this case, the Panel believes that the Complainant’s FACEBOOK service mark is one of the most famous marks internationally, particularly when applied to Internet users. The Panel cannot conceive of a situation where a non-affiliated and non-licensed entity could register and use a domain name that is confusingly similar to that mark in good faith. Moreover, several previous UDRP panels have noted the fame of the Complainant’s FACEBOOK mark in determining bad faith registration and use of disputed domain name. Therefore, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith under Policy paragraph 4(a)(iii). See, for example, *Meta Platforms, Inc. v. oguz cinar*, WIPO Case No. [D2021-4066](#) (“...the Panel considers that the Disputed Domain Names were registered and are being used targeting the famous FACEBOOK mark, in bad faith, with the intention of obtaining a free ride on the established reputation of the Complainant and its trademarks.”); and *Google Inc. v. Eamonn Smyth*, WIPO Case No. [D2011-1023](#) (“The Panel also notes that, as found by other panels, where a domain name is so obviously connected with a well-known product or service, its very use by someone with no connection with the product suggests opportunistic bad faith.”).

The disputed domain name does not resolve to an active website. However, prior UDRP panels have found that the non-use of a domain name does not necessarily prevent a finding of bad faith under the doctrine of passive holding. See, [WIPO Overview 3.0](#), section 3.3; and *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

Accordingly, the Panel finds that the Complainant has proved that the disputed domain name was registered and is being used 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, <facebookcrypto.com>, be transferred to the Complainant.

/Dennis A. Foster/

Dennis A. Foster

Sole Panelist

Date: February 27, 2023