

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Martial Duchatellier, Martial Duchatellier
Case No. D2023-0574

1. The Parties

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

Respondents are Martial Duchatellier and Martial Duchatellier, United States.

2. The Domain Names and Registrar

The disputed domain names <ghanafacebook.com>, <indianfacebook.com>, and <indonesiafacebook.com> are registered with Domain.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 7, 2023. On February 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 8, 2023, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to Complainant on February 17, 2023, providing the registrant and contact information disclosed by the Registrar and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 22, 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 Respondents of the Complaint, and the proceedings commenced on February 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 16, 2023. Respondents sent an email to the Center on February 25, 2023, but no formal Response was filed.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on March 31, 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

Complainant Meta Platforms is a United States social network technology company, and operates Facebook, Instagram, Meta Quest (formerly Oculus), and WhatsApp.

Complainant has numerous registrations worldwide for its FACEBOOK trademark including, for example: United States Trademark Registration No. 3041791, registered on January 10, 2006, in International Class 38 with a first use in commerce date of April 4, 2004; India Trademark Registration No. 1622925, registered in Class 9, 38, and 42, on November 20, 2007; International Registration No. 1075094, registered in International Classes 9, 35, 36, 38, 41, 42, and 45 on July 7, 2010 (designating, *inter alia*, Ghana); and Indonesia Trademark Registration No. IDM000334005, registered in Class 9 on August 4, 2020.

The Respondents were disclosed under the same name (Martial Duchatellier) and email address, but reportedly located in two different states in the United States. Further to Section 6.1 below, as the Respondents are nominally identical and registered the disputed domain names under the same email address, the Panel will treat the Respondents as the "Respondent".

Two of the disputed domain names, <indianfacebook.com> and <indonesiafacebook.com>, were registered August 11, 2022. The disputed domain name <ghanafacebook.com> was registered January 16, 2022.

As for the appearance of Respondent's websites: (1) the webpage to which the <indianfacebook.com> disputed domain name resolves displays a banner and title reading "Welcome to Indianfacebook A New Social Network Platform for the people of India"; (2) the webpage to which the <ghanafacebook.com> disputed domain name resolves displays a banner and title reading "Welcome to Social Follow A New Social Network Platform," appearing nearly identical to the webpage at "www.indianfacebook.com"; and (3) the <indonesiafacebook.com> disputed domain name does not currently resolve to an active website.¹

5. Parties' Contentions

A. Complainant

Complainant states that its FACEBOOK network enjoys more than 2.96 billion monthly active users worldwide.

Complainant avers that all three disputed domain names resolve to visually and functionally similar login pages of what purport to be Internet social networks. Complainant also avers that these three websites of Respondent appear very similar to Complainant's FACEBOOK websites.

Listing similarities between the appearance and structure of Respondent's websites and Complainant's FACEBOOK websites, Complainant contends that the disputed domain names resolve in each case to websites which:

- (i) Use the same blue-and-white color scheme used on Complainant's FACEBOOK websites.
- (ii) Feature a blue banner at the top of the page, which mimics a previous version of Complainant's web-based FACEBOOK interface.
- (iii) Display a similar structure and directory to Complainant's FACEBOOK websites.

¹However, annexes to the Complaint show that the <indonesiafacebook.com> previously resolved to a webpage with an appearance very similar to the webpages at "www.ghanafacebook.com" and "www.indianfacebook.com".

- (iv) Display round thumbnail user profile pictures, similar to the profile picture displays on Complainant's FACEBOOK websites.
- (v) Have a layout for user profile pages that closely resembles the layout and function of FACEBOOK user profile pages, with each user having a "Timeline" and capability to "Like" content using a "Like" button with a thumbs-up graphic.

On December 20, 2022, Complainant avers, Complainant's lawyers sent notices via the registrar's Domain Owner Contact Form for each domain name. In the notices, the lawyers requested that the disputed domain names be transferred to Complainant. On December 21, 2022, Complainant avers, Respondent replied to Complainant's demand letters as follows:

"I will be contacting the SEC and as many news outlets possible to do firm the validity of your claim. My current position that you purchase the claimed names if you would like to take possessions of the claimed names. I paid for the names legally. On what basis are asking me to relinquish the names to you for free? Please do not write me again unless you are prepared to pay for the registered names."²

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain names are confusingly similar to Complainant's FACEBOOK trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain names, and (3) the disputed domain names were registered and are being used in bad faith, all in violation of the Policy.

On the foregoing basis, Complainant requests transfer of the disputed domain names.

B. Respondent

Respondent did not submit a formal reply to Complainant's contentions. On February 25, 2023 however, Respondent sent an email to the Center in response to notification of the Complaint. Respondent's email stated:

"We agree to disable the websites. However, we will not give them to you for free. We will sell them to your client. We will not entertain any further discussion with you nor your client. You have 14 days, from 2/25/2023, to respond to the offer to sell the websites to your client. Thereafter, we will block all further communications with you, your client and or representatives."

6. Discussion and Findings

6.1 Procedural Issues: Consolidation of Multiple Respondents

As noted above, the Complaint has been filed against two nominally identical Respondents, reportedly located in at different states within the United States. As noted in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.11.2, "[w]here a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties".

Given that Respondents are nominally identical and registered the disputed domain names under the same email address, the Panel finds that the disputed domain names are under common control. Moreover, the similar construction, and use of two of the disputed domain names, reinforces the finding that the disputed domain names are part of a common scheme targeting Complainant. Lastly, Respondent's informal communication did not rebut any assertions in the Complaint, including the consolidation of the Complaint against multiple respondents. Accordingly, the Panel permits the consolidation of the Complaint and will address the Respondents as the "Respondent".

² The Complaint annexes copies of these December 20 and 21, 2022 emails.

6.2 Substantive Issues

The Rules require the Panel to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Rules, paragraph 15(a). Complainant must establish each element of paragraph 4(a) of the Policy, namely:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Complainant must establish these elements even if Respondent does not submit a formal Response. See, e.g., *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#); WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. In the absence of a Response, the Panel may also accept as true the reasonable factual allegations in the Complaint. See, e.g., *ThyssenKrupp USA, Inc. v. Richard Giardini*, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

A. Identical or Confusingly Similar

The Panel agrees with Complainant's allegation that the disputed domain names are confusingly similar to Complainant's FACEBOOK mark.

UDRP panels commonly disregard Top-Level Domains ("TLDs") in determining whether a disputed domain name is identical or similar to a complainant's marks. [WIPO Overview 3.0](#), section 1.11.1.

Omitting the ".com" TLD from the disputed domain names, the Panel notes that Complainant's entire FACEBOOK mark is included in each of the three disputed domain names, adding only the terms "Ghana," "Indian," and "Indonesia," respectively. The Panel finds that these additions to Complainant's mark does not prevent a finding of confusing similarity in each instance. See *id.*, section 1.7 (where a domain name incorporates the entirety of a trademark, the domain name will normally be considered by UDRP panels to be confusingly similar).

The Panel therefore finds that the disputed domain names are confusingly similar to Complainant's mark and concludes that the first element of paragraph 4(a) of the Policy is established.

B. Rights or Legitimate Interests

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain names.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of rebuttal passes to the respondent. See, e.g., WIPO Overview 3.0, section 2.1. The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. *Id.*

Complainant alleges that Respondent is not commonly known by the disputed domain names and that Respondent has no affiliation nor any rights or authorization to use Complainant's FACEBOOK marks. In the absence of a Response, the Panel accepts these allegations as true.

Complainant has submitted credible evidence that Respondent copied Complainant's websites. The Panel does not consider Respondent's unauthorized copying from Complainant's websites to be fair or legitimate noncommercial use without intent to misleadingly divert consumers. See, e.g., [WIPO Overview 3.0](#), sections 2.13 and 2.5.3 (commercial gain for purposes of the Policy may include a respondent gaining or seeking reputational and/or bargaining advantage, even where such advantage may not be readily quantified).

The Panel therefore finds that Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests. Refraining from submitting a response, Respondent fails to contradict or rebut the *prima facie* case.

The Panel rules that the Complaint satisfies the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is also established, as elaborated below.

Using a domain name to intentionally attract Internet users, for commercial gain, by creating a likelihood of confusion, may be evidence of bad faith registration and bad faith use. Policy, paragraph 4(b)(iv). See, e.g., *L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc*, WIPO Case No. [D2005-0623](#).

The record shows that the disputed domain names were used to route users to websites that reproduce substantial aspects of Complainant's websites without authorization. The Panel infers that Respondent was undoubtedly aware of Complainant's FACEBOOK marks, which had been registered and enjoyed widespread use for many years. The Panel finds that Respondent deliberately included the FACEBOOK mark in the disputed domain names to create confusion and attract Internet users to Respondent's websites for commercial gain. The Panel therefore concludes that Respondent registered the disputed domain names in bad faith.

Moreover, the content of the websites to which the disputed domain names route is evidence of Respondent's attempt to compete with and disrupt Complainant's FACEBOOK social network business. The Panel finds this to be strong evidence of Respondent's use of the disputed domain names in bad faith. See, e.g., Policy paragraph 4(b)(iii).

Consequently, the Panel concludes that the requirements of the third element of Policy, paragraph 4(a) are fulfilled.

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 names <ghanafacebook.com>, <indianfacebook.com>, and <indonesiafacebook.com> be transferred to Complainant.

/Jeffrey D. Steinhardt/
Jeffrey D. Steinhardt
Sole Panelist
Date: April 14, 2023