

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Jiri Capcuch

Case No. D2023-1258

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 Jiri Capcuch, Czech Republic.

2. The Domain Names and Registrar

The disputed domain names <facebookforlogin.com> and <facebookislogin.com> are registered with Dynadot, LLC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 23, 2023. On March 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 23, 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, Dynadot Privacy Service”) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 29, 2023, 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 March 31, 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 April 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 25, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on May 12, 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 operates the world-famous Facebook social networking website and mobile application in various languages (Annex 5, 6 and 9) to the Complaint).

The Complainant is the owner of numerous trademark registrations containing the word FACEBOOK around the world, *inter alia*

- United States registrations no. 3,122,052, for services in classes 35 and 38, registered since July 25, 2006 and registration no. 3,881,770, for services in classes 35, 38, 41, 42 and 45, registered November 23, 2010 with first use in commerce April 2, 2004 (Annex 10 to the Complaint);
- European Union registrations no. 9151192, registered since December 17, 2010 for goods and services in classes 9, 35, 36, 38, 41, 42 and 45, and no. 9776618 registered since November 2, 2011 for goods and services in classes 9, 16, 35 and 36;
- International Registration no. 1075094, for goods and services in classes 9, 35, 36, 38, 41, 42 and 45, registered since July 16, 2010, designated for various countries around the world.

Moreover, the Complainant owns a number of domain names containing the mark FACEBOOK e.g., <facebook.com>, <facebook.org>, <facebook.net> (Annex 8 to the Complaint).

The disputed domain names were registered on September 12, 2022 (Annex 2 to the Complaint). Currently (May 26, 2023), the disputed domain name <facebookforlogin.com> resolves to a website containing anti-virus offers and the disputed domain name <facebookislogin.com> resolves to a website stating "Web Page Blocked".

5. Parties' Contentions

A. Complainant

The Complainant operates the Facebook social networking website and mobile application and owns the exclusive rights to the FACEBOOK trademarks and service marks (collectively, the "Facebook mark"), which it has used since 2004. The Respondent, who is not affiliated with or authorized by the Complainant, has registered the disputed domain names which are confusingly similar to the Complainant's FACEBOOK mark. The Respondent uses each of the disputed domain names to direct to a commercial parking page featuring a number of "related searches" links that direct visitors to advertisements and third-party websites. The parking page at each of the disputed domain name also states the disputed domain name "may be for sale" and "Click here to inquire about this domain," which is a generalized offer to sell the disputed domain name. Therefore, the Respondent is clearly engaged in cybersquatting in violation of the Policy.

The Complainant's use of the FACEBOOK mark, in the United States and throughout the world, has been extensive, continuous, and substantially exclusive. The Complainant has made, and continues to make, a substantial investment of time, effort, and expense in the promotion of its goods and services, and the FACEBOOK mark. As a result of the Complainant's efforts and use, the FACEBOOK mark is inextricably linked with the products and services offered by the Complainant. The FACEBOOK mark is ranked 17th in Interbrand's current Best Global Brands report. The FACEBOOK mark is unquestionably famous and recognized around the world as signifying high-quality, authentic goods and services provided by the Complainant.

The disputed domain names consist of the Complainant's FACEBOOK mark with the addition of descriptive terms, and are confusingly similar to the Complainant's FACEBOOK mark. In the case of the disputed domain name <facebookforlogin.com> the Respondent has merely added the descriptive terms "for login," and in the case of the disputed domain name <facebookislogin.com> the Respondent has merely added the terms "is login". The disputed domain names are confusingly similar to the Complainant's FACEBOOK mark.

The Respondent has no rights or legitimate interest in the disputed domain names: The Complainant has not licensed nor authorized the Respondent to use the Complainant's FACEBOOK mark, nor does the Respondent have any legal relationship with the Complainant that would entitle the Respondent to use the FACEBOOK mark. Further, neither the Whois data for the disputed domain names nor the corresponding websites available at the disputed domain names support that the Respondent is known by any of the disputed domain names. The Respondent has no legitimate reason for using the FACEBOOK mark within the disputed domain names, and instead, the Respondent is using the disputed domain names to direct to commercial parking pages that display links for "related searches" that lead to advertisements for third-party websites. In addition, the webpages at the disputed domain names include generalized offers to sell the disputed domain names. Therefore, the Respondent cannot demonstrate any of the factors that would support a legitimate interest in the disputed domain names under the Policy.

The Respondent has registered and is using the disputed domain names in bad faith: The Respondent registered the disputed domain names on September 12, 2022, which postdates the registration and use of the Complainant's FACEBOOK mark by many years. Hence, the Respondent was well aware of the Complainant's trademark rights at the time of registration. Because the FACEBOOK mark is so obviously connected with the Complainant and its well-publicized services, and the disputed domain names clearly reference this mark, the registration and use of the disputed domain names by the Respondent, who has no connection with the Complainant, supports a finding of bad faith registration.

Moreover, the use of a domain name that is confusingly similar to a complainant's mark to host a commercial parking page constitutes use in bad faith. Further, a generalized offer to sell a domain name, such as stating that the domain name may be for sale, is indicative of bad faith. Hence, the Respondent has registered and is using the disputed domain names in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that

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

A. Identical or Confusingly Similar

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the trademark FACEBOOK.

The disputed domain names are confusingly similar to the Complainant's registered FACEBOOK mark since they entirely contain this famous and distinctive mark and only add the terms "for login" and "is login".

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition "[WIPO Overview 3.0](#)").

Finally, it has also long been held that generic Top-Level Domains ("gTLDs") are generally disregarded when evaluating the confusing similarity of a disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy in the present case.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", 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 (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain names, comprising the Complainant's famous and distinctive mark in its entirety together with the terms "for login" and "is login", cannot be considered fair as these falsely suggest an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

Noting the above, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain names were registered by the Respondent in bad faith, and
 - the disputed domain names are being used by the Respondent in bad faith.
- (i) The Complainant has rights and is the owner of the well-known, famous and highly distinctive registered FACEBOOK mark, which is registered and used in many jurisdictions around the world for years. Moreover, the Complainant registered and is using various domain names containing the mark FACEBOOK e.g. <facebook.com>, <facebook.org>, <facebook.net> among others.

It is inconceivable for this Panel that the Respondent registered or has used the disputed domain names without knowledge of the Complainant's rights which were established long before the registration of the disputed domain names; these facts lead to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain names incorporate the Complainant's distinctive FACEBOOK mark entirely.

Therefore, the Panel is convinced that the disputed domain names were registered in bad faith by the Respondent.

- (ii) The disputed domain names are also being used in bad faith since they currently resolve to websites offering anti-virus products (<facebookforlogin.com>) and stating “Web Page Blocked” (<facebookislogin.com>).

But even if there were no evidence that the disputed domain names are being actively used, previous UDRP panels have found that bad faith use under paragraph 4(a)(iii) does not necessarily require a positive act on the part of the respondent – the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith, since also inaction is within the concept of paragraph 4(a)(iii) under the doctrine of passive holding (see especially *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#)).

Further, the Respondent was using the disputed domain names to direct to commercial parking pages that displayed links for “related searches” that lead to advertisements for third-party websites. The use of a domain name that is confusingly similar to a complainant’s mark to host a commercial parking page constitutes use in bad faith.

This Panel concludes that the disputed domain names are being used in bad faith, putting emphasis on the following:

- the Complainant’s trademark FACEBOOK is famous with a high distinctiveness and is well-known globally;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain names;
- the disputed domain names incorporate the Complainant’s trademark in its entirety, and are thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant’s site); and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain names.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain names have been registered and used in bad faith 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 names <facebookforlogin.com> and <facebookislogin.com> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: May 26, 2023