

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc., Meta Platforms Technologies, LLC v. ZHAO WEN,  
FMA.INC

Case No. D2023-1816

### **1. The Parties**

The Complainants are Meta Platforms, Inc., and Meta Platforms Technologies, LLC, United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is ZHAO WEN, FMA.INC, China.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 21, 2023. On April 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 24, 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 (Whois Privacy, Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 26, 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 April 28, 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 sent notification to the Respondent of the Complaint, and the proceedings commenced on May 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 24, 2023. The Respondent did not submit any response. However, email communications were received from the Respondent by the Center on May 1 and 3, 2023, respectively, indicating the Respondent’s intent to retain counsel for purposes of the proceeding. Accordingly, the Center sent notification of the Commencement of Panel Appointment Process on May 25, 2023.

The Center appointed Petra Pecar as the sole panelist in this matter on June 6, 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 Complainants, Meta Platforms, Inc., previously known as Facebook Inc., (hereafter referred to as the “First Complainant”), and its subsidiary, Meta Platforms Technologies, LLC (hereafter referred to as the “Second Complainant”), have filed a complaint concerning the registration of the disputed domain name <metaquest.bayern>.

The First Complainant is a United States social technology company which operates a wide range of social technology platforms, including Facebook, Instagram, Meta Quest (formerly Oculus), and WhatsApp, all of which strive to turn the idea of the metaverse into reality and to help people to connect, find communities, and grow businesses. First Complainant maintains an online presence, using social media platforms such as Facebook, Twitter, and LinkedIn for its communications.

The intellectual property rights associated with the technologies developed by Meta are held by the Second Complainant, initially operated under company name Oculus VR, LLC, which is now known as the Second Complainant and was incorporated into Meta in 2014.

The Second Complainant is recognized for its contributions to the development and distribution of virtual reality (VR) software and hardware, notably VR headsets such as the Oculus Rift S, Oculus Quest, and Oculus Quest 2. On October 28, 2021, Meta’s Chief Technology Officer announced the rebranding of Oculus Quest to Meta Quest.

The Complainants hold several trademark registrations for META and QUEST in multiple jurisdictions, including the following:

- United States Registration No. 5548121 for META, registered on August 28, 2018;
- Chinese Registration No. 33818197 for QUEST, registered on June 14, 2019; and
- United States Registration No. 6279215 for QUEST, registered on February 23, 2021;

The Complainants are the registrants of numerous domain names consisting of or including the META mark under a wide range of generic Top-Level Domains (gTLDs) as well as under numerous country code Top-Level Domains (ccTLDs). The disputed domain name was registered on April 22, 2022, and redirects to an inactive parking page.

#### **5. Parties’ Contentions**

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

The Complainants assert that they have established ownership of numerous registrations for the META and QUEST marks in various global jurisdictions, thereby meeting the initial requirement for initiating a UDRP case. The Complainants contend that the disputed domain name integrates their registered marks entirely under the “.bayern” gTLD, which creates a confusing similarity between the disputed domain name and the Complainants marks. The above-mentioned view is confirmed by earlier UDRP rulings where similar structured domain names were determined as confusingly similar to the registered marks. As the “.bayern” gTLD is a typical component of registration, it is usually disregarded during the assessment of confusing similarity. Consequently, the Complainants argue that the disputed domain name is confusingly similar to their META and QUEST marks.

The Complainants argue that the Respondent holds no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainants and has not been authorized to use their META and QUEST marks. The disputed domain name is not used in relation to any genuine offering of goods or services and is currently a parking page, which coincides to passive holding. Additionally, there is no evidence that the Respondent has made any substantial preparations to use the disputed domain name.

The Complainants contend that there is no indication that the Respondent is commonly known by the disputed domain name. The disputed domain name has been registered using a privacy service and at time of the Complainant filing remains parked. The registrant details provided by the Registrar do not correlate with the disputed domain name. The Respondent also does not appear to have secured or applied for any trademark registrations for “metaquest”.

The Complainants argue that the Respondent is not making a fair or legitimate noncommercial use of the disputed domain name. Its non-use does not constitute any form of legitimate noncommercial or fair use. Further, the disputed domain name consists entirely of the Complainant’s META and QUEST marks, suggesting an implied affiliation and thereby excluding any potential fair use claim.

The Complainants argue that they have established a *prima facie* case demonstrating the Respondent’s lack of rights or legitimate interests in the disputed domain name. Thereby, the above-mentioned shifts the burden of production to the Respondent. If the Respondent fails to provide counterevidence, the Complainants should be considered to have satisfied their requirement of proving the Respondent’s lack of rights or interests in the disputed domain name.

The Complainants assert that the disputed domain name was registered and used in bad faith. Despite the Complainants relatively recent renaming, their META trademark is globally recognized and linked with their products and services. This renaming gained significant global media attention, and both META and QUEST marks have been previously recognized as having international renown by panels.

The disputed domain name was registered after the Complainant’s transition from “Oculus Quest” to “Meta Quest”. The Complainants believe that the Respondent was aware of the META and QUEST marks when registering the disputed domain name and proceeded to do so, implying an affiliation with the Complainants, suggesting registration in bad faith. Furthermore, the Respondent’s incomplete address supplied to the Registrar could indicate bad faith.

The Complainants also assert that the passive holding of the disputed domain name does not prevent a finding of use in bad faith. Factors supporting this include the reputation of the META and QUEST marks, the Respondent’s lack of response or evidence of good-faith intent, the hiding of the Respondent’s identity, and the high risk of the disputed domain name implying affiliation with the Complainants.

In conclusion, the Complainants believe that the disputed domain name was registered and is being used in bad faith, and it represents an ongoing threat to them.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Multiple Complainants**

The Complainants assert their common legal interest in the META and QUEST marks, which are incorporated within the disputed domain name. The Complainants argue that they have been the target of common conduct by the Respondent, who allegedly registered and used the disputed domain name in bad faith.

Given these circumstances, the Complainants propose consolidation in the current proceeding, suggesting that it would be both equitable and procedurally efficient. The Complainants further contend that such consolidation would not unfairly prejudice the Respondent in any manner. The above-mentioned is supported by the fact that the Second Complainant is the owner of the QUEST mark, is a wholly owned subsidiary of the First Complainant, the owner of the META mark, thereby establishing their shared legal interest in these marks.

According to section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[when] assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation".

The Second Complainant is entirely owned by the First Complainant, leading to the two Complainants sharing a joint issue with the Respondent due to their shared interests. Given the circumstances, and with no objections coming from the Respondent, the Panel finds that the Complainants have a common grievance, and the Respondent has engaged in a common conduct including the META and QUEST marks, which are in common control of the Complainants in the disputed domain name. For the above-mentioned reasons, the Panel accepts to consolidate the Complaints into one single case against the Respondent. The Panel believes this approach to be just and balanced for all involved parties and recognizes both Complainants as parties in the proceeding.

## **6.2. Substantive matters**

Despite the lack of formal communication from the Respondent in this case, the Panel notes the existence of three emails that were sent by the Respondent to the Center. These emails are dated May 1 and 3, 2023.

The first email from the Respondent demonstrated a willingness to engage in dialogue, stating, "Happy to hear from you, let's get the ball rolling to proceed this deal and we won't let the cat out of the bag." The second email underscored the Respondent's readiness for the proceedings, conveying, "It's my pleasure to be a defendant, you know, I have 100+ related domains, all I just want to say is that appoint as many professionals as you can and I will hire lawyers too, just wait and see!". Finally, in the third email dated May 3, 2023, the Respondent confidently asserted, "Our lawyers are ready to take action further".

Although these emails exist, they do not substitute a formal Response in line with the Rules. However, the Panel acknowledges that the Respondent is aware of the ongoing procedure and has engaged in a form of indirect communication.

Given this context and the indirect communications from the Respondent, the Panel believes it is appropriate to proceed with the case in accordance with paragraph 15(a) of the Rules and is prepared to draw inferences from the Respondent's failure to file a formal Response.

The above-mentioned does not automatically tip the decision in favor of the Complainant. The Panel is permitted to draw appropriate conclusions from the Respondent's lack of formal Response. The applicable standard of proof in these UDRP cases remains the "balance of probabilities" or "preponderance of the evidence", which will be considered in light of the specific facts and circumstances of the case, as detailed in section 4.2 of the [WIPO Overview 3.0](#).

Even if the Respondent did not file a Response to the Complainants' contentions, the Panel shall consider the issues present in the case based on the statements and documents submitted by the Complainants.

"A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable", as indicated in paragraph 15(a) of the Rules.

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark 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 by the Respondent in bad faith.

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

Paragraph 4(a)(i) of the Policy requires a complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. A trademark registration provides a clear indication that the rights in the trademark belong to the complainant (see [WIPO Overview 3.0](#)), section 1.2.1).

The Panel finds that the Complainants have successfully demonstrated their ownership of the META and QUEST marks through previous trademark registrations, both of which are subject to common control.

The mere fact that the disputed domain name entirely incorporates a combination of the Complainant's META and QUEST marks establishes confusing similarity for purposes of the Policy.

Furthermore, it is widely recognized among UDRP panels that a gTLD, such as “. bayern”, is typically disregarded when evaluating whether a domain name is identical or confusingly similar to a trademark (refer to section 1.11 of the [WIPO Overview 3.0](#)). Therefore, the Panel agrees to exclude the gTLD when assessing the confusing similarity of the disputed domain name. Taking all of the aforementioned factors into consideration, the Panel finds that the disputed domain name is indeed confusingly similar to the Complainant's META and QUEST marks.

The presence of the Complainant's recognizable META and QUEST marks within the disputed domain name leads the Panel to conclude that the Complainants have satisfied the first requirement stipulated in paragraph 4(a)(i) of the Policy, namely, that the disputed domain name is identical or confusingly similar to the Complainant's registered marks.

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

Under the second element of the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence to rebut that presumption. If the respondent fails to do so, a complainant is generally deemed to have satisfied the second element, as set out in paragraph 4(a)(ii) of the Policy (see also [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainants have established a *prima facie* case that the Complainants hold rights over the META and QUEST marks and that the Respondent has no rights or legitimate interests to acquire and use the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy.

Furthermore, the nature of the disputed domain name, comprising the combination of the Complainants' trademarks in their entirety, cannot be considered fair as it suggests an affiliation with the Complainants that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. The Panel considers that the Complainants have made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has failed to present evidence to the contrary. With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

### C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires a complainant to demonstrate that the respondent registered and is using the disputed domain name in bad faith. [WIPO Overview 3.0](#), section 3.1, states that “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”.

Paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s website or location or of a product or service on its website or location.

The Complainant’s registration and use of the META and QUEST marks predate the date at which the Respondent registered the disputed domain name.

As indicated by the Complainants, they and their META and QUEST marks have a worldwide reputation and are well known and associated with its global goods and services. The renaming of the Complainants companies to “Meta” also received significant media attention.

Previous UDRP cases have recognized the strength of the Complainant’s META and QUEST marks (see *Meta Platforms, Inc. and Meta Platforms Technologies, LLC v. 昭龙 叶*, WIPO Case No. [D2022-4696](#)). Consequently, the Panel concludes that the registration of the disputed domain name by the Respondent was not accidental but rather appears to have been with the intent to target the fame of the Complainants and their earlier marks.

The Respondent has not denied knowledge of the Complainants. Under these circumstances, and also given the distinctiveness of the Complainant’s marks, as well as the combined use of the Complainant’s marks in the disputed domain name, it is reasonable that the Respondent has registered the disputed domain name with full knowledge of the Complainant’s marks and to target those marks which in combination are associated with the Complainants.

The Complainant's lawyers attempted to resolve the matter amicably but received no response. The lack of response from the Respondent despite attempts to engage in an amicable resolution can be seen as another indication of bad faith. The Respondent's failure to provide any justification for the registration and use of the disputed domain name further support the inference that the Respondent registered the domain name with the intention to deceive the Complainant's rights. This lack of cooperation and refusal to engage in a process adds to the overall assessment of bad faith in this case.

At the time of filing the Complaint, when attempting to access the disputed domain name, it resolved to a registrar parking page displaying the following message: "metaquest.bayern has been registered at Porkbun but the owner has not put up a site yet. Visit again soon to see what amazing website they decide to build". The mentioned suggests that the Respondent has registered the domain but has not developed any content or provided any services. However, prior panels have found that such passive holding, or non-use, of a domain name does not necessarily prevent a finding of bad faith when weighing the totality of the circumstances. See [WIPO Overview 3.0](#), section 3.3.

The Complainant's META and QUEST marks should be observed as a trademark that is sufficiently distinctive and enjoy a certain level of reputation. The Respondent has failed to rebut the assertions in the Complaint and has therefore failed to provide any justification for the registration and use of the disputed domain name. It seems rather unlikely that even if the disputed domain name was put to actual use, such use would be in good faith. Lastly, the Respondent appears to not only have engaged in the use of a privacy service to mask its details on the publicly-available WhoIs, but the underlying details disclosed also included false or incomplete details that prevented the courier from delivering the Center's written communication. Such multi-layered obfuscation is likely done with the intent to prevent the proper course of any potential UDRP proceeding, such as this one, and reflects the Respondent's bad faith. Based on the foregoing reasons, the Panel finds that the disputed domain name's non-use in the present case does not prevent a finding of bad faith.

The Panel concludes that the Complainants have satisfied the requirement 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 name, <metaquest.bayern>, be transferred to the First Complainant.

*/Petra Pecar/*

**Petra Pecar**

Sole Panelist

Date: June 20, 2023