

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc. v. Rostislav Radchenko  
Case No. D2023-4215

### **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 Rostislav Radchenko, Ukraine.

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

The disputed domain name <fbdownloader.pro> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 10, 2023. On October 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 12, 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 (Domain Admin Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 19, 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 October 24, 2023.

The Respondent sent several email communications in English and in Russian to the Center on October 19, 24, 28, and 31, 2023 claiming that the website related to the disputed domain name was deleted. The Center sent an email to the Parties regarding settlement possibilities on October 25, 2023. The Complainant confirmed on October 31, 2023, that the proceeding should continue. On November 2, 2023, the Center reminded to the Respondent that the language of the proceeding was English and provided a courtesy translation of the same message in Ukrainian.

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 November 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 23, 2023. The Respondent sent several further email messages to the Center on November 3, 4, 8, 22 and 24, 2023. On November 24, 2023 the Center notified the Parties that it will proceed to Panel Appointment.


The Center appointed Assen Alexiev as the sole panelist in this matter on December 4, 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 social technology company, which operates the Facebook, Instagram, Meta Quest (formerly Oculus), Portal, and WhatsApp platforms and applications. The Complainant's Facebook platform was founded in 2004 and is a leading provider of online social-media and social-networking services, provided in more than 70 languages. As of June 30, 2023, Facebook had 2.06 billion daily active users. In 2022, the FACEBOOK brand was ranked 17th in Interbrand's Best Global Brands report.

The Complainant is the owner of the following trademark registrations for the sign FB (the "FB trademark"):

- the European Union trademark FB with registration No. 008981383, registered on August 23, 2011 for services in International Class 45; and
- the United States trademark FB with registration No. 4659777, registered on December 23, 2014 for services in International Class 35.

The Complainant is also the owner of the United States figurative trademark  with registration No. 4639633, registered on November 18, 2014 for goods and services in International Classes 9, 38, 42 and 45 (the "figurative trademark F").

The Complainant is the owner of the domain names <facebook.com> registered on March 29, 1997, and <fb.com>, registered on May 22, 1990, which resolve to the Complainant's official website of Facebook.

The disputed domain name was registered on December 30, 2019. It is currently inactive. At the time of filing of the Complaint, the disputed domain name resolved to a website that provided services for downloading of videos from Facebook and displayed the Complainant's figurative trademark F.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant states that the disputed domain name is confusingly similar to its FB trademark, because it comprises this trademark in its entirety as its leading element, with the addition of the dictionary word "downloader", which does not prevent a finding of confusing similarity with the FB trademark.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not a licensee of the Complainant and has not been authorized by the Complainant to use the FB trademark in a domain name or otherwise. The Complainant notes that the website at the disputed domain name purports to provide tools for downloading of content from Facebook,

which is in breach of the Complainant's Developer Policies, as content downloading goes beyond the limits that the Complainant has placed on the functionality of its own products. The Complainant points out that the offering of downloading tools also places the privacy and security of Facebook users at risk, as content scraped from the Facebook platform may be stored and later used for unauthorized purposes by third parties.

The Complainant maintains that the Respondent is not commonly known by the disputed domain name or a name corresponding to the disputed domain name, and has not obtained any trademark for "fbdownloader".

The Complainant states that the Respondent is not making any legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers. According to the Complainant, the provision of a tool that allows Internet users to download content from Facebook does not amount to a legitimate noncommercial or fair use, and the provision of services that violate the Complainant's Developer Policies does not give rise to rights or legitimate interests in the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It states that the FB trademark was registered in 2011 in connection with the Complainant's social network, and has rapidly acquired considerable goodwill and renown worldwide. The Complainant submits that the Respondent must have had prior knowledge of the FB trademark at the time of registration of the disputed domain name in December 2019, by which time the Complainant's social network had already amassed 1.66 billion daily active users. According to the Complainant, the Respondent's intent to target the Complainant through the disputed domain name is evident from the content of the website at the disputed domain name, which make references to Facebook and FB, prominently uses the Complainant's figurative trademark F, and promotes activities that violate the Complainant's Developer Policies.

The Complainant further notes that from the time since the Respondent registered the disputed domain name, it has not displayed any *bona fide* intent in relation to the disputed domain name. Rather, the Respondent, having no authorization by or other affiliation with the Complainant, registered the disputed domain name with a view to providing services that go beyond the technical limits placed on the Complainant's products and put the online privacy and security of Facebook users at risk, given that the downloaded videos from Facebook may be stored and later used for unauthorized purposes by third parties. The Complainant concludes that the Respondent registered the disputed domain name with a view to attracting Internet users to the website at the disputed domain name resulting from a perceived association between the disputed domain name, the website at the disputed domain name, and the Complainant's FB trademark.

The Complainant maintains that the presence of a disclaimer-like statement in the "Terms" section of the website at the disputed domain name does not render the Respondent's activities *bona fide*, as the disclaimer is not prominently placed. The Complainant further submits that the presence of a disclaimer cannot legitimize activities that violate the Complainant's Developer Policies. The Complainant adds that the Respondent's failure to respond to the Complainant's cease-and-desist letter of July 20, 2023 is an additional indication of the Respondent's bad faith.

## **B. Respondent**

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

With its informal letters to the Center, the Respondent stated that the website at the disputed domain name had not been active for a long time and had been deleted, that the Respondent did not need the disputed domain name anymore and it could be transferred to the Complainant. The Respondent further stated that its understanding was that this was a complaint against copyright infringement due to the use of the FB icon, that its website was created as a hobby and never contained advertisements, and that the Respondent never thought that it could infringe copyright as there were many other similar websites on the Internet. Finally, the Respondent offered to pay USD 1,000 to resolve the dispute, and asked for instructions how to do this.

## 6. Discussion and Findings

### 6.1. Further Procedural Considerations – Location of the Respondent

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition. The location of the Respondent disclosed by the Registrar appears to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification. It is therefore appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

The record shows that the Center's written notice could not be delivered by postal-mail to the Respondent's mailing address disclosed by the Registrar, in terms of the paragraph 2(a)(i) of the UDRP Rules. However, the Notification of Complaint's emails were delivered to the Respondent's email address, as provided by the Registrar, and the Respondent exchanged a number of email communications in English and Russian with the Center in the course of the proceeding, including on issues related to the merits of the case.

The Panel concludes that the Respondent allegedly located in Ukraine has been given a fair opportunity to present its case, and so that the administrative proceeding takes place with due expedition, the Panel will proceed to a Decision accordingly.

### 6.2. Substantive issues

#### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the FB trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the FB trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the FB trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "downloader") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the FB trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

#### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of

proof always remains on the complainant). 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.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The disputed domain name is confusingly similar to the FB trademark. The evidence shows that it has been used for a website offering a tool to download videos from Facebook, and that such service would be in violation of the Complainant's Developer Policies. As pointed out by the Complainant, the downloading and further circulation of Facebook videos by third parties may put the privacy and safety of Facebook users at risk. The Respondent does not explain why its use of the disputed domain name for such service should be considered legitimate and safe, and the Panel does not regard it as giving rise to rights or legitimate interests in the disputed domain name.

Based on the available record, the Panel therefore finds that the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

As discussed earlier in this Decision, the disputed domain name is confusingly similar to Complainant's FB trademark, and has been used for a website using the Complainant's figurative trademark F and offering software tools for downloading of video content from the Complainant's Facebook platform. The Complainant states that the Respondent's services have not been authorized by it and violate its Developer Policies, and may put at risk the privacy and security of Facebook users. The evidence shows that the Respondent's website does not disclose the lack of authorization of the Respondent's services by the Complainant, and there seem to be no restrictions as to what can be downloaded from Facebook and by whom. The Respondent has not denied the Complainant's allegations and the evidence in the case, and has not responded to the Complainant's cease-and-desist letter. It has not provided any plausible explanation as to why its actions should be considered as being carried out in good faith and as safe to Facebook users.

In light of all of the foregoing, the Panel considers it more likely than not that the Respondent has targeted the Complainant by registering and using the disputed domain name in an attempt to attract Internet users to the associated website, where to offer them unauthorized by the Complainant software tools that go beyond the limits of the functionalities of the Complainant's products, by misleading them into believing that such tools were somehow authorized by the Complainant. This supports a finding that the disputed domain name was registered and is being used in bad faith. The fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith ([WIPO Overview 3.0](#), section 3.3).

Based on the available record, the Panel therefore finds that the Complainant has established the third element 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 <fbdownloader.pro> be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: December 13, 2023