

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. CK CK

Case No. D2024-1363

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 CK CK, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <fbdown.com> (the “Domain Name”) 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 March 29, 2024. On April 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 2, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 3, 2024, 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 5, 2024.

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 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 3, 2024.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on May 10, 2024. 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, and operates, inter alia, Facebook, Instagram, Meta Quest (formerly Oculus), and WhatsApp.

Founded in 2004, the Complainant's Facebook platform is a leading provider of online social-media and social-networking services. It is also available for mobile devices and currently the 4th most downloaded mobile application worldwide as per Data.ai's Top Apps Ranking in 2024.

In March 2022, the Complainant had approximately 2.94 billion monthly active users. As of October 2023, its main website "www.facebook.com" ranked as the 3rd most visited website in the world.

The Complainant is the owner of a number of trade mark registrations in jurisdictions throughout the world, including but not limited to (hereafter the "Trade Marks"):

- United States Trademark Registration No. 3041791, FACEBOOK, registered on January 10, 2006;
- International Registration No. 1075807, FACEBOOK, registered on July 16, 2010;
- European Union Trade Mark No. 005585518, FACEBOOK, registered on May 25, 2011;
- European Union Trade Mark No. 008981383, FB, registered on August 23, 2011;
- European Union Trade Mark No. 018146501, FB, registered on November 7, 2020; and
- United States Trademark Registration No. 4659777, FB, registered on 23 December 2014.
- United States Trademark Registration No. 3934743  , registered on 22 March 2011.

The Domain Name was registered on April 2, 2023 and resolves to a website entitled "Facebook Video Downloader" (the Website), which purportedly offers a free online service enabling Internet users to download Facebook videos (including private Facebook videos) by simply copying the URL of the desired Facebook video and pasting it into the box displayed at the top of the homepage. It also purports to support the download of content from other popular social media platforms, such as TikTok and YouTube. The Website refers multiple times to the Trade Marks (e.g., "fbdow.com Fb downloader Download Facebook video to your phone, PC, or tablet with highest quality", "fbdow.com - Best Facebook Video Downloader," "use our FB video downloader with your browser", and "all easily downloaded & saved from Fb with just a few clicks"), and uses the figurative  Trade Mark.

The Website does not provide any contact details. On February 22, 2024, the Complainant's lawyer sent an infringement notice via the Registrar's registrant contact form. The Respondent did not respond to this notice.

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 Domain Name.

Notably, the Complainant contends that the presence of its FB Trade Mark in the Domain Name is sufficient to establish confusing similarity between the Domain Name and the FB Trade Mark and that the addition of the three letters "dow" in the Domain Name (presumably short for "download") does not prevent a finding of confusing similarity with the FB Trade Mark, which remains recognizable in the Domain Name.

The Complainant further submits that the content of the Website, which prominently features the Trade Marks, makes it clear that the Respondent has sought to target the Trade Marks through the Domain Name. The Complainant states that the generic Top-Level Domain ("gTLD") ".com" may be disregarded for purposes of assessing confusing similarity, as it is viewed as a standard registration requirement. For reasons set out above, the Complainant submits that the Domain Name is confusingly similar to the Complainant's FB Trade Mark, in accordance with paragraph 4(a)(i) of the Policy.

The Complainant submits that the Respondent has no rights or legitimate interests in the Domain Name, as it is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy that would demonstrate its rights or legitimate interests in the Domain Name, since it is not a licensee of, nor affiliated with the Complainant, while the Complainant has not granted any authorization for the Respondent to make use of the Trade Marks, in a domain name or otherwise. The Complainant contends that the Respondent does not make a bona fide offering of goods or services as it fails to fulfil the criteria set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), specifically:

(i) The Respondent is not a bona fide service provider as it is not providing services for the proper use of the Complainant's product. Rather, the Respondent's Website purports to provide an unauthorized Facebook downloader tool, in breach of the Complainant's Developer Policies.

(ii) Given that the Website also purports to support the download of content from other popular social media platforms, such as TikTok and YouTube, the Respondent cannot be said to be using the Domain Name solely in connection with goods and services offered under the FB trade mark comprised in the Domain Name.

(iii) The Respondent's Website does not prominently display or otherwise contain any disclaimer or other clearly worded statement clarifying its (lack of) relationship with the Complainant.

The Complainant submits that there is no evidence to suggest that the Respondent is commonly known by the Domain Name, as contemplated by paragraph 4(c)(ii) of the Policy, since the Domain Name was registered in the name of a proxy service, while the Website does not display any contact details so that the Respondent's identity is unknown to the public, while the Respondent's use of the Domain Name to offer an online service related to downloading videos from the Complainant's Facebook platform does not support any reasonable claim of being commonly known by the Domain Name, nor does it give rise to any reputation in the Domain Name itself, independent of the Trade Marks.

According to the Complainant, the Respondent cannot assert that it has made or is currently making a legitimate noncommercial or fair use of the Domain Name pursuant to paragraph 4(c)(iii) of the Policy, notably given the following circumstances:

(i) the content of the Respondent's Website tends to create a misleading impression that the Facebook video downloader provided on this site is authorized, endorsed, or otherwise connected with the Complainant.

(ii) The provision of services that violate the Complainant's Developer Policies or facilitate breach of the Facebook Terms of Service does not give rise to rights or legitimate interests in the Domain Name. For the foregoing reasons, the Complainant submits that it has established a prima facie showing that the Respondent lacks rights or legitimate interests in the Domain Name. Accordingly, the burden of production shifts to the Respondent to come forward with evidence to rebut the Complainant's case. In the absence of such evidence, the Complainant may be deemed to have satisfied the requirements of paragraph 4(a)(ii) of the Policy.

The Complainant contends that the Domain Name was registered and is being used in bad faith.

First, the Complainant submits that the Domain Name was registered in bad faith since the Respondent, when registering the Domain Name, was or should have been aware of the FB Trade Mark, which is commonly used to refer to Facebook, as this was registered with the European Intellectual Property Office in 2011 and has rapidly acquired considerable goodwill and renown worldwide.

According to the Complainant, the Respondent's prior knowledge of the Complainant and the Trade Marks as well as the Respondent's intent to target the Complainant when registering the Domain Name may also be inferred from the content of the Website, which offers an online tool for downloading Facebook content and makes prominent use of the Trade Marks (including its distinctive  Trade Mark). The Complainant further submits that the Respondent, having no relationship with the Complainant or authorization to make use of the FB Trade Mark in a domain name or otherwise, has knowingly proceeded to register the Domain Name, carrying a high risk of implied affiliation with the Complainant, in bad faith.

With respect to use in bad faith, the Complainant points out that the Respondent is using the Domain Name to purport to provide a tool to download content from the Complainant's Facebook platform, as well as from third-party platforms such as TikTok and YouTube. The Complainant also contends that the lack of a disclaimer on the Website to clarify the Respondent's relationship (or lack thereof) with the Complainant adds to the confusion caused by the Domain Name and constitutes additional evidence of the Respondent's bad faith conduct. Moreover, the Complainant submits that even if such disclaimer was featured on the Respondent's Website, it would not have been sufficient to cure the Respondent's illegitimate use of the Domain Name.

Furthermore, the Complainant submits that, in the circumstances of the present case, the Respondent's use of a proxy service to register the Domain Name indicates the Respondent's bad faith and its intent to use the Domain Name in a way which may be abusive or otherwise detrimental to the Complainant and its rights. Indeed, given the overall circumstances of this case (in particular, the Complainant's strong reputation worldwide and the services provided by the Respondent in violation of the Complainant's terms and policies), there is no reason that could explain why the Respondent would need to protect its identity by means of a proxy shield except to frustrate the purposes of the Policy or make it difficult for the Complainant to protect the Trade Marks against infringement, dilution, and cybersquatting.

Finally, the Complainant submits that the Respondent's failure to respond to the infringement notice sent by the Complainant's lawyers via the Registrar's registrant contact form also indicates bad faith.

In view of the above, the Complainant asserts that the Domain Name was registered and is being used in bad faith, in accordance with paragraph 4(a)(iii) of the Policy.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has shown that it has registered rights in the Trade Marks. The Domain Name is confusingly similar to the Trade Marks as it incorporates the FB Trade Mark in its entirety. The addition of the term "dow", which appears to be a reference to "download", in the Domain Name does not avoid a finding of confusing similarity between the Domain Name and the Trade Marks (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8; see also, inter alia, *TPI Holdings, Inc. v. Carmen Armengol*, WIPO Case No. [D2009-0361](#), and *F. Hoffmann-La Roche AG v. John Mercier*, WIPO Case No. [D2018-0980](#)). The gTLD ".com" is typically disregarded under the confusing similarity test, since it is a technical registration requirement ([WIPO Overview 3.0](#), section 1.11.1). Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights.

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. See [WIPO Overview 3.0](#), section 2.1.

Based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has not received the Complainant's authorization or consent to use the Trade Marks as part of the Domain Name, is not commonly known by the Domain Name, and has not acquired trade mark rights in the Domain Name. In addition, the Respondent's use of the Domain Names does not constitute a bona fide offering of goods or services, since the Domain Name resolves to a website which, using the Trade Marks, creates the false impression of a relationship with or authorization of its services by the Complainant, while it does not contain a disclaimer or clarification with respect to the non-existence of such affiliation. In addition, the Respondent uses the Trade Marks on the website and as part of the Domain Name to also offer download services in relation to competitors of the Complainant, which cannot be considered a legitimate noncommercial or fair use of the Domain Name.

In view of the above, the Panel concludes that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Name.

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. This list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, leaves open that other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

Based on the undisputed information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the Domain Name the Respondent was or should have been aware of the Trade Marks, since:

- the Respondent's registration of the Domain Name occurred some twelve years after the registration of the earliest of the Trade Marks;
- the Trade Marks have a worldwide reputation, as evidenced, inter alia, by the worldwide presence of the services provided under the Trade Marks, the number of monthly users worldwide and the ranking of the Complainant's FACEBOOK app as the 4th most downloaded mobile application worldwide as per Data.ai's Top Apps Ranking in 2024; and
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Name would have informed the Respondent of the existence of the Trade Marks.

Since the Respondent has no authorization from or other affiliation with the Complainant, and was or should have been aware of the Complainant's rights at the time of registration, the Domain Name was registered in bad faith.

With regard to bad faith use, the Panel finds that the use of the Trade Marks on the Website for offering download services in relation to both the videos of the Complainant and those of competitors of the Complainant implies that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Trade Marks as to the source, sponsorship, affiliation, or endorsement of its website and the services offered on that website. In addition, the following circumstances taken together warrant a finding of bad faith use of the Domain Name:

- the probability that the Respondent was aware or should have been aware of the Complainant's rights in the Trade Marks;
- the lack of a formal Response of the Respondent;
- the use upon registration of the Domain Name of a proxy service and, as disclosed by the Registrar, an incomplete or non-existing address, apparently to hide the identity of the Respondent.

Therefore, the Panel concludes that the Domain Name has been 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 <fbdown.com> be transferred to the Complainant.

/Wolter Wefers Bettink/

Wolter Wefers Bettink

Sole Panelist

Date: 26 May 2024