

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Muhammad Owais, Inspirmentia
Case No. D2024-2573

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 Muhammad Owais, Inspirmentia, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <fb-down.net> (the “Disputed Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 25, 2024. On June 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On June 25, 2024, 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 Administrator, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 27, 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 July 2, 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 July 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 29, 2024. The Respondent did not submit any formal response. However, on July 15, 2024, the Respondent sent an informal communication to the Center. On the same day, the Respondent also sent a communication to the Complainant only, which was copied to the Center in

the Complainant's reply thereto. The Center notified the Parties with the Commencement of Panel Appointment Process on August 10, 2024.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on August 16, 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, Meta Platforms, Inc., is a social technology company, and operates, inter alia, Facebook, Instagram and WhatsApp. The Complainant is the holder of numerous registered trademarks, including the following:

- FACEBOOK, Pakistan trademark registered on March 31, 2008, with registration No. 248352 in class 45¹;
- FACEBOOK, Unites States trademark registered on January 10, 2006, with registration No. 3041791 in class 35;
- FB, Unites States trademark registered on December 23, 2014, with registration No.4659777 in class 35;

The Disputed Domain Name was registered on January 12, 2023. According to the evidence provided by the Complainant, the Disputed Domain Name resolved to a commercial website that purportedly offered an online service enabling Internet users to download Facebook videos.

The Disputed Domain Name currently resolves to a parking page of the Registrar.

On March 5, 2024, the Complainant's lawyer sent a cease and desist letter to the Respondent using the proxy email address listed in the Whois. According to the Complainant, the Respondent never responded to this letter.

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.

First, the Complainant contends that the Disputed Domain Name is confusingly similar to a trademark in which it claims to have rights.

Second, the Complainant claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, as, according to the Complainant:

- the Respondent is not using the Disputed Domain Name in connection with any bona fide offering of goods or services;
- the Respondent is not commonly known by the Disputed Domain Name;

¹ The Complainant only provides a copy of a renewal certificate for this trademark. Although the Panel cannot verify the validity of the registration, this trademark appears to be valid and is undisputed. However, the Panel finds that the validity of this trademark in Pakistan, where the Respondent appears to be located, would have no impact on the Decision in this case given the Respondent's clear knowledge of, and targeting of, the Complainant's trademark through the registration and use of the Disputed Domain Name (see below).

- the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant:

- the Disputed Domain Name was registered with knowledge of the Complainant's trademark;
- the Respondent's use of a proxy service to register the Disputed Domain Name further indicates the Respondent's bad faith and its intent to use the Disputed Domain Name in a way which may be abusive or otherwise detrimental to the Complainant and its rights;
- the Respondent is intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source of such website;
- the Respondent's failure to respond to the cease and desist letter sent by the Complainant's lawyers also indicates bad faith.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. In an email communication filed with the Center on July 15, 2024, the Respondent consented to fully cooperate and to resolve the matter amicably should the Disputed Domain Name indeed be associated with any illegal activities or infringements.

It appears that on the same day, the Respondent sent an email to the Complainant offering to transfer the Disputed Domain Name at no cost.

6. Discussion and Findings

6.1 Preliminary issue: Respondent's consent to transfer the Disputed Domain Name

Where parties to a UDRP proceeding have not been able to settle their dispute prior to the issuance of a panel decision using the "standard settlement process" described above, but where the respondent has nevertheless given its consent on the record to the transfer (or cancellation) remedy sought by the complainant, many panels will order the requested remedy solely on the basis of such consent. In such cases, the panel gives effect to an understood party agreement as to the disposition of their case (whether by virtue of deemed admission, or on a no-fault basis).

Despite such respondent consent, a panel may in its discretion still find it appropriate to proceed to a substantive decision on the merits. Scenarios in which a panel may find it appropriate to do so include (i) where while consenting to the requested remedy the respondent has expressly disclaimed any bad faith, or (ii) where the complainant has not agreed to accept such consent and has expressed a preference for a recorded decision. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 4.10.

In the present case, the Panel notes that the Respondent sent an informal email to the Complainant on July 15, 2024 in which it consented to the transfer of the Disputed Domain Name. However, the Respondent seemed to disclaim any bad faith as it stated it was "unaware of any potential issues related to the domain". Moreover, the Complainant replied to this email by mentioning it did not "wish to explore settlement at this time" and would "prefer to wait for the Panel's decision".

In view of the above, the Panel finds it appropriate to proceed to a substantive decision on the merits.

6.2 Substantive elements of the Policy

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

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 3.0](#), section 1.7.

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

The Panel observes that the FB mark is reproduced within the Disputed Domain Name. In such cases, the domain name will normally be considered confusingly similar to the incorporated mark for purposes of UDRP standing. [WIPO Overview 3.0](#), section 1.7.

Additionally, the Panel finds that the addition of a hyphen and another term – here, “down” – does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

It is well established that generic Top-Level-Domains (“gTLDs”), here “.net”, may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

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 Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name, and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is “Muhammad Owais” from the organization “Inspirmania”. The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant.

Fundamentally, a respondent's use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant's mark is often central to this inquiry. Even where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

The Disputed Domain Name incorporates the Complainant's FB trademark in its entirety and merely adds a hyphen and the term "down". Given the widespread use and reputation of the Complainant's FB trademark, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, and the absence of a response, support a fair use or not. [WIPO Overview 3.0](#), sections 2.5.2 and 2.5.3.

According to the Complainant's evidence, the Disputed Domain Name appeared to resolve to a commercial website that purportedly offered an online service enabling Internet users to download videos from the Complainant's Facebook platform. The Panel finds that this does not amount to a bona fide offering of goods or services, or a legitimate noncommercial or fair use of the Disputed Domain Name. Moreover, the Respondent does not accurately and prominently disclose its relationship with the Complainant. As a result, the Respondent fails the so-called "Oki Data test" for legitimate resellers, distributors or service providers of a complainant's goods or services. [WIPO Overview 3.0](#), sections 2.8.

The Panel observes that the Disputed Domain Name currently resolves to a parking page of the Registrar. In the Panel's view, this does not amount to any legitimate noncommercial or fair use or use in connection with a bona fide offering of goods and services either.

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Based on the available record, the Panel finds 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.

As established above, the Complainant's has shown that the Disputed Domain Name resolved to a commercial website that purportedly offered an online service enabling Internet users to download Facebook videos. In the Panel's view, the circumstances of this case indicate that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark. [WIPO Overview 3.0](#), section 3.2.4.

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.

In the present case, the Panel finds that it is inconceivable that the Respondent was unaware of the Complainant and its trademark rights when it registered the Disputed Domain Name as:

- the Disputed Domain Name incorporates the Complainant's well-known trademark in its entirety;
- the Disputed Domain Name appeared to resolve to a website displaying the Complainant's FB and FACEBOOK trademarks.

Given the totality of the circumstances discussed above, the current state of the Disputed Domain Name redirecting to a parking page of the Registrar does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

Based on the available record, the Panel 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 <fb-down.net> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: August 30, 2024