

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Aquila Space Aquila Space, Aquila Space (Hong Kong) Company Limited

Case No. D2024-3133

1. The Parties

The Complainant is Meta Platforms, Inc., United States of America (“US”), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is Aquila Space Aquila Space, Aquila Space (Hong Kong) Company Limited, Hong Kong, China.

2. The Domain Name and Registrar

The disputed domain name <fbvideodown.com> 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 July 30, 2024. On July 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 1, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 1, 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 August 6, 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 August 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 1, 2024.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on September 9, 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

Founded in 2004, the Complainant's platform Facebook is a leading provider of online social-media and social-networking services. Facebook had 1 million active users by the end of 2004, 100 million users in August 2008, 500 million users in July 2010, 1 billion users worldwide by September 2012 and 2.27 billion users as of September 2018. As of December 2023, Facebook has over 3 billion monthly active users and 2.11 billion daily active users on average worldwide. Facebook is currently ranked as the 13th app by downloads for iOS phones worldwide, according to applications information company Data.ai (formerly known as App Annie). In 2023, the FACEBOOK brand ranked 21st in Interbrand's Best Global Brands report. The term "FB" commonly refers to Facebook and has been used by international publications such as The New York Times, "Generation FB", dated June 23, 2011, and The Guardian, "Who are the most social publishers on the web?", (referencing "FB Likes, FB Shares, FB Comments") dated October 3, 2013.

The Complainant's affiliated entity Facebook, Inc. is the owner of several trademarks for FACEBOOK ("FACEBOOK trademark") and FB ("FB trademark"), including:

- US Trademark Registration FACEBOOK, No. 3041791, registered on January 10, 2006;
- European Union Trade Mark FACEBOOK, No. 005585518, registered on May 5, 2011;
- European Union Trade Mark FB, No. 008981383, registered on August 23, 2011; and
- US Trademark Registration FB, No. 4659777, registered on December 23, 2014.

The Complainant is also owner of several domain names including the FACEBOOK trademark and FB trademark, such as the domain name <facebook.com>, registered on March 29, 1997, and the domain name <fb.com>, registered on May 22, 1990.

The disputed domain name was registered on March 23, 2022. At the time of decision and at the time the Complaint was filed, as the Complainant showed evidence, the disputed domain name resolves to an active website which displays the FB trademark and FACEBOOK trademark, as well as variations of the Complainant's figurative trademarks, and purports to offer a tool that enables Internet users to download video content from Facebook and Complainant's subsidiary, Instagram, as well as from the third-party social-media platform TikTok.

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.

On the first element of the Policy, the Complainant claims that the disputed domain name is confusingly similar to the Complainant's FB trademark. The Complainant owns trademark registrations for FB in jurisdictions throughout the world. The Complainant submits that the inclusion of the FB trademark in its entirety in the disputed domain name is sufficient to establish confusing similarity between the disputed domain name and the FB trademark. Further, the Complainant submits that the addition of the terms "video" and "down" in the disputed domain name does not prevent a finding of confusing similarity with the FB trademark, which remains recognizable in the disputed domain name. While the content of the website associated with a disputed domain name is usually disregarded by UDRP panels when assessing confusing similarity under the first element, in some instances, panels have taken note of the content of the website

associated with a domain name to confirm confusing similarity whereby it appears prima facie that the Respondent has sought to target a trademark through the disputed domain name. The Complainant submits that the contents of the Respondent's website make it clear that the Respondent has sought to target the Complainant's trademarks through the disputed domain name.

On the second element of the Policy, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not a licensee of the Complainant, and the Respondent is not affiliated with the Complainant in any way. The Complainant has not granted any authorization for the Respondent to make use of its FB trademark, in a domain name or otherwise. The Respondent cannot assert that prior to any notice of this dispute he was using, or had made demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. The Respondent's website purportedly provides a tool for downloading public and private video content from Facebook. The Complainant submits that the Respondent is unable to be viewed as a bona fide service provider, as it does not prove sales or repairs in relation to a product provided by the Complainant. Rather, the Respondent is making unauthorized use of the FB trademark to market its own ancillary services, namely purporting to provide a tool that enables Internet users to download content from Facebook, from Instagram, and from a third-party platform TikTok.

Further, there is no evidence to suggest that the Respondent is commonly known by the disputed domain name. 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 unauthorized Facebook downloader tool, in breach of the Meta Developer Policies. Given that the Respondent's website purports to provide tools for the downloading of content from a third-party platform TikTok, the Respondent cannot be said to be using the disputed domain name solely in connection with goods and services offered under the FB trademark contained in the disputed domain name. The Respondent's website does not accurately and prominently disclose its lack of relationship with the Complainant. In fact, by featuring the copyright notice "Copyright© 2024 fbvideodown" and by using a blue and white colour scheme very similar to that of the Complainant's Facebook platform, the Respondent's website suggests that the Respondent is affiliated with the Complainant, which is not the case.

Further, the Respondent's use of the Domain Name violates the Meta Developer Policies by going beyond the limits placed on the functionality of the Facebook platform, and facilitates breach of the Facebook Terms of Service. Not only do tools for the unauthorized downloading of content from Facebook violate the Meta Developer Policies and facilitate breach of the Facebook Terms of Service, but they also place the 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 disputed domain name has been registered using a proxy service. The identity of the underlying registrant is essentially unknown. In addition, to the best of the Complainant's knowledge, there is no evidence of the Respondent having acquired or applied for any trademark registrations for "fbvideodown" or any variation thereof, as reflected in the disputed domain name. The Respondent's use of the disputed domain name does not support any reasonable claim of being commonly known by the disputed domain name, nor does it give rise to any reputation in the disputed domain name itself, independent of the Complainant's trademark rights. Nor is the Respondent currently making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers.

The disputed domain name comprises the FB trademark, followed by the terms "video" and "down", which may be read as referring to the downloading of content shared on the Complainant's Facebook platform. The Complainant submits that the nature of the disputed domain name itself is such that it carries a risk of implied affiliation with the Complainant, and therefore cannot give rise to a claim of legitimate noncommercial or fair use. 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.

On the third element of the Policy, the Complainant asserts that the Respondent registered and used the disputed domain name in bad faith. The FB trademark, which is commonly used to refer to Facebook, was

registered in 2011 in connection with the Complainant's social network, and has rapidly acquired considerable goodwill and renown worldwide. Prior UDRP panels have repeatedly recognized the strength and renown of the FB trademark and have ordered the transfer of disputed domain names containing the trademarks to the Complainant. The Respondent's prior knowledge of the Complainant and its trademark rights as well as the Respondent's intent to target the Complainant through the disputed domain name is made clear from the contents of the Respondent's website, which offer tools for the illegitimate downloading of Facebook content, make explicit reference to the Complainant's Facebook platform, and feature modified versions of the Complainant's logos as well as a blue and white colour scheme that is very similar to that of the Complainant's Facebook platform.

The Complainant infers from the above that the Respondent registered the disputed domain name with a view to attracting Internet users to its website resulting from a perceived association between the disputed domain name, the Respondent's website, and the Complainant's trademarks. The Complainant submits that the Respondent, having no authorization from 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 that put the online security of Facebook users at risk, in bad faith. Further, the Respondent is using the disputed domain name to purport to provide a tool to download content from the Complainant's Facebook platform. Such use of the disputed domain name circumvents the inability of users to download other users' Facebook content, which violates the Meta Developer Policies and facilitates breach of the Facebook Terms of Service. Prior panels have held that the unauthorized downloading of content from the platform of the Complainant and its subsidiaries may place the privacy and security of users of such platforms at risk and amounts to bad faith. Further, these types of websites can be used in order to hack into users' accounts.

Moreover, in light of the nature of the disputed domain name, which comprises the FB trademark followed by terms "video" and "down", as well as the use of modified versions of the Complainant's logos and of a blue and white colour scheme that is very similar to the blue and white colour scheme of the Complainant's Facebook platform, the Complainant submits that the Respondent is seeking to target the Complainant's trademark to create an impression of association with the Complainant, to divert traffic to the disputed domain name and to offer an unauthorized, illegitimate tool to Internet users and disrupt the Complainant's business.

The lack of disclaimer on the Respondent's website to clarify the Respondent's relationship (or lack thereof) with the Complainant adds to the confusion caused by the disputed domain name and constitutes additional evidence of the Respondent's bad faith conduct. Moreover, the Complainant submits that even if such a disclaimer was featured on the Respondent's website, it would not have been sufficient to cure the Respondent's illegitimate use of the disputed domain name. The Complainant submits that the fact that the Respondent's website also purports to offer a tool to download content from a third-party social media platform, TikTok, further disrupts the Complainant's business by redirecting Internet users to such third-party platform, in bad faith. The Respondent's failure to respond to the Complainant's notice submitted via the Registrar's registrant contact form is an additional indication of the Respondent's bad faith. In the surrounding circumstances, the Respondent's use of a proxy service to conceal its identity with regard to the disputed domain name further supports an inference of bad faith on the part of the Respondent.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "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".

It has been a consensus view in previous UDRP decisions that a respondent's default (i.e., failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

- (i) the disputed domain name is 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 in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

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.

While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. [WIPO Overview 3.0](#), section 1.7.

Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements. [WIPO Overview 3.0](#), section 1.8.

Panels have also found that the overall facts and circumstances of a case (including relevant website content) may support a finding of confusing similarity, particularly where it appears that the respondent registered the domain name precisely because it believed that the domain name was confusingly similar to a mark held by the complainant. [WIPO Overview 3.0](#), section 1.7.

The applicable TLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.

The content of the website associated with the disputed domain name is usually disregarded by panels when assessing confusing similarity under the first element. In some instances, panels have however taken note of the content of the website associated with a domain name to confirm confusing similarity whereby it appears prima facie that the respondent seeks to target a trademark through the disputed domain name. Such content will often also bear on assessment of the second and third elements, namely whether there may be legitimate co-existence or fair use, or an intent to create user confusion. [WIPO Overview 3.0](#), section 1.15.

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 entirety of the FB trademark is reproduced within the disputed domain name and the Panel finds the mark is recognizable within the disputed domain name.

The disputed domain name differs from the FB trademark by the addition of the terms “video” and “down”, assembled as “videodown”, which does not prevent a finding of confusing similarity.

Further, the content of the website associated with the domain name, which displays the FB trademark and FACEBOOK trademark as well as variations of the Complainant’s figurative trademarks and purports to offer a tool that enables Internet users to download video content from Facebook, confirms confusing similarity since it is obvious that the Respondent seeks to target the FB trademark through the disputed domain name.

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.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the FB trademark. The Panel finds on the record that there are no indications that the Respondent is commonly known by the disputed domain name or otherwise has any rights to or legitimate interests in the disputed domain name. Further, there are no evident preparations for the use of the disputed domain name for a bona fide offering of goods or services. Rather, the disputed domain name resolves to an active website which displays the FB trademark and FACEBOOK trademark as well as variations of the Complainant’s figurative trademarks and purports to offer a tool that enables Internet users to download public and private video content from Facebook and third parties.

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.

Further, Panels have held that the use of a domain name for illegal activity (as applicable to this case: passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

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.

Issues such as the strength of the complainant's mark or the respondent's intent to provide its own legitimate offering of goods or services without trading off the complainant's reputation, are decided under the second and third elements. [WIPO Overview 3.0](#), section 1.7.

The Panel notes that the FB trademark and FACEBOOK trademark was registered before the disputed domain name.

Panels have held that Complainant's wordmark FB has a strong reputation and is widely known throughout the world, See *Facebook, Inc. v. Domain Admin, Whoisprotection.cc / Tony FBT*, WIPO Case No. [D2019-1672](#) and *Facebook, Inc., WhatsApp Inc. v. Wisdom King, Wizindo*, WIPO Case No. [D2019-2517](#).

The wordmark FB is set prominently at the beginning of the disputed domain name.

The Panel finds that it is more likely than not that the Respondent registered the disputed domain name with the knowledge of the Complainant's trademarks, which indicates registration in bad faith.

Further, the disputed domain name resolves to an active website which displays the FB trademark and FACEBOOK trademark, as well as variations of the Complainant's figurative trademarks, and purports to offer a tool that enables Internet users to download public and private video content from Facebook. The website under the disputed domain name did not contain any disclaimer as to the Respondent's lack of relationship with the Complainant. Further, the Respondent failed to respond to the Complaint.

By using the disputed domain name, the Respondent has intentionally attempted to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the FB trademark.

Moreover, panels have held that the use of a domain name for illegal activity (as applicable to this case: passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

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

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 <fbvideodown.com> be transferred to the Complainant.

/Christian Gassauer-Fleissner/
Christian Gassauer-Fleissner
Sole Panelist
Date: September 23, 2024