

## ADMINISTRATIVE PANEL DECISION

### Meta Platforms, Inc., and Instagram, LLC v. Muhammad Qamar ul haq Case No. D2024-3239

#### 1. The Parties

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

The Respondent is Muhammad Qamar ul haq, Pakistan.

#### 2. The Domain Names and Registrar

The disputed domain names <fbdown.online> and <instadown.app> are registered with GoDaddy.com, LLC (the “Registrar”).

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 7, 2024. On August 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 8, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names 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 Complainants on August 12, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on August 16, 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 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 19, 2024.

The Center appointed Eva Fiammenghi as the sole panelist in this matter on September 27, 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 first Complainant in this proceeding is Meta Platforms, Inc., a United States-based social technology company, established in 2004 (previously known as Facebook, Inc., until its rebranding in October 2021). Meta operates some of the world's leading social media platforms, including Facebook, Instagram, and WhatsApp. The company's core business focuses on creating platforms that allow individuals and businesses to connect, communicate, and share content globally, with a significant online presence.

The second Complainant is Meta's subsidiary, Instagram, LLC, is an online photo and video-sharing social networking service, launched in 2010 and acquired by Meta in 2012. Instagram is globally recognized for its substantial user base, with over 2 billion monthly active users.

The Complainants have secured ownership of numerous trademark registrations for FB, FACEBOOK, INSTA and INSTAGRAM in many jurisdictions throughout the world, including but not limited to the following:

- United States Trademark Reg. No. 4,146,057, INSTAGRAM, registered on May 22, 2012 - Class 9.
- European Union Trademark Reg. No. 014810535, INSTA, registered on May 23, 2018 - Class 9.
- European Union Trademark No. 008981383, FB, registered on August 23, 2011 – Class 45.
- United States Trademark Reg. No. 3122052, FACEBOOK, registered on July 25, 2006 – Classes 35 and 38.

The Complainants own and operate several domain names that correspond to its primary trademarks, including:

- <instagram.com> (registered in 2011)
- <facebook.com> (registered in 2005)
- <meta.com> (registered in 2021)

The disputed domain names <fbdown.online>, registered on August 8, 2020, and <instadown.app>, registered on December 8, 2023, were both registered by the Respondent.

The disputed domain name <fbdown.online> resolves to a website providing tools to download videos from Facebook and other platforms, in violation of Meta's Terms of Service and Developer Policies.

Similarly, the disputed domain domain <instadown.app> resolves to a similar website offering tools to download videos from Instagram, Facebook, and other sources, also breaching Instagram's Terms of Use.

Both websites list the email address (...)376@gmail.com and display an identical "Disclaimer" page.

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

##### **A. Complainants**

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainants assert that the disputed domain names are confusingly similar to their registered trademarks, including the well-known trademark FB and INSTA. Furthermore, the term "down" relates to downloading, which is a service closely associated with Facebook and Instagram. The addition of the generic top-level domain (gTLD) ".online" and ".app" do not differentiate the domain from the Complainants' trademarks and instead increases the likelihood of confusion.

The Complainants argue that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent has not been commonly known by the disputed domain names and has not used the disputed domain names in connection with a bona fide offering of goods or services.

The Complainants maintain that the disputed domain names were registered and are being used in bad faith. The Respondent had actual knowledge of the Complainants' brand and registered the disputed domain names to take advantage of the Complainants goodwill and reputation.

The Complainants further argues that the Respondent has intentionally attempted to attract, for commercial gain, internet users to the website by creating a likelihood of confusion with the Complainants' trademarks as to the source, sponsorship, affiliation, or endorsement of the website.

Additionally, after receiving a cease-and-desist letter from the Complainants, the Respondent made superficial changes to the website without ceasing the infringing activity, further indicating bad faith in the continued use of the disputed domain names.

The Complainants request that the disputed domain names be transferred to them.

## **B. Respondent**

The Respondent did not reply to the Complainants' contentions.

## **6. Discussion and Findings**

### **6.1 Consolidation of Complainants**

In 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.

In this case, Instagram LLC is a wholly-owned subsidiary of Meta Platform Inc. The Panel is also satisfied that the Complainants each have rights in the FB and INSTA mark, respectively, as set out in the Factual Background section above. The Panel notes that the Complainants assert that they have been the target of common conduct by the Respondent and that as there is a common grievance on the part of each of them and each of the disputed domain names, it would be procedurally efficient to deal with all matters in the one proceeding, given the almost identical facts.

In all of these circumstances, the Panel considers that it is procedurally efficient to allow the Complainants to proceed with the single Complaint as filed and is content that such consolidation is fair and equitable to all of the Parties, and will refer to the "Complainant" here and after.

### **6.2 Substantive issues**

Under paragraph 4(a) of the Policy, to succeed the Complainant must prove 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 was registered and is being used in bad faith.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

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 mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

Based on the above, 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 names. 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 names, such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegitimate activity, here, claimed impersonation/passing off, to provide a downloading service without permission, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available evidence and the Respondent's failure to provide a valid defense, 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.

In the present case, the Panel notes that the Respondent registered and is using the disputed domain names in bad faith under paragraph 4(b)(iv) of the Policy. The Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's well-known trademarks, FB and INSTA. The Respondent's website offers services closely related to the Complainant's

business, specifically providing unauthorized downloading of media from Instagram and Facebook platforms, which further indicates bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate bad faith, but other circumstances may also demonstrate bad faith. [WIPO Overview 3.0](#), section 3.2.1. In this case, the Respondent continued to use the disputed domain names for infringing services even after receiving a cease-and-desist letter from the Complainant, further demonstrating bad faith registration and use.

Panels have held that the use of a domain name for illegitimate activity, here unauthorized use of the Complainant's trademarks to offer downloading services, 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 names constitutes bad faith under the Policy.

Based on the above, 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 <fbdown.online> be transferred to the Complainant Meta Platforms, Inc. and the disputed domain name <instadown.app> be transferred to the Complainant Instagram, LLC.

*/Eva Fiammenghi/*

**Eva Fiammenghi**

Sole Panelist

Date: October 11, 2024