

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc. v. Nazif Güven
Case No. D2024-4095

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 Nazif Güven, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <fbliveviewerbot.com> (the “Disputed Domain Name”) is registered with Squarespace Domains II LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 5, 2024. On October 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 7, 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 (REDACTED FOR PRIVACY, Nazif Güven) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 8, 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 October 9, 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 October 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 31, 2024. The Respondent sent email communications to the Center on October 11, 23, 25, and November 1, 2024 in which the Respondent expressed its willingness to explore settlement. Upon receipt of the Center’s email regarding possible settlement, the Complainant

confirmed to the Center on October 24, 2024 that they did not wish to explore settlement at this time. On November 1, 2024, the Center confirmed that it would proceed with panel appointment.

The Center appointed Mariia Koval as the sole panelist in this matter on November 8, 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 social technology company, which operates, inter alia, Facebook, Instagram, Meta Quest (formerly Oculus), and WhatsApp. The Complainant's focus is to bring the metaverse to life and to help people connect, find communities, and grow businesses.

Launched in 2004, the Complainant's Facebook social platform, commonly referred to as "fb", is a leading provider of online social-media and social-networking services. Since its launch, Facebook rapidly developed considerable renown and goodwill worldwide, with one million active users by the end of 2004, 100 million users in August 2008, 500 million users in July 2010 and one billion users worldwide by September 2012. Facebook had 2.27 billion monthly active users by September 2018 and as of March 31, 2020, i.e., around the time of the registration of the Disputed Domain Name, Facebook had approximately 2.60 billion monthly active users and 1.73 billion daily active users on average worldwide. With approximately 85 percent of its daily active users outside the United States and Canada, Facebook's social-networking services are provided in more than 70 languages. In addition, Facebook is also available for mobile devices, and in recent years has consistently ranked amongst the top "apps" in the market.

The Complainant is the owner of multiple FACEBOOK and FB trademark registrations (collectively, the "FB Trademarks") in various jurisdictions worldwide, among which are:

- United States Registration No. 3041791 for FACEBOOK, registered on January 10, 2006, in respect of services in classes 36 and 38;
- European Union Trademark Registration No. 005585518 for FACEBOOK, registered on May 25, 2011, in respect of services in classes 35, 41, 42 and 45;
- European Union Trademark No. 008981383 for FB, registered on August 23, 2011, in respect of services in class 45;
- United States Trademark Registration No. 4659777 for FB, registered on December 23, 2014 in respect of services in class 35.

The Complainant has also made substantial investments to develop a strong presence online by being active on various social media platforms, in particular the Facebook page on the Complainant's Facebook platform has over 180 million "likes". The Complainant operates a number of domain name registrations, which incorporate the FB Trademarks, among which are <facebook.com> (registered on March 29, 1997), <facebook.us> (registered on May 5, 2004), <facebook.ca> (registered on January 26, 2005) and others.

The Disputed Domain Name was registered on April 13, 2020. At the date of this Decision, the Disputed Domain Name does not resolve to any active website. However, according to the evidence presented by the Complainant (Annex 12 to the Complaint), the Disputed Domain Name previously resolved to a website containing the Complainant's logo, prompting Internet users to create an account or sign in, and purportedly offering for sale various interactions on Facebook and Instagram, which Facebook live stream and video views, Facebook pages, posts, video likes and Instagram followers, comments. The Respondent's website also purported to offer for sale live stream views on the third-party platforms.

On July 23, 2024, to resolve the matter amicably, the Complainant sent a cease-and-desist letter to the Respondent via email. No response was received prior to the filing of the Complaint.

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.

Notably, the Complainant contends that the Disputed Domain Name is confusingly similar to its FB Trademarks since the Disputed Domain Name includes the FB Trademarks in their entirety. The addition of the term "liveviewerbot" to its FB Trademarks does not prevent a finding of confusing similarity with the Complainant's FB Trademarks, which remain clearly recognizable in the Disputed Domain Name.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name in view of the following:

- the Respondent is not a licensee of the Complainant and 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 Trademarks, in the Disputed Domain Name or otherwise;
- the Respondent is not using the Disputed Domain Name in connection with any bona fide offering of goods or services: the Respondent's website under the Disputed Domain Name purported to offer for sale Facebook live stream views, video views, Instagram followers, likes and comments, and TikTok and YouTube live stream views;
- the Respondent's website did not feature any disclaimer as to the Respondent's lack of relationship with the Complainant; by making numerous references to the Complainant's Facebook platform and the Instagram platform of the Complainant's related company; the Respondent's website suggested that the Respondent is affiliated with the Complainant, which is not the case;
- by offering for sale of live stream views and video views on Facebook as well as likes on Facebook posts, pages and videos and Instagram followers, likes and comments, the Respondent breached the Meta Developer Policies as it goes beyond the limits placed on the functionality of the Facebook;
- there is no evidence of the Respondent having acquired or applied for any trademark registrations for "FB" or any variation thereof, as reflected in the Disputed Domain Name;
- it is clear that the Respondent derived commercial gain from the offering for sale of paid live stream and video views on Facebook, paid page, post and video likes on Facebook and paid followers, likes, and comments on Instagram.

The Complainants further contend that the Respondent registered and is using the Disputed Domain Name in bad faith in view of the following:

- The Complainant's FB Trademarks are highly distinctive and famous throughout the world;
- the Respondent registered the Disputed Domain Name without any authorization to make use of the Complainant's FB Trademarks, with a view to pointing it to a website that purported to offer for sale Facebook live stream, video views, page, post, video likes and Instagram followers, comments, and likes, in bad faith;
- in light of the nature of the Disputed Domain Name, which comprises the Complainant's FB Trademarks followed by the term "liveviewerbot", with the "Facebook Live" functionality being a key part of the services offered on the Complainant's Facebook application, the Disputed Domain Name suggests endorsement by the Complainant. This is particularly the case given the blue and white colour scheme that is very similar to the Complainant's Facebook color scheme. As a result, Internet users were likely to be misled into believing that the Respondent's website is affiliated with or endorsed by the Complainant, which is not the case;

- the lack of disclaimer on the Respondent's website to clarify the Respondent's relationship with the Complainant further adds to the confusion caused by the Disputed Domain Name and constitutes additional evidence of the Respondent's bad faith conduct;
- it is clear that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's FB Trademarks as to the source, sponsorship, affiliation, or endorsement of its website and services on its website;
- the Respondent's failure to reply to the cease-and-desist letter sent by the Complainant further evidences the Respondent's bad faith.

B. Respondent

The Respondent did not submit a formal Response to the Complainant's contentions but did provide informal email communications stating that there is a misunderstanding, and it has not violated any intellectual property rights, and it would like to reach a compromise and resolve the matter amicably. The Respondent further indicated that the Disputed Domain Name is no longer actively used and will not be used in the future. The Respondent also expressed its willingness to transfer the Disputed Domain Name to the Complainant

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant to succeed must satisfy the panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (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.

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 Disputed Domain Name completely reproduces the Complainant's FB Trademarks in combination with terms "live", "viewer" and "bot" and the generic Top-Level Domain ("gTLD") ".com". According to the [WIPO Overview 3.0](#), section 1.8, 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. In this case, the addition of the words "live", "viewer" and "bot", to the FB Trademarks does not prevent a finding of confusing similarity.

According to the [WIPO Overview 3.0](#), section 1.11, the applicable gTLD 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.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's FB Trademarks and 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 Complainant obtained the registrations of the FB Trademarks several years earlier than the Respondent registered the Disputed Domain Name in 2020. Taking into account all circumstances of this case, the Panel finds that the Respondent was very well aware of the Complainant’s business and its FB Trademarks when registering the confusingly similar Disputed Domain Name that completely incorporates the Complainant’s FB Trademarks. The Panel considers it is obvious bad faith that the Respondent deliberately chose the Disputed Domain Name to create a likelihood of confusion with the Complainant’s FB Trademarks, so as to create a false association or affiliation with the Complainant.

The Panel is of opinion that there is no evidence that the Respondent is using the Disputed Domain Name to offer bona fide goods or services or making a legitimate noncommercial or fair use of the Disputed Domain Name. On the contrary, the Disputed Domain Name previously resolved to the website which purportedly offered for sale inter alia Facebook live stream, video views, page, post, video likes, as well as Instagram, TikTok, and YouTube followers, comments. The Respondent’s website also reproduced the Complainant’s logo and FB Trademarks and was designed in the same color scheme used by the Complainant on its official website. According to the [WIPO Overview 3.0](#), section 2.8.1, UDRP panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant’s trademark to undertake sales or repairs related to the complainant’s goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the “Oki Data test”, the following cumulative requirements will be applied to the specific conditions of a UDRP case:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
- (iv) the respondent must not try to “corner the market” in domain names that reflect the trademark.

As is seen from this case, the products or services offered on the website under the Disputed Domain Name are not provided by the Complainant. Further, there is no disclaimer on the website prominently and accurately disclose the relationship between the Complainant and the Respondent, and the website also purportedly offers for sale products related to third parties. Thus, the Respondent does not satisfy the conditions of the Oki Data test.

Moreover, in accordance with the [WIPO Overview 3.0](#), section 2.5.1, where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. The fact that the Respondent has incorporated the Complainant’s FB Trademarks

in their entirety in the Disputed Domain Name with the addition of the terms “live”, “viewer”, and “bot”, which relate to the Complainant’s business, is further evidence, that the Respondent was well aware of the Complainant’s FB Trademarks and business at the time of registration of the Disputed Domain Name and has done so for the only purpose of creating an impression that the Disputed Domain Name is connected with the Complainant.

In light of the above, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Therefore, the second element of the paragraph 4(a) of the Policy has been met by the Complainant.

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 the Disputed Domain Name long after the Complainant registered its FB Trademarks. The Disputed Domain Name incorporates the Complainant’s FB Trademarks in whole and previously resolved to the website using of the Complainant’s logo and FB Trademarks and purportedly offering for sale inter alia live stream views on the Complainant’s Facebook platform, as well as Facebook posts, pages, and video likes, as well as Instagram followers, comments. Having reviewed the record, the Panel finds the Respondent’s registration and use of the Disputed Domain Name constitutes bad faith under paragraph 4(b)(iv) of the Policy. Moreover, such previous use of the Disputed Domain Name indicates that the Respondent was aware of the Complainant’s activity and FB Trademarks when it registered the Disputed Domain Name. The Panel finds that the evidence in the case file as presented indicates that the Respondent’s aim in registering the Disputed Domain Name was to profit from or exploit the Complainant’s FB Trademarks.

The Panel is also of the opinion that it is clear that the Respondent, having registered and used the Disputed Domain Name, which is confusingly similar to the Complainant’s FB Trademarks, intended to disrupt the Complainant’s business and confuse Internet users seeking for or expecting the Complainant. In view of the absence of any evidence to the contrary and that the Respondent did not file any response to claim otherwise, the Panel concludes that the Respondent has registered and is using the Disputed Domain Name in bad faith.

As at the date of this Decision the Disputed Domain Name resolves to an inactive website. The Panel finds such change of the use of the Disputed Domain Name after the Respondent’s notice of the proceeding does not affect the Panel’s finding of the Respondent’s bad faith.

The Panel finds the third element of the Policy has been established.

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 <fbviewerbot.com> be transferred to the Complainant.

/Mariia Koval/

Mariia Koval

Sole Panelist

Date: November 22, 2024