

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc. v. Hafiz Nayyar Khurshid

Case No. DCO2022-0090

### **1. The Parties**

The Complainant is Meta Platforms, Inc., United States of America (“United States”), represented by Tucker Ellis, LLP, United States.

The Respondent is Hafiz Nayyar Khurshid, Malaysia.

### **2. The Domain Name and Registrar**

The disputed domain name <facebooklikes.co> is registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 22, 2022. On October 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 25, 2022, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 28, 2022, 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 November 2, 2022. The Respondent sent email communications to the Center on October 29, 2022 and November 2, 2022 requesting to have more information about the matter and indicating that he had not known about this matter before buying the disputed domain name.

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 November 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 30, 2022. The Respondent did not submit any formal response. On December 7, 2022, the Center informed the Parties that it would proceed to panel appointment. On the same date, the Respondent sent an email communication to the Center indicating that it was willing to negotiate with the Complainant.

The Center appointed Edoardo Fano as the sole panelist in this matter on December 20, 2022. 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to the Respondent". The Panel moreover notes the communication from the Respondent which removes any doubt about proper notification. Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a formal response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

#### **4. Factual Background**

The Complainant is Meta Platforms, Inc., a United States company operating the Facebook social network website and mobile application and owning several trademark registrations for FACEBOOK, among which the following:

- United States Trademark Registration No. 3,122,052 for FACEBOOK, registered on July 25, 2006;
- United States Trademark Registration No. 3,881,770 for FACEBOOK, registered on November 23, 2010;
- United States Trademark Registration No. 4,441,540 for FACEBOOK, registered on November 26, 2013;
- International Trademark No. 1075094 for FACEBOOK and design, registered on July 16, 2010;
- European Union Trademark No. 009151192 for FACEBOOK, registered on December 17, 2010;
- European Union Trademark No. 009776618 for FACEBOOK, registered on November 2, 2011.

The Complainant operates on the Internet at the main website "www.facebook.com", as well as with many other generic Top-Level Domains ("gTLDs") and country code Top-Level Domains ("ccTLDs") consisting of the trademark FACEBOOK, including <facebook.org> and <facebook.net>.

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on January 5, 2020, and it resolves to a webpage that reproduces the Complainant's trademark FACEBOOK and a variation of the Complainant's logo and purportedly sells extensions that can be added to a website to generate, *inter alia*, more "likes" for a Facebook page. At the bottom, the webpage features a disclaimer.

## 5. Parties' Contentions

### A. Complainant

The Complainant states that the disputed domain name is confusingly similar to its trademark FACEBOOK, as the disputed domain name wholly incorporates the Complainant's trademark with the addition of the descriptive term "likes".

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name, and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name: the Respondent, in the website at the disputed domain name, is purportedly selling extensions that can be added to a website to generate, *inter alia*, more "likes" for a Facebook page.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's trademark FACEBOOK is distinctive and internationally known. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain name and the Complainant contends that the use of the disputed domain name with the purpose of attracting, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark as to an affiliation between the Respondent and the Complainant, qualifies as bad faith registration and use.

### B. Respondent

The Respondent has made no formal reply to the Complainant's contentions.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn (see, e.g., *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#); *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. [D2003-0109](#); *SSL INTERNATIONAL PLC v. MARK FREEMAN*, WIPO Case No. [D2000-1080](#); *ALTAVISTA COMPANY v. GRANDTOTAL FINANCES LIMITED et al.*, WIPO Case No. [D2000-0848](#); and *Confédération Nationale du Crédit Mutuel, Caisse Fédérale du Crédit Mutuel Nord Europe v. Marketing Total S.A.*, WIPO Case No. [D2007-0288](#)).

In this case, the Respondent submitted three informal email communications, on October 29, November 2 and December 7, 2022, stating the following:

"Hello Yesterday i was received email regarding dispute. Can you tell me more about this case? Thanks" (October 29, 2022);

"So what happend next, baaically i have working too much on yhis domain and invest many dollars. So if you give me any favor it good for me because i was not know aboyt this matter before buying this domain. Thanks in advance" (November 2, 2022);

"I'm not sure what happend with my domain but anyways if this dispute is valid then kindly tell the counter party to contact with me then i will be negotiate with them and send this domain as well. Thanks and Regards" (December 7, 2022).

## 6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (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

The Panel finds that the Complainant is the owner of the trademark FACEBOOK both by registration and acquired reputation and that the disputed domain name is confusingly similar to the trademark FACEBOOK.

Regarding the addition of the term “likes”, the Panel notes that it is now well established that the addition of other terms or letters to a domain name does not prevent a finding of confusing similarity between the disputed domain name and the trademark, where the relevant trademark remains recognizable within the disputed domain name (see, e.g., *Aventis Pharma SA., Aventis Pharma Deutschland GmbH v. Jonathan Valicenti*, WIPO Case No. [D2005-0037](#); *Red Bull GmbH v. Chai Larbthanasub*, WIPO Case No. [D2003-0709](#); *America Online, Inc. v. Dolphin@Heart*, WIPO Case No. [D2000-0713](#)). The addition of the term “likes” does not therefore prevent the disputed domain name from being confusingly similar to the Complainant’s trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8.

It is well accepted that a ccTLD, in this case “.co”, may be ignored when assessing the confusing similarity between a trademark and a domain name. See [WIPO Overview 3.0](#), section 1.11.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain name is confusingly similar to the Complainant’s trademark, pursuant to the Policy, paragraph 4(a)(i).

### B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following circumstances, in particular but without limitation:

- “(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving the three elements of the Policy. However, satisfying the burden of proving a lack of the Respondent’s rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a)(ii) of the Policy is potentially quite difficult, since proving a negative circumstance is always more complicated than establishing a positive one.

As such, it is well accepted that it is sufficient for the Complainant to make a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production on the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain name.

The Respondent, who is not associated with the Complainant in any way, is not commonly known by the disputed domain name and is not making a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name: the Respondent, in the website at the disputed domain name, is purportedly selling extensions that can be added to a website to inappropriately generate for a fee, *inter alia*, more “likes” for a Facebook page.

Moreover, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation, where one does not exist. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides that “for the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that [the respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) that [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) that [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the respondent’s] website or location or of a product or service on [the respondent’s] website or location.

Regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant’s trademark FACEBOOK in the social networks field is clearly established and given the services offered the Panel finds that the Respondent obviously knew of the Complainant and its trademark and deliberately registered the disputed domain name in bad faith, especially because the Respondent, in the website at the disputed domain name, is reproducing the Complainant’s trademark FACEBOOK and a variation of the Complainant’s logo and is purportedly selling extensions that can be added to a website to generate, *inter alia*, more “likes” for a Facebook page, for a fee.

The Panel further notes that the disputed domain name is also used in bad faith since on the relevant website the Respondent is trying to sell similar services for third parties which are competitors of the Complainant (e.g., Twitter and YouTube).

The above suggests to the Panel that the Respondent intentionally registered and is using the disputed domain name in order to create confusion with the Complainant's trademark and attract, for commercial gain, Internet users to its website in accordance with paragraph 4(b)(iv) of the Policy.

Furthermore, the Panel considers that the nature of the disputed domain name, which is almost identical to the Complainant's trademark with the mere addition of the term "likes" related to the Complainant's services, further supports a finding of bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

Finally, considering that the above overall circumstances of the case point to the Respondent's bad faith, the Panel deems that the mere existence of a disclaimer in the website at the disputed domain name cannot cure such bad faith, but instead can be considered as the Respondent's admission that Internet users may be confused. See [WIPO Overview 3.0](#), section 3.7.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain name in bad faith.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

## **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 <facebooklikes.co> be transferred to the Complainant.

*/Edoardo Fano/*

**Edoardo Fano**

Sole Panelist

Date: January 3, 2023