

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc. v. Zemschih Evgheni  
Case No. DMD2023-0001

### **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 Zemschih Evgheni, Republic of Moldova.

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

The disputed domain name <facebook.md> (the “Domain Name”) is registered with Information Technology and Cyber Security Service (the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 26, 2023. On June 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 30, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Unknown Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 4, 2023, 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 7, 2023.

On July 4, 2023, the Center informed the Parties in Romanian and English that the language of the registration agreement for the Domain Name is Romanian. On July 7, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent replied to the Complainant’s request on July 8, 2023, expressing its difficulty with the English language and its wish to settle the dispute. Accordingly, the Center sent a possible settlement email on July 10, 2023. On July 13, 2023, the Complainant requested for the proceedings to be suspended. On July 14, 2023, the Center sent the Notification of Suspension. On August 16, 2023, the Complainant requested an extension of the suspension. On August 17, 2023, the Center notified the extension of suspension.

On September 27, 2023, the Complainant requested for the reinstatement of the proceedings. The Center notified the Reinstatement of Proceeding on September 28, 2023. During the suspension period the Center received further communications from the Parties on July 19, 25, 26, 27, and 31, and August 1, 3, 15, and 18, 2023. On September 29 and October 6, 2023, the Respondent sent further communications expressing again its difficulty with the English language and reiterating its wish to settle the dispute. However, no settlement was reached between the Parties.

The Center verified that the Complaint together with the amendment to the Complaint and 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 in both English and Romanian, and the proceedings commenced on September 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2023. As noted above, the Center received communications from the Respondent on September 29 and October 6, 2023, expressing its willingness to settle the dispute. However, no settlement was reached. The Respondent did not submit any formal response to the Complainant. Accordingly, the Center notified the Commencement of Panel Appointment Process on October 23, 2023.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on October 27, 2023. 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 an American social technology company. It operates, *inter alia*, Facebook – an online social-media and social-networking platform. As of March 31, 2023, Facebook has approximately 2.99 billion monthly active users and 2.04 billion daily active users on average worldwide.

The Complainant is the owner of numerous FACEBOOK trademark registrations, including:

- the United States Trademark Registration FACEBOOK No. 3041791, registered on January 10, 2006;
- the European Union Trade Mark Registration FACEBOOK No. 005585518, registered on May 25, 2011;  
and
- the International Trademark Registration FACEBOOK (figurative) No. 1075094, registered on July 16, 2010.

The Complainant is also the owner of the domain name <facebook.com> incorporating its FACEBOOK trademark.

The Domain Name was registered on August 27, 2012.

On February 8 and February 16, 2023, the Complainant sent emails to the Registrar, requesting the Registrar to forward a cease and desist letter to the Respondent. No response was received.

At the time of submitting the Complaint and as of the date of this Decision, the Domain Name has not resolved to an active website.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant requests the transfer of the Domain Name. According to the Complainant, each of three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Name is identical to the trademark in which the Complainant has rights.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant submits that the Domain Name was registered and is being used in bad faith.

### **B. Respondent**

The Respondent did not submit any formal response to the Complainant.

In several communications sent by the Respondent, it expressed its willingness to settle the present dispute in return for payment of the Respondent's alleged out-of-pocket expenses.

## **6. Discussion and Findings**

### **6.1. Preliminary Matter – Language of the Proceeding**

The language of the Registration Agreement for the Domain Name is Romanian. Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case, and that the proceeding takes place with due expedition (see, e.g., *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#)).

The Complainant has submitted a request that the language of the proceeding be English. The Complainant notes that the Domain Name reproduces the Complainant's FACEBOOK trade mark which is composed of English-language terms. Moreover, the Complainant submits that it is unable to communicate in Romanian. Finally, the Complainant argues that it would be disproportionate to require the Complainant to translate the Complaint and the annexes into Romanian, as it would cause the Complainant to incur substantial additional costs. It would also cause unwarranted delay of the proceedings.

The Respondent alleges that he does know English. Also, the Respondent understands Romanian poorly. The Respondent's native language is Russian. Thus, the Respondent requests to receive documents in Russian.

The Panel notes that Russian language requested by the Respondent neither constitutes the language of the Registration Agreement in the present case, nor it has been requested by the Complainant to be the language of the proceedings. The language of the Registration Agreement for the Domain Name is Romanian. However, the Panel finds that substantial additional expense and delay would likely be incurred

if the Complaint had to be translated into Romanian. Moreover, given the Respondent's own expressed poor understanding of Romanian, the Panel sees no equity in requiring Romanian be the language of the proceeding.

Thus, taking these circumstances into account, the Panel finds that it is appropriate to exercise its discretion and allow the proceeding to be conducted in English.

### **6.1.1. Preliminary Matter – Consent to Transfer**

As expressed above, the Respondent has seemingly consented to the Complainant's requested remedy, though conditioning such transfer on the payment of the Respondent's alleged out-of-pocket expenses.

Further to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.10, many panels will order the requested remedy solely on the basis of a respondent's consent on the record to the transfer sought by a complainant. However, "despite such respondent consent, a panel may in its discretion still find it appropriate to proceed to a substantive decision on the merits". Here, noting the Parties' ultimate inability to settle, the Respondent's request for payment, and the Respondent's apparent disclaimer of its bad faith, the Panel does find a broader interest in proceeding with recording a substantive decision on the merits.

### **6.2. Substantive Matters – Three Elements**

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

The requested remedy may only be granted if the above criteria are met. At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence". See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

#### **A. Identical or Confusingly Similar**

Under the first element, the Complainant must establish that the Domain Name is identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant holds valid FACEBOOK trademark registrations. The Domain Name incorporates this trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to that trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The country code Top-Level domain ("ccTLD") in the Domain Name is viewed as a standard registration requirement and as such is generally disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Name is identical to the Complainant's FACEBOOK trademark. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

Under the second element, the Complainant must prove that the Respondent has no rights or legitimate interests in the Domain Name.

The Respondent may establish a right or legitimate interest in the Domain Name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made 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 prior to the dispute; or
- (ii) that it is commonly known by the Domain Name, even if it has not acquired any trademark rights; or
- (iii) that it is 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.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence on record that the Complainant's FACEBOOK trademark registrations predate the Respondent's registration of the Domain Name. There is no evidence in the case record that the Complainant has licensed or otherwise permitted the Respondent to use the FACEBOOK trademark or to register the Domain Name incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name.

Moreover, it results from the evidence on record that the Respondent does not make use of the Domain Name in connection with a *bona fide* offering of goods or services, nor does it make a legitimate noncommercial or fair use of the Domain Name. On the contrary, at the time of submitting the Complaint and as of the date of this Decision, the Domain Name has resolved to inactive website. In fact, it does not result from the case evidence that the Domain Name has been used in any active way to date.

Furthermore, the composition of the Domain Name, wholly incorporating the FACEBOOK trademark by itself, carries a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant's *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

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

Under the third element, the Complainant must prove that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1 of the [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or

- (ii) circumstances indicating that the domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the FACEBOOK trademark predate the registration of the Domain Name. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration. This finding is supported by the composition of the Domain Name consisting exclusively of the FACEBOOK trademark and the ccTLD. Moreover, it has been proven to the Panel's satisfaction that the Complainant's FACEBOOK trademark is well known and unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of services under this trademark. In sum, the Respondent in all likelihood registered the Domain Name with the expectation of taking advantage of the reputation of the Complainant's FACEBOOK trademark.

Moreover, as of the date of this Decision, as well as at the time of submitting the Complaint, the Domain Name has not resolved to an active website. While the Respondent vaguely referenced "own goals and ideas for" the disputed domain name, no evidence or further information was provided. Considering the overall circumstances of this case, the Panel finds that the Respondent's passive holding of the Domain Name does not prevent a finding of bad faith. As numerous UDRP panels have held, passive holding, under the totality of circumstances of the case, would not prevent a finding of bad faith under the Policy. See section 3.3 of the [WIPO Overview 3.0](#). Here, given the well-known nature of the Complainant's trademark and the implausible good faith use to which the Domain Name may be intrinsically put, the Panel agrees with the above.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under paragraph 4(a)(iii) 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 Domain Name <facebook.md> be transferred to the Complainant.

*/Piotr Nowaczyk/*

**Piotr Nowaczyk**

Sole Panelist

Date: November 10, 2023