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Purchased by	: DEEPALI GUPTA
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: DEEPALI GUPTA
Second Party	: Not Applicable
Stamp Duty Paid By	: DEEPALI GUPTA
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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DEEPALI GUPTA
SOLE ARBITRATOR

IN Registry - National Internet Exchange of India
INDRP Case No: 1642

In the matter of Arbitration Between:

META PLATFORMS INC.

MIKA KHAN

Versus

.....Complainant

.....Respondent

Disputed Domain Name : <FACEBOOK.CO.IN>

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DEEPALI GUPTA
SOLE ARBITRATOR

Appointed by the .IN Registry - National Internet Exchange of India

INDRP Case No: 1642

In the matter of:

META PLATFORMS INC.
1601 Willow Road, Menlo Park
California 94025
United States
Through its authorised Representative:
David Taylor / Jane Seager
Hogan Lovells (Paris) LLP
17, avenue Matignon
75008 Paris
France
Telephone: +33 1 53 67 47 47
Fax: +33 1 53 67 47 48
Email: domaindisputes@hoganlovells.com

.....Complainant

Versus

MIKA KHAN,
Batag Designs
Hyderabad
Hyderabad, 0
United States
Telephone: +91.4056270180
Email: newccp9@hotmail.com

(Registrant)

.....Respondent

Disputed Domain Name : <**FACEBOOK.CO.IN**>

ARBITRATION AWARD

DATED FEBURARY 06, 2023.

1) The Parties:

The Complainant in the present arbitration proceedings is META PLATFORMS INC.
1601 Willow Road, Menlo Park, California, 94025, United States of America.



The Complainant is represented by its Authorized Representative David Taylor / Jane Seager, Hogan Lovells (Paris) LLP, 17, avenue Matingnon, 75008 Paris, France.

The Respondent in the present case is MIKA KHAN, Batag Designs, Hyderabad, Hyderabad, 0 United States, Email- : newccp9@hotmail.com, as per the details available in the 'WHOIS' database by National Internet Exchange of India (NIXI).

2) The Domain Name, Registrar and Registrant:

The disputed domain name is <FACEBOOK.CO.IN>

The Registrar is Endurance Digital Domain Technology LLP

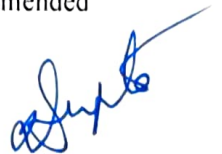
The Registrant is Name-MIKA KHAN, Organization-Batag Designs, City-Hyderabad, Hyderabad, Postal Code -00000, Country- United States, Email- :newccp9@hotmail.com, Telephone: +91.4056270180

3) Procedural History:

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure (the Rules) were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint and appointed Ms. Deepali Gupta as the Sole Arbitrator to arbitrate the dispute between parties in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of impartiality and independence, as required by NIXI.

- The Complaint was produced before the Arbitrator on 9th December, 2022.
- That as the Complaint filed by the Complainant was incomplete hence amended complaint was filed by the complainant.



- Thereafter Notice was issued to the Respondent on 13th December 2022, at his e.mail address 'newccp9@hotmail.com', communicating the appointment of the Arbitrator in the case and outlining that the Complainant had prayed for transfer of the disputed Domain name <[FACEBOOK.CO.IN](https://www.facebook.co.in)> in its favour. The Respondent was called upon to submit their response within ten (10) days of the receipt of the Arbitrators email i.e. on or before 23rd of December 2022.

- The Arbitrator received no response from the respondent within the said timeline and even thereafter. Further the Arbitrator did not receive any delivery failure notification from the Respondents email id, therefore the respondent is deemed to be served with the complaint. In view of no response / acknowledgement / communication from the Respondent, the Complaint is being decided ex-parte and solely based on the materials and evidence submitted by the Complainant and contentions put forth by them.

4) FACTUAL BACKGROUND:

The Complainant herein is Meta Platforms, Inc. (formerly Facebook, Inc.), a United States of America (United States) Corporation. The Complainant, Meta Platforms, Inc., (Meta) is a United States social technology company, and operates, inter alia, Facebook, Instagram, Meta Quest (formerly Oculus), Portal, and WhatsApp. Meta's focus is to bring the metaverse to life and to help people connect, find communities and grow businesses. Founded in 2004, the Complainant's Facebook platform (Facebook) is a leading provider of online social-media and social-networking services. Facebook's mission is to give people the power to build community and bring the world closer together. People use Facebook's services to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them. Access to Facebook quickly expanded and, in 2006 'Facebook' was accessible to anyone in the world with a valid email address. Since its launch in 2004, Facebook rapidly developed considerable renown and goodwill worldwide. Presently, Facebook has approximately 2.93 billion monthly active users worldwide, Facebook's social-networking services are provided in more than 70 languages. In addition, Facebook is available for mobile devices, and in recent years has consistently ranked amongst the top apps in the market, with its FACEBOOK brand ranking 15th in Interbrand's 2021 Best Global Brands report.



In 2010, there were already 15 million users in India when Facebook opened its office in Hyderabad, India and in July 2017 India became the largest audience for Facebook. Today, India still has the highest number of Facebook users.

Reflecting its global reach, Facebook is the owner of numerous domain names consisting of its FACEBOOK trade mark, including but not limited to <facebook.com>, <facebook.org> and <facebook.net> as well as under various country code extensions (ccTLDs), including but not limited to <facebook.com.br> (Brazil), <facebook.cn> (China), <facebook.eu> (European Union), <facebook.in> (India), <facebook.mx> (Mexico) and <facebook.us> (United States).

Given the exclusive online nature of the Complainant's social networking business, the Complainant's domain names consisting of its trade marks are not only the heart of its entire business but also the main way for millions of users to avail themselves of its services.

The Complainant has extensive presence online and is very active on the different social media forums like twitter and youtube etc. The Complainant has a global presence and has registrations for the Trademark 'FACEBOOK' not only in India but globally.

5) Summary of Complainant's contentions:

The Complainant has contended that each of the element in the .IN Domain Name Dispute Resolution Policy are applicable to the present dispute. It has thus been contended that the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; that the Registrant's has no rights or legitimate interests in respect of the domain name that is the subject of complaint; and the Registrant's domain name has been registered or is being used in bad faith. The Complainant has in support of its case has made the following submissions:

- a) The Complainant submits that the Complainant owns numerous trademark registrations in the mark 'FACEBOOK' in many jurisdictions throughout the world, including in India. The Complainant relies on WIPO Overview 3.0 section 1.1.2, and submits that the date of a trademark registration is not considered relevant to the first element test, although it is relevant to the second and third elements. It is



submitted that Facebook owns numerous trademark registrations in the term 'FACEBOOK' in many jurisdictions throughout the world, including, but not limited to, the following:

(i)- *United States Trademark Registration No. 3041791, FACEBOOK, registered on 10 January 2006 (first use in commerce in 2004);*

(ii)- *United States Trademark Registration No. 3122052, FACEBOOK, registered on 25 July 2006 (first use in commerce in 2004);*

(iii)- *Indian Trade mark No. 1622925, FACEBOOK, registered on 9 November 2011; and*

(iv)- *International Registration No. 1075094, FACEBOOK, registered on 16 July 2010.*

- b) It is submitted that the disputed Domain Name incorporates the Complainant's 'FACEBOOK' trademark in its entirety. It is submitted that under the .IN Policy, where a disputed domain name incorporates a trademark in its entirety, it is sufficient to prove that the disputed domain name is either identical or confusingly similar to the mark.
- c) The Complainant submits that the disputed Domain Name is identical to the Complainant's trademark 'FACEBOOK'. It is submitted further by the Complainant that it is well established under the .IN Policy that a ccTLD such as ".co.in" is immaterial when assessing whether a domain name is identical or confusingly similar to a complainant's trade mark. As a result, the Complainant submits that the disputed Domain Name is confusingly similar to its trademark 'FACEBOOK'.
- d) The Complainant further submits that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant submits that the Respondent is not using, and has not demonstrably prepared to use, the Domain Name in connection with a *bona fide* offering of goods or services. It has been submitted that 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 authorisation for the Respondent to make any use of its 'FACEBOOK' trademark in a domain name or otherwise.
- e) It is further submitted by the Complainant that in May 2022 the Complainant became aware that the Disputed Domain Name 'FACEBOOK.CO.IN' redirected to the Continental Cellular Website, which purported to offer for sale smartphones,



tablets, laptops and repair services for the same under the name "Continental Cellular". It has been submitted by Complainant that as per its knowledge, the Respondent launched Continental Cellular in 1988. The Complainant submits that by redirecting Internet users seeking the Complainant and its Facebook platform to its Continental Cellular Website, from which the Respondent is obtaining financial gain, the Respondent has sought to profit from the Complainant's goodwill and reputation. The Complainant in this regard relies on "Facebook, Inc. v te5gfh gtfghbfh", WIPO Case No. D2018.2433, (<facebook.item.com> et al.) holding: "[A] respondent's use of a complainant's mark to redirect users (e.g., to a competing site) would not support a claim to rights or legitimate interests."

- f) It is further submitted that since the Respondent received the cease and desist letter from the Complainant, the disputed Domain Name no longer resolves to the Continental Cellular Website and now resolves to a domain name broker parking page. The Complainant submits that this is a futile attempt by the Respondent to avoid culpability for its previous abusive action, as the resolution of the disputed Domain Name to a broker parking page still does not constitute a bona fide offering of goods or services.
- g) It is further submitted by the Complainant that while prior UDRP panels have held that the aggregating and holding of domain names (for resale) consisting of, inter alia, acronyms and dictionary words can be bona fide and is not per se illegitimate under the UDRP, the term "facebook" is not a dictionary word and rather, is distinctive of the Complainant's platform. As a result, the Complainant infers that the Respondent registered the Domain Name with knowledge of the Complainant, with a view to deriving profit from the resale of the disputed Domain Name to the Complainant or to a competitor of the Complainant. Such use of the disputed Domain Name seeks to capitalize on the goodwill and reputation of the Complainant's FACEBOOK mark and does not amount to a bona fide offering of goods or services. The Complainant in this regard relies on "Meta Platforms, Inc. v. Whois Agent, Domain Protection Services, Inc. / Ahmad Butto", WIPO Case No. D2022-0471 (<fb.news> et al.): "Nor does use of the disputed domain names for websites offering the disputed domain names for sale constitute a *bona fide* offering in the circumstances outlined in section 6E below, whereby the Panel has concluded that the Respondent registered the disputed domain names for the purpose of sale to the Complainant or a competitor."



- h) It is submitted by the Complainant that the Respondent is not commonly known by the disputed Domain Name or a name corresponding to the disputed Domain Name, even if it has not acquired trademark rights. The Complainant submits that the Respondent cannot conceivably assert that it is commonly known by the term FACEBOOK, in accordance with paragraph 6(b) of the .IN Policy. It is submitted further that neither the Respondent's name nor the Respondent's organization bears any resemblance to the disputed Domain Name. There is no evidence to show that it has secured or sought to secure any trademark rights in the term FACEBOOK
- i) The Complainant further submits that the Respondent is not making a legitimate non-commercial or fair use of the Domain Name. It is submitted that the disputed Domain Name redirected to the Continental Cellular Website that purported to offer for sale smartphones, tablets, laptops and repair services for the same under the name "Continental Cellular" and now presently, the Domain Name resolves to a domain name broker parking page. The Complainant has relied on Annexure - 18. The Complainant has further submitted that Respondent cannot assert that it has made or is currently making a legitimate non-commercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or tarnish the Complainant's FACEBOOK mark. By redirecting Internet users seeking the Complainant to the Continental Cellular Website, the Complainant submits that the Respondent's intention was not to use the disputed Domain Name in a fair and non-commercial way but rather to exploit the goodwill and reputation attached to the Complainant's trademark for its own or a third party's financial gain. Such activity is detrimental to the Complainant and its well-known FACEBOOK trademark.
- j) That the Respondent's current use of the disputed Domain Name to resolve to a domain name broker parking page offering the Domain Name for sale with 'price upon request' does not support a finding of legitimate non-commercial or fair use of the Domain Name. Rather, the Respondent's offering for sale of the Domain Name signals its intent to derive commercial gain from the resale of the Domain Name.
- k) It has further been submitted that panels under the UDRP have largely held that where a domain name is identical to a well-known trademark, there is a high risk of implied affiliation with the trademark owner which cannot constitute fair use. It is submitted that the disputed Domain Name incorporates the Complainant's

FACEBOOK trademark in its entirety, which gives rise to a high risk of implied affiliation with the Complainant.

- l) It is thus submitted that for the foregoing reasons, Complainant has established prima facie that the Respondent has no rights or legitimate interests in the disputed Domain Name.
- m) The Complainant submits that the disputed Domain Name was registered or is being used in bad faith. The disputed Domain Name was registered on 11th September 2005, i.e., over 18 months after the Complainant launched in February 2004. By this date, the Complainant had already acquired common law rights in its FACEBOOK mark, owing, inter alia, to its exponential growth since its launch and its significant reputation as a social-media platform for students. That on 2nd September 2005, i.e., nine days before the disputed Domain Name was registered, Facebook announced that it would extend the platform to high school students, which greatly increased the platform's target market and further developed Facebook's already significant reputation and its goodwill in the FACEBOOK mark. The Complainant relies on 'Annexure- 19', depicting a TechCrunch online article dated 8 September 2005. It is thus submitted by the Complainant that it would have been impossible for the Respondent not to have had knowledge of the Complainant and its Facebook platform at the time of registering the disputed Domain Name, particularly given that the Respondent ran a technology retailer company in the United States on the date of registration of the disputed Domain Name. The Complainant relies on Annexure- 15. It is submitted that given the Respondent's knowledge of the Complainant, it is clear that the Respondent registered the disputed Domain Name to target the Complainant and to profit from the Complainant's rights, goodwill and reputation in its FACEBOOK name/ mark.
- n) It is submitted by the Complainant that prior UDRP panels have recognized the strength and renown of the Complainant's mark 'FACEBOOK' registered and common law rights and have ordered the transfer of disputed domain names registered in 2005 or earlier containing the FACEBOOK mark to the Complainant. See e.g., *Facebook Inc. v Privacy Ltd. Disclosed Agent for YOLAPT*, WIPO Case No. D2007-1193, (<face-book.com>, registered on 3 October 2004): "[...] it See e.g., *Facebook Inc. v Privacy Ltd. Disclosed Agent for YOLAPT*, WIPO Case No. D2007-1193, (<face-book.com>, registered on 3 October 2004): "[...] it is difficult to imagine that – eight months after the Complainant's services were first offered



online [in February 2004] – the registration of an almost identical domain name that is not generic by a third party is a mere coincidence. The Complainant's services, by their very nature, became known to the public through the Internet and thus worldwide. Domicile is irrelevant in this regard. [...] As a general rule, a domain name is not registered in bad faith if it was registered before the trademark. Still, an exception must be made to this rule where the respondent registered the domain name with speculative intent in full knowledge of the likely use of the trademark by the complainant, and, more particularly, where the respondent hopes to either benefit from confusion and the diversion of web traffic or by selling the domain name to the trademark holder. [...] the Panel is of the opinion that the Respondent in all likelihood had such speculative intent and thus that the registration of the disputed domain name occurred in bad faith." See *e.g., Facebook, Inc. v Igor Dolgalev*, WIPO Case No. D2012-1008, (<facebook.info>, registered on **25 September 2004**): "Based on the record, the Panel concludes that Respondent had Complainant's FACEBOOK mark in mind when registering the Domain Name. There is ample record evidence that, by September 25, 2004 (the date the Domain Name was registered), Complainant's services had been widely referred to as FACEBOOK."

- o) Furthermore, Complainant submits that panels have previously found in favour of complainant with international rather than Indian trade mark rights at the time of registration of a disputed domain name, meaning that it is not necessary for the prior trade mark rights to be in India; *Akelius Residential Property AB/Roger Akelius v Shashi Shekar / Shashishekar T.S.*, INDRP / 1119 (<akelius.in>), (a copy of the relevant pages of which is provided as Annexure- 20), also *Akelius Residential Property AB/Roger Akelius v Shashi Shekar*, INDRP / 1114 (<akelius.co.in>) relied on.
- p) In addition, the fact that the Respondent registered the disputed Domain Name using incomplete Whois contact information (i.e., the address "Hyderabad, Hyderabad, Hyderabad, 0" is vague and does not appear to exist in the United States), also indicates his bad faith at the time of registration. The Complainant relies on "*Miss Universe L.P., LLLP v. Domainsr*", WIPO Case No. D2010-1643 (<missusasex.com>): "Providing false or incomplete contact information in an attempt to thwart domain name dispute proceedings constitutes bad faith."



- q) The Complainant thus submits that the Respondent registered the Domain Name in bad faith.
- r) It is further submitted by Complainant that the term FACEBOOK is exclusively associated with the Complainant. All search results obtained by typing the term FACEBOOK in Google search engine available at www.google.com and www.google.co.in refer to the Complainant. The Complainant has relied on Annexure- 21.
- s) The Complainant has submitted that the disputed Domain Name currently resolves to a domain name broker parking page that displays a form soliciting offers to purchase the disputed Domain Name. The Complainant submits that such use reflects the Respondent's intention to take advantage of the goodwill and reputation of the Complainant by selling the disputed Domain Name for a profit in excess of its out-of-pocket costs, in bad faith. The Complainant relies on '*Meta Platforms, Inc. and Silvergate Capital Corporation v. Privacy Service Provided by Withheld for Privacy ehf et al*', WIPO Case No. D2022-1690 (<africanovi.com> et al.): "The Panel further notes that the disputed domain names are also being used in bad faith since the Respondent has registered the disputed domain names primarily for the purpose of selling them to the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the disputed domain names, in an attempt to capitalize upon the Complainant's reputation and goodwill."
- t) The Complainant submits that there is no other evidence of the Respondent having made any bona fide use of the disputed Domain Name, and that the Respondent's non-use of the disputed Domain Name in connection with an active website does not prevent a finding of bad faith.
- u) It is further submitted that in light of the composition of the Domain Name itself, the Complainant cannot conceive of any good faith use to which the disputed Domain Name could be put by the Respondent that would not carry with it an inherent risk of confusion. As such, the Complainant submits that the presence of the disputed Domain Name in the hands of the Respondent represents an abusive threat hanging over the head of the Complainant (i.e., an abuse capable of being triggered by the Respondent at any time) and therefore a continuing abusive use.
- v) As a result, the Complainant asserts that the facts submitted clearly demonstrate that the disputed Domain Name was registered and is being used in bad faith by the Respondent.



- w) The Complainant also submits that its claims should not fail under the doctrine of laches. It is submitted that prior UDRP panels have widely recognized that there is no doctrine of laches associated with the UDRP; The Complainant relies on 'Meta Platforms, Inc. v Stefano Grossi', WIPO Case No. D2022-2715 (<facebook-download-app.com> et al.): "Respondent registered the disputed domain names nearly a decade ago and [...] there is no evidence that they have been used. This does not preclude a finding of bad faith registration and use. There is no doctrine of laches associated with the Policy."
- x) It is submitted that adoption of the Disputed Domain Name, that is identical to the Complainants registered trademark infringes the Complainants Rights and proves, beyond reasonable doubt, bad faith adoption by the Respondent.

6) RESPONDENT:

The Respondent did not respond in these proceedings although notice was sent to the Respondent under the INDRP Rules.

7) DISCUSSION AND FINDINGS

Under the INDRP Policy the following three elements are required to be established by the Complainant in order to obtain the relief of transfer of the disputed domain name:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights and
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

Identical or confusingly Similar:

The disputed Domain Name incorporates the Complainant's 'FACEBOOK' mark without addition or alteration. The Complainant has submitted that respondent's domain name incorporates the Complainant's 'FACEBOOK' mark exactly, without addition or alteration.



It is well established that the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identical or confusing similarity. Addition of generic terms to a well known trademark does not prevent a finding of confusing similarity between the disputed domain name and mark. It is a well established principal that when a domain name wholly incorporates a complainant's registered mark, the same is sufficient to establish identity or confusing similarity for purposes of the Policy. It is evident that the disputed domain name "FACEBOOK.CO.IN" incorporates in its entirety the Complainants trademark 'FACEBOOK' and has the term "co.in" appended to it. However, such differences can be ignored for the purpose of determining similarity between the disputed domain name and the Complainant's trademark as it is a generic and technical requirement and is non-distinctive and does not prevent a finding of confusing similarity between the disputed domain name and mark.

The Complainant has submitted evidence of its trademark registrations for the "FACEBOOK" mark in India as also in other Jurisdictions globally and has accordingly established its rights in the mark. The Complainant has also provided evidence of the reputation, goodwill and fame associated with its mark due to its extensive global use. Further in addition to the above, reflecting its global reach, the Complainant is also the owner of numerous domain names consisting of its FACEBOOK trade mark, including but not limited to <facebook.com>, <facebook.org> and <facebook.net> as well as under various country code extensions (ccTLDs), including but not limited to <facebook.com.br> (Brazil), <facebook.cn> (China), <facebook.eu> (European Union), <facebook.in> (India), <facebook.mx> (Mexico) and <facebook.us> (United States). The Complainant has relied on Annexure- 8 depicting copies of the WhoIs records of a selection of these domain names.

It is well established that 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.

The disputed domain name is accordingly found to be identical or confusingly similar to the Complainant's mark. The Complainant has successfully fulfilled the first element under paragraph 4 of the Policy, that the disputed domain name is identical or confusingly similar to a mark in which the Complainant has rights.

Rights and Legitimate Interests:

The second element requires the Complainant to put forward a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Although the onus



of proving that the Respondent lacks rights or legitimate interests in the disputed domain name lies on the Complainant, the same may amount to 'proving in negative' hence may not be possible. Hence the Complainant has to make out a prima facie case that the respondent lacks rights or legitimate interests, whereafter, the burden of proof on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant has argued that the Respondent lacks rights or legitimate interests in the disputed domain name and has submitted that the Registrant does not own any registered rights in any trademarks that comprise part or all of the disputed domain name.

The Complainant has stated that in May 2022 the Complainant became aware that the disputed Domain Name 'FACEBOOK.CO.IN' redirected to the Continental Cellular Website, which purported to offer for sale smartphones, tablets, laptops and repair services for the same under the name "Continental Cellular". That the Respondent launched Continental Cellular in 1988. It is apparent that by redirecting Internet users seeking the Complainant and its Facebook platform to its Continental Cellular Website, the Respondent has sought to profit from the Complainant's goodwill and reputation. It is well settled proposition that respondent's use of a complainant's mark to redirect users (e.g., to a competing site) would not support a claim to rights or legitimate interests.

The Complainant has argued that the disputed Domain Name was registered on 11th September 2005, i.e., over 18 months after the Complainant launched in February 2004. By this date, the Complainant had already acquired common law rights in its 'FACEBOOK' mark, owing, inter alia, to its exponential growth since its launch and its significant reputation as a social-media platform. Given the Respondent's knowledge of the Complainant, it is clear that the Respondent registered the disputed Domain Name to target the Complainant and to profit from the Complainant's rights, goodwill and reputation in its 'FACEBOOK' name/ mark. It has been held in *'Facebook Inc. v Privacy Ltd. Disclosed Agent for YOLAPT'*, WIPO Case No. D2007-1193, : "[...] it is difficult to imagine that – eight months after the Complainant's services were first offered online [in February 2004] – the registration of an almost identical domain name that is not generic by a third party is a mere coincidence. The Complainant's services, by their very nature, became known to the public through the Internet and thus worldwide. Domicile is irrelevant in this regard. [...] As a general rule, a domain name is not registered in bad faith if

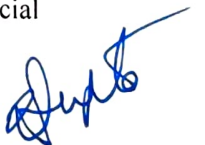


it was registered before the trademark. Still, an exception must be made to this rule where the respondent registered the domain name with speculative intent in full knowledge of the likely use of the trademark by the complainant, and, more particularly, where the respondent hopes to either benefit from confusion and the diversion of web traffic or by selling the domain name to the trademark holder. [...] the Panel is of the opinion that the Respondent in all likelihood had such speculative intent and thus that the registration of the disputed domain name occurred in bad faith.". It has been held in '*Facebook, Inc. v Igor Dolgalev*', WIPO Case No. D2012-1008,: "Based on the record, the Panel concludes that Respondent had Complainant's FACEBOOK mark in mind when registering the Domain Name. There is ample record evidence that, by September 25, 2004 (the date the Domain Name was registered), Complainant's services had been widely referred to as FACEBOOK.".Furthermore, it is not necessary for the prior trademark rights to be in India;

The Complainant has stated that the term FACEBOOK is exclusively associated with the Complainant. The Complainant has argued that due to extensive use of the 'FACEBOOK' mark globally and in India, the mark is distinctive and enjoys substantial goodwill, reputation and fame. It is found that the Complainant has acquired rights in the mark 'FACEBOOK' through use and registration and the Complainant has provided evidence of the mark being distinctive and having a substantial global recognition. In the light of these facts and circumstances, it is found that the respondent's use of the 'FACEBOOK' mark which is distinctive of the Complainant and its products & services, does not constitute legitimate use or fair use of the mark by the Respondent.

The Complainant has further argued that the Respondent has registered the disputed domain name after a considerable time of the Complainant having established its rights in the 'FACEBOOK' mark. It is found that the Complainant has provided evidence of its prior adoption of the 'FACEBOOK' mark. The Complainant has submitted that the use of the mark by the respondent is likely to mislead people and the respondent lacks rights to use the said trademark in the disputed domain name. The Complainant's submissions that the Respondent's use of mark in the disputed domain name is likely to mislead Internet users is plausible.

Use of the said trademark 'FACEBOOK' by the Respondent with the intention of attracting customers is likely to cause confusion and deception to those who encounter the disputed domain name. Internet users are likely to believe that the disputed domain name is in some way connected to the Complainant or is endorsed or authorized by the Complainant. Use of a trademark with the intention to derive benefit from the mark and to make improper commercial



gains by such use is recognized as infringing use under INDRP Policy. The use of the Complainants 'FACEBOOK' mark by the Respondent, is found to be misleading use of the mark, and is accordingly found not qualifying as legitimate use by the Respondent.

The fact that the disputed Domain Name currently resolves to a domain name broker parking page that displays a form soliciting offers to purchase the disputed Domain Name, reflects the Respondent's intention to capitalize upon the Complainant's reputation and goodwill.

The Respondent has not participated in these proceedings. The Complainant has categorically submitted that it has not consented, authorized or permitted the Respondent for use of the disputed domain name.

In the light of the facts and circumstances discussed, it is accordingly found that the Complainant has made out a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. The second element under paragraph 4 of the Policy has been met by the Complainant.

Bad faith

The evidence on record clearly demonstrates the Complainant's prior adoption and extensive use of the 'FACEBOOK' mark. Complainant had clearly acquired common law rights in the term FACEBOOK since February 2004 much before the registration date of the disputed Domain Name. The disputed domain name has been registered on 11th September 2005. The Complainant has argued that neither the Respondent's name nor the Respondent's organization bears any resemblance to the disputed Domain Name. There is no evidence to show that it has secured or sought to secure any trademark rights in the term FACEBOOK. It has been established by evidence adduced on record by the Complainant that it has acquired valuable rights in the mark 'FACEBOOK' not only by prior use but also by having registered trademark's for 'FACEBOOK' in numerous jurisdictions globally.

These facts establish the Complainants prior adoption of the FACEBOOK mark and the evidence filed by the Complainant also establish that it has extensively used the said trademark for a number of years continuously and the mark is recognized internationally and is well known, which has substantial value. The evidence filed by the Complainant clearly establishes the international recognition and reputation associated with the FACEBOOK mark.



Further the evidence placed on record depicts that the Respondent has registered the Disputed Domain Name primarily for the purpose of selling or otherwise transferring the domain name registration for valuable consideration. This only shows the *mala fide* intention of the Respondent to wrongfully gain monetary benefits at the cost of the goodwill and reputation of the Complainant's trademark 'FACEBOOK'.

Such acts are not only prejudicial to the rights of the Complainant but also to the members of trade and public. The activities of the Respondent rise to the level of a bad faith usurpation of the recognition and fame of Complainant's well-known mark 'FACEBOOK' to improperly benefit the Respondent financially and are in violation of applicable laws. These activities demonstrate bad faith registration.

The Respondent has been found to have no rights or legitimate interests in the disputed domain name. It is furthermore observed that the facts circumstances and the evidence indicate that the Respondent has used the FACEBOOK Mark in the disputed domain name to intentionally mislead and attract for commercial gain, internet users to its website by creating a likelihood of confusion with the mark of Complainant and based on the reputation associated with the mark.

There are numerous precedents under the Policy, where it has been held that the registration of a domain name with a well known mark which is likely to create confusion in the minds of Internet users and attempting to use such a domain name to attract Internet traffic based on the reputation associated with the mark is considered bad faith registration and use under the Policy. Similarly in the present case it is found that the use of the 'FACEBOOK' mark by the Respondent is likely to attract customers based on the Complainant's mark and Internet users are likely to be misled by the use of the trademark in the disputed domain name. Further the numerous attempts by the Respondent to offer for sale the Disputed Domain name against valuable consideration speaks for itself.

Further, the fact that the Respondent registered the disputed Domain Name using incomplete WhoIs contact information also indicates his bad faith at the time of registration. It is well established that providing false or incomplete contact information in an attempt to thwart domain name dispute proceedings constitutes bad faith.



For the reasons discussed, the registration of the disputed domain name by the Respondent leads to the conclusion that the domain name in dispute was registered and used by the Respondent in bad faith.

In the light of all that has been discussed, it is found that the Respondent has registered the disputed domain name in bad faith. Accordingly, it is found that the Complainant has established the third element under paragraph 4 of the Policy.

DECISION

In view of the above findings it is ordered that the disputed domain name <FACEBOOK.CO.IN> be transferred to the Complainant.



Deepali Gupta
Sole Arbitrator
Date: 6th February 2023.