

DISPUTE RESOLUTION SERVICE**D00020698****Decision of Independent Expert**

Facebook Inc.

and

Mr Chigozie Ihebom

1. The Parties:

Lead Complainant: Facebook Inc.
1601 Willow Road
Menlo Park
California 94025
United States

Respondent: Mr Chigozie Ihebom
No 10 Bus Stop Nekede Old Road
Owerri
Imo 234084
Nigeria

2. The Domain Name(s):

fb-lottery.co.uk
fbclaims.co.uk
fblottery.co.uk

3. Procedural History:

I can confirm that I am independent of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of such a nature as to call in to question my independence in the eyes of one or both of the parties.

12 October 2018 19:51 Dispute received

15 October 2018 14:46 Complaint validated

15 October 2018 14:56 Notification of complaint sent to parties

01 November 2018 01:30 Response reminder sent

06 November 2018 10:28 No Response Received

06 November 2018 10:28 Notification of no response sent to parties

16 November 2018 01:30 Summary/full fee reminder sent

19 November 2018 14:07 Expert decision payment received

4. Factual Background

This summary of the factual background to this dispute is based upon the Complainant's submissions only. No response has been received and the Complainant's assertions have thus gone unchallenged.

The Complainant is Facebook Inc., a social media company based in the United States.

Save for the registration details set out above, nothing further is disclosed about the Respondent.

The Domain Name first listed above resolves to a page purporting to describe a lottery operated by the Complainant. The second listed Name resolves to a holding page and the third does not resolve.

5. Parties' Contentions

As no Response was received, what follows is a summary of the Complainant's submissions only.

Complainant' Rights

The Complainant has submitted extensive evidence of its rights in the marks FACEBOOK and FB. It holds trademark registrations for these names in many jurisdictions. In addition the Complainant also submits evidence in support of its claim to have built substantial goodwill in both marks giving rise to rights at common law.

Similarity of the Complainant's mark to the domain names

The Complainant argues that the Domain Names incorporate in full a name in which it has registered and unregistered rights, combined with the terms "lottery" and "claims". The Complainant's view is that these terms do not materially differentiate the Domain Names from its mark, a position which is supported by its success in other dispute resolution fora where third party registrants have attempted to combine generic terms with this mark. The Complainant therefore claims rights in a name which is identical or similar to the Domain Names, sufficient to bring this complaint under the DRS Policy.

Abusive Registration

The Complainant asserts that the Respondent's registrations of the Domain Names are abusive registrations as defined in the DRS Policy.

The Complainant submits that the Domain Names were both registered and have been used in a manner which has taken unfair advantage of and has been unfairly detrimental to the Complainant's Rights. The Complainant refers to Paragraph 5 of the DRS Policy which contains a non-exhaustive list of circumstances likely to lead to a finding of abusive registration.

The Complainant maintains that the Respondent registered the Domain Names in full knowledge of the Complainant and its rights, with the intention of unfairly taking advantage of the Complainant's notoriety. The Complainant asserts that

its FB trade mark is highly distinctive and that it is inconceivable that the Respondent did not have knowledge of the Complainant's FB trade mark at the time of Domain Names' registration.

The Complainant argues that the Respondent's subsequent use of the Domain Names to point to a website displaying the Complainant's protected marks in connection with a lottery purportedly run by Facebook or in an email address connected to this fake lottery leaves no doubt as to the Respondent's knowledge of the Complainant's rights at the time of registration.

Abusive use

The Complainant maintains that the Respondent has intentionally used the Domain Names in a way which has confused or is likely to confuse people or businesses into believing that the Domain Names are registered to, operated or authorised by, or otherwise connected with the Complainant in accordance with paragraph 5.1.2 of the DRS Policy. In support of this argument, the Complainant reports that the Domain Name <fb-lottery.co.uk> is pointing to a website displaying the Complainant's FACEBOOK trade mark along with corporate data relating to the Complainant with no disclaimer. Similarly, although the Domain Name <fb-lottery.co.uk> is no longer resolving, it was previously pointing to a very similar website. The Domain Name <fbclaims.co.uk> resolves to a parking page containing sponsored links and the email address "facebookreport@fbclaims.co.uk" appears on the website to which the Domain Name <fb-lottery.co.uk> is pointing.

The Respondent's actions in registering the Domain Names, says the Complainant, fall within the contemplation of paragraph 5.1.3 of the DRS Policy in that the Respondent is engaged in a pattern of registrations where the Respondent is the registrant of domain names which correspond to well known names or trademarks in which the Respondent has no apparent rights, and the Domain Name is part of that pattern. The Complainant points out that the Respondent has registered other domain names that include the Complainant's FACEBOOK and FB trade marks in conjunction with the generic terms "lotto", "lottery", "lottery online" and "lottonline" under several generic or specific country extensions, and one of these domain names currently points to a website similar to the one associated with the Domain Name <fb-lottery.co.uk>. Other registrations incorporating third party trade marks include <nattwestbank.co.uk>, <santandersbank.co.uk>, <walmartlottery.co.uk>, <wellsfargouk.co.uk>, <zenithbankltd.co.uk> and <zenithbankukltd.co.uk>.

6. Discussions and Findings

No response was received to this complaint from the registrant of the Domain Names and that assertions of the Complainant are therefore not challenged by the other Party to this dispute. This does not relieve the Complainant of the burden of proving its case within the terms of the DRS Policy, Paragraph 2.1 of which requires the Complainant to demonstrate on the balance of probabilities that:

"(i) The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

(ii) The Domain Name, in the hands of the Respondent, is an Abusive Registration."

The Complainant's Rights

Paragraph 1 of the DRS Policy defines "Rights" as:

"rights enforceable by the Complainant, whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning."

The Complainant asserts Rights in the Domain Names based on its registered and trade mark rights in the terms FACEBOOK and FB in many jurisdictions throughout the world, including the United Kingdom. The Complainant also relies upon the global notoriety of its marks and trading identity which give rise to commercial goodwill and related unregistered rights at common law.

The Domain Names repeat the Complainant's marks in full, in combination with the terms "lottery" in two cases and "claims" in the third. I concur with the Complainant's view that these additional terms are generic and do not materially differentiate the Domain Names from the Complainant's marks.

The Complainant has submitted extensive evidence in support of these claims. I have no difficulty in accepting this evidence and finding that the Complainant has the necessary rights under the DRS Policy.

Abusive Registration

Paragraph 1 of the DRS Policy provides that "Abusive Registration means a Domain Name which either:

(i) was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights;
or

(ii) is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights".

The Complainant has submitted argument and supporting evidence in respect of both of the grounds in Paragraph 1 of the DRS Policy quoted above. Given the notoriety of the Complainant's mark at the time of registration of the Domain Names there can be little doubt that the Respondent was aware of the Complainant and alive to the fact that such registrations would be detrimental to its rights. The Respondent's behaviour thus falls within the definition of Abusive Registration in paragraph 1.i above.

When discussing the Respondent's use of the Domain Names, the Complainant sets its case in the wider context of well-documented online scams directed at the public, which make improper use of many globally recognised brands. I have not referred to these broader matters in my summary of the Complainant's submissions above as they stray beyond the scope of the DRS Policy and it is not necessary in any event to deal with them in the light of the evidence before me. The Complainant's evidence strongly supports a finding in its favour within the narrower confines of the DRS Policy. From this evidence it is clear that where the Domain Names point or have pointed towards websites, the content of these sites is, at the very least, misleading and prejudicial to the Complainant's rights. It is in principle possible that a respondent could show, with credible evidence, that the initials FB were being used descriptively to denote something or someone other than the Complainant, but in the present dispute the evidence is unequivocal: the Complainant's protected marks are used with a clear intention to deceive, and images of members of the Complainant's senior management and genuine mail addresses of Complainant's offices are included.

Having found in favour of the Complainant on the grounds set out above, it is not necessary to consider the additional allegations against the Respondent referred to in the Complaint. For completeness I also confirm that I have considered the provisions of paragraph 8 of the DRS Policy, setting out a non-exhaustive list of circumstances which may show that a registration is not abusive. These relate to the Respondent's prior knowledge, or lack of the same, of the Complainant's cause for complaint and the possibility of the Respondent making fair use of the Complainant's marks. On the evidence before me and the arguments presented by the Complainant, I take the view that none of the provisions of paragraph 8 of the DRS Policy can assist the Respondent.

7. Decision

I find that the Complainant has rights in marks identical or similar to the Domain Names and that these Domain Names are abusive registrations in the Respondent's hands. I direct that the Domain Names be transferred to the Complainant.

Signed

Dated 12 December, 2018