

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. On behalf of Instagram.net owner, Whois Privacy Service /
Geric Eene
Case No. D2022-0455

1. The Parties

Complainant is Instagram, LLC, United States of America (“United States” or “U.S.”), represented by Tucker Ellis, LLP, United States.

Respondent is On behalf of Instagram.net owner, Whois Privacy Service, United States / Geric Eene, United States.

2. The Domain Name and Registrar

The disputed domain name <Instagram.net> (the “Disputed Domain Name”) is registered with Amazon Registrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 10, 2022. On February 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 10, 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, and contact information in the Complaint. The Center sent an email communication to Complainant on February 11, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 16, 2022.

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 Respondent of the Complaint, and the proceedings commenced on February 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 9, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 10, 2022.

The Center appointed Richard W. Page as the sole panelist in this matter on March 14, 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.

4. Factual Background

Complainant operates the Instagram social networking service and mobile application. Complainant owns the exclusive rights to the INSTAGRAM trademarks and service marks (hereinafter the “INSTAGRAM Mark”), which it has used since 2010.

Instagram enables its users to create their own personal profiles, post photos and videos, and connect with each other on their mobile devices.

Instagram has more than five hundred million daily active accounts and more than one billion monthly active users from all over the world. Screen captures from Complainant’s main website, available at the domain name <instagram.com>, and screen captures from Complainant’s mobile application, taken from the Apple app Store and the Google Play stores confirm these activity levels. Complainant’s official “www.instagram.com” website is currently ranked as the twenty-first most visited website in the world (according to the information company Alexa) and the second most downloaded app globally (according to Forbes magazine).

Approximately 89 percent of Instagram users are outside of the United States. Instagram provides translation support for over 35 languages as part of its social networking services and mobile application. In recent years, the Instagram mobile application has consistently ranked among the top “apps” in the market.

In addition to the <instagram.com> domain name, Complainant owns and operates numerous other domain names consisting of the INSTAGRAM Mark in combination with various generic and country code Top-Level Domains, including <instagram.net> and <instagram.org>.

In addition to its extensive common law rights in the INSTAGRAM Mark, Complainant owns numerous registrations protecting the INSTAGRAM Mark in the United States, the European Union, and around the world. Complainant’s registrations include, without limitation:

- United States Registration No. 4,146,057 for INSTAGRAM, registered on May 22, 2012; and
- United States Registration No. 4,170,675 for INSTAGRAM, registered on July 10, 2012.

The Disputed Domain Name was registered on September 3, 2021, and does not resolve to an active website.

5. Parties’ Contentions

A. Complainant

Complainant contends that the Disputed Domain Name is confusingly similar to the INSTAGRAM Mark in which Complainant owns rights, pursuant to paragraph 4(a)(i) of the Policy.

Complainant further contends that it owns numerous trademark registrations worldwide and that its U.S. registrations listed above are incontestable pursuant to the provisions of 15 U.S. Code §1065.

Complainant further contends that it has made, and continues to make, a substantial investment of time, effort, and expense in the promotion of its good and services, and in the INSTAGRAM Mark. As a result of

Complainant's efforts and use, the INSTAGRAM Mark is inextricably linked with the products and services offered by Complainant. The INSTAGRAM Mark ranked 19th in Interbrand's current Best Global Brands report. The INSTAGRAM Mark is unquestionably recognized around the world as signifying high-quality, authentic goods and services provided by Complainant.

Complainant further contends that the Disputed Domain Name is a deceptive misspelling of the INSTAGRAM Mark, and hence is confusingly similar to the INSTAGRAM Mark. The Disputed Domain Name consists of the entire INSTAGRAM Mark merely replacing the upper case letter "I" in the INSTAGRAM Mark with the lower case letter "i", and replacing the letter "m" with the letters "r" and "n", which closely resemble the letter "m". Such common misspellings and typographical variations have consistently been found to satisfy the confusingly similar prong of paragraph 4(a)(i) of the Policy. Moreover, the addition of a generic Top-Level Domain ("gTLD"), such as ".net", has no distinguishing value in this analysis.

Complainant asserts that Respondent has no rights or legitimate interests in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

Complainant further asserts that Respondent is not affiliated with or authorized by Complainant to use the INSTAGRAM Mark, but that Respondent has registered the Disputed Domain Name which is confusingly similar to the INSTAGRAM Mark and is passively holding the Disputed Domain Name. Complainant further asserts that Respondent is clearly engaged in cybersquatting in violation of the Policy and that the Disputed Domain Name should be transferred to Complainant.

Complainant further asserts that in, neither in the Whois database for domain names nor in the corresponding website to which the Disputed Domain Name resolves, is Respondent identified by the Disputed Domain Name.

Complainant further asserts that Respondent is making no *bona fide* or legitimate use of the Disputed Domain Name by passive holding. In addition, the INSTAGRAM Mark is so famous that it is inconceivable that Respondent registered the Disputed Domain Name without knowing of Complainant's rights.

Complainant alleges that the Disputed Domain Name was registered and is being used in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Complainant further alleges that Respondent is engaged in passive holding of the Disputed Domain Name, has actual and constructive knowledge of Complainant's rights, is intentionally cybersquatting, and has no conceivable good faith reason to register and use the Disputed Domain Name.

Complainant further alleges that the Disputed Domain Name has been listed on one or more blacklists indicating previous use in connection with spam, malware, or other domain name abuse.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the INSTAGRAM Mark in which Complainant has rights; and
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Complainant contends that it has numerous registrations for the INSTAGRAM Mark and provides a sampling of the registrations in the United States, European Union, and internationally.

As provided in section 1.2.1 of the [WIPO Overview 3.0](#), Complainant's registration of INSTAGRAM Mark is *prima facie* evidence of Complainant having enforceable rights in the INSTAGRAM Mark.

Respondent has not contested these contentions and the Panel finds that for purposes of this proceeding Complainant has enforceable trademark rights in the INSTAGRAM Mark.

Complainant further contends that the Disputed Domain Name is a deceptive misspelling of the INSTAGRAM Mark, and hence is confusingly similar to the INSTAGRAM Mark. The Disputed Domain Name consists of the entire INSTAGRAM Mark merely replacing the upper case letter "I" in the mark with the lower case letter "l", and replacing the letter "m" with the letters "r" and "n", which closely resemble the letter "m". Moreover, the addition of a gTLD, such as ".net", may be disregarded in this analysis.

Section 1.7 of the [WIPO Overview 3.0](#) says that inclusion of an entire trademark in a domain name will be considered confusingly similar. Section 1.9 of the [WIPO Overview 3.0](#) instructs that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by UDRP panels to be confusingly similar to the relevant mark for purposes of the first element. Also, section 1.11.1 of the [WIPO Overview 3.0](#) instructs that gTLDs such as ".net" may be disregarded for purposes of assessing confusing similarity.

The Panel finds that the entire INSTAGRAM Mark is sufficiently recognizable in the Disputed Domain Name, that the other letters in the Disputed Domain Name do not prevent such a finding, and that the gTLD ".net" is not relevant.

Therefore, Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant asserts that Respondent has no rights or legitimate interest in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

Section 2.1 of the [WIPO Overview 3.0](#) states that once Complainant makes a *prima facie* case in respect of the lack of rights or legitimate interests of Respondent, Respondent carries the burden of demonstrating it has rights or legitimate interests in the Disputed Domain Name. Where Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or a legitimate interest in the Disputed Domain Name:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a

bona fide offering of goods or services; or

(ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain Name, even if you have acquired no trademark or service mark rights; or

(iii) you [Respondent] are making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the INSTAGRAM Mark.

Complainant further asserts that Respondent is not affiliated with or authorized by Complainant to use the INSTAGRAM Mark, but has registered the Disputed Domain Name which is confusingly similar to the INSTAGRAM Mark and is passively holding the Disputed Domain Name. Complainant further asserts that Respondent is clearly engaged in cybersquatting in violation of the Policy and that the Disputed Domain Name should be transferred to Complainant.

Complainant further asserts that neither in the Whois database for domain names nor in the corresponding website to which the Disputed Domain Name resolves, is Respondent identified by the Disputed Domain Name.

Complainant further asserts that Respondent is making no *bona fide* or legitimate use of the Disputed Domain Name by passive holding. In addition, the INSTAGRAM Mark is so famous that it is inconceivable that Respondent registered the Disputed Domain Name without knowing of Complainant's rights.

The Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests in the Disputed Domain Name and that Respondent has not countered the assertions of Complainant.

Therefore, the Panel finds that Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Complainant alleges that Respondent registered and is using the Disputed Domain Name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of domain names:

(i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to Complainant who is the owner of the INSTAGRAM Mark to a competitor of Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Name; or

(ii) you [Respondent] have registered the Disputed Domain Name in order to prevent the owner of the INSTAGRAM Mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you [Respondent] have registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Disputed Domain Name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the INSTAGRAM Mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product.

In addition to these criteria, Complainant can show other indications of bad faith registration and use of the Disputed Domain Name. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

Complainant has alleged that Respondent is typosquatting. See section 3.2.1 of the [WIPO Overview 3.0](#).

In addition, Complainant has alleged that Respondent is engaged in passive holding of the Disputed Domain Name. Complainant has alleged that there is no conceivable good faith use to which Respondent can point in registering the Disputed Domain Name. Further, the Panel notes the distinctiveness and wide reputation of Complainant's INSTAGRAM Mark, the failure of Respondent to submit a response or provide any evidence of actual or contemplated good faith use, and Respondent's use of a privacy service. See section 3.3 of the [WIPO Overview 3.0](#).

In addition, Complainant has alleged that Respondent had actual and constructive knowledge of Complainant's rights in the INSTAGRAM Mark when Respondent registered the Disputed Domain Name. See section 3.2.2 of the [WIPO Overview 3.0](#).

The Panel finds that the alleged evidence of bad faith registration and use of the Disputed Domain Name is present in this record and that Complainant has satisfied the requirements of 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 Disputed Domain Name <Instagrarn.net> be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: March 22, 2022