

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Huzaifa Dhapai
Case No. D2023-1448

1. The Parties

The Complainant is Instagram, LLC, United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is Huzaifa Dhapai, India.

2. The Domain Name and Registrar

The disputed domain name <gbinsta.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2023. On April 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 4, 2023, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 6, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On April 7, 2023, the Respondent sent an informal communication. The Complainant filed an amended Complaint on April 8, 2023. On April 11, 2023, the Complainant informed the Center that it did not wish to settle.

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 April 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2023. From April 14, 2023 to April 17, 2023, the Respondent sent informal communications. The Respondent did not submit any formal response. Accordingly, the Center notified the Parties that it will proceed to Panel Appointment on May 4, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on May 9, 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 operates an online photo- and video-sharing social-networking application. The Instagram application was launched in 2010, it was acquired by Facebook, Inc. (now Meta Platforms, Inc.) in 2012, and today it is one of the world's fastest growing photo- and video-sharing and editing software and online social network, with more than 2 billion monthly active accounts worldwide.

The Complainant is the exclusive owner of several registered trademarks consisting of or including INSTAGRAM, and INSTA including:

- International trademark registration No. 1129314 for INSTAGRAM, registered on March 15, 2012;
- European Union Trade Mark registration No. 14493886 for INSTAGRAM, registered on December 24, 2015;
- United States trademark registration No. 5061916 for INSTA, registered on October 18, 2016.

The disputed domain name was registered on November 24, 2017 and does not currently resolve to an active website. According to un rebutted evidence in the Complaint, it resolved to a website that promoted and offered for download a modified version of the Complainant's Instagram application. It displayed the Complainant's figurative and verbal trademark as a favicon in the URL, respectively on the webpage at the disputed domain name. Also, at the bottom of the page a small disclaimer was displayed, stating that: "[t]his website is not affiliated with Facebook".

5. Parties' Contentions

A. Complainant

The Complainant argues that its INSTA trademark or the dominant part of its INSTAGRAM trademark is immediately recognizable in the disputed domain name, and that the addition of two letters "gb" to the Complainant's trademarks does not prevent a finding of confusing similarity.

With respect to the second element, the Complainant argues that the Respondent is not a licensee of the Complainant, that the Respondent is not affiliated with the Complainant in any way and that the Complainant has not granted any authorization for the Respondent to make use of its INSTAGRAM, or INSTA trademarks, in a domain name or otherwise. As per the Complainant, the Respondent is making unauthorized use of the Complainant's trademarks to promote a third party modified version of Instagram and fails to accurately and prominently disclose the relationship with the Complainant by simply stating "[t]his website is not affiliated with Facebook". Moreover, the website at the disputed domain name makes prominent use of the Complainant's figurative and verbal trademarks, for the purpose of promoting the modified version of Instagram. The Complainant further submits that the modified Instagram app promoted via the disputed domain name may be used to illegitimately harvest personal data (for example, by downloading media files from Instagram) or to steal Instagram users' account credentials (e.g., by logging onto this modified app), for phishing or for other unauthorized or illegal activities, which would not only put Instagram users' security at risk but also violate the Complainant's Terms of Use. There is no evidence to suggest that the Respondent is commonly known by the disputed domain name.

As regards the third element, the Complainant contends that its trademarks are inherently distinctive and well-known throughout the world in connection with its online photo-sharing social network. The Respondent could not credibly argue that it did not have knowledge of the Complainant or its INSTAGRAM trademark when registering the disputed domain name. The Respondent's intent to target the Complainant when

registering the disputed domain name may be inferred from the content of the website to which the disputed domain name resolves, which makes explicit reference to “Instagram” and promotes a modified Instagram application. Moreover, the Respondent’s prior registration of another domain name incorporating the Complainant’s distinctive INSTAGRAM trademark (*i.e.*, <oginstagram.com>) leaves no doubt as to his intent to target the Complainant. The Respondent’s use of a privacy service strongly suggests an attempt to shield illegitimate conduct from a UDRP proceeding and therefore constitutes additional evidence of bad faith at the time of registration of the disputed domain name. Given the composition of the disputed domain name and noting the nature of the Respondent’s website, which makes explicit reference to the Complainant’s distinctive verbal and figurative trademarks and displays sponsored or pay-per-click (“PPC”) advertising, Internet users may be misled into believing that the website at the disputed domain name, along with the promoted modified Instagram application, are affiliated with or somehow otherwise endorsed by the Complainant. The modified Instagram application promoted via the disputed domain name may be used to harvest data or to steal Instagram users’ account credentials, for phishing or for other unauthorized or illegal activities. Such use places the security of Instagram users at risk and violates the Complainant’s policies.

B. Respondent

The Respondent did not formally reply to the Complainant’s contentions. In its initial informal communication, the Respondent inquired what the Complaint is about. After the Notification of Complaint and Commencement of Administrative Proceeding email, the Respondent sent informal communications confirming he had shut down the website at the disputed domain name and asking assistance to cancel the disputed domain name.

6. Discussion and Findings

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

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

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant must establish that it has a trademark or service mark and that the disputed domain name is identical or confusingly similar to that trademark or service mark.

Given the evidence put forward by the Complainant, the Panel is satisfied that it proved it has rights over the INSTA and INSTAGRAM trademarks.

As regards the question of identity or confusing similarity for the purpose of the Policy, it requires a comparison of the disputed domain name to the trademarks in which the Complainant holds rights. The trademark INSTA is reproduced in its entirety in the disputed domain name. The addition of the letters “gb” does not prevent a finding of confusing similarity with the Complainant’s trademark, which is recognizable in the disputed domain name. The fact that a domain name wholly incorporates a complainant’s trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such marks. The addition of an additional term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See section 1.8 of the [WIPO Overview 3.0](#).

It is well accepted that a generic Top-Level Domain (“gTLD”), such as “.com”, is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark.

This Panel concludes that the disputed domain name is confusingly similar to the Complainant’s trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case the Complainant claims that the Respondent has no rights or legitimate interests in the disputed domain name and argues that the Respondent is not a licensee of the Complainant, that the Respondent is not affiliated with the Complainant in any way, that the Complainant has not granted any authorization for the Respondent to make use of its trademarks, that the Respondent is not known by the disputed domain name, and is not carrying out a *bona fide* use of the disputed domain name. The Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not reasonably explained why and for what purposes it has registered the disputed domain name. It has not submitted any contrary evidence to the Complainant’s allegations. In its informal communications, the Respondent failed to address the allegation of the Complainant regarding the unauthorized use of the disputed domain name. Rather, it had closed the website at the disputed domain name and inquired about cancelling it. In the Panel’s view, these statements mean that the Respondent accepts that the Complainant is right to object to the disputed domain name (and its particular use).

The use of the disputed domain name in connection to a website that promoted and offered for download a modified version of the Complainant’s Instagram application shows that the Respondent targets the Complainant to exploit its popularity to attract Internet users to the Respondent’s website and to offer them its services likely for commercial gain or to somehow benefit the Respondent. The Panel therefore does not regard this conduct of the Respondent as a legitimate activity that may give rise to rights or legitimate interests of the Respondent in the disputed domain name under the Policy.

Furthermore, the nature of the disputed domain name, that includes the Complainant’s well-established trademark, together with its content carries a risk of Internet user confusion and cannot constitute a fair use.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

To fulfil the third requirement of the Policy, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

The disputed domain name was registered many years after the Complainant has obtained registration of its INSTAGRAM and INSTA trademarks. The Respondent has not denied knowledge of the Complainant and its trademarks. The disputed domain name is confusingly similar with the Complainant’s trademarks. Moreover, the website at the disputed domain name promoted and offered for download a modified version of the Complainant’s Instagram application, and displayed the trademarks of the Complainant. Under these circumstances it is obvious that the Respondent was aware of the Complainant’s trademarks at the registration of the disputed domain name and targeted those trademarks. The Panel finds that the Respondent registered the disputed domain name in bad faith.

The website at the disputed domain name offered for download a modified version of the Complainant's Instagram application, and displayed the trademarks of the Complainant. In addition, it used as a favicon the Complainant's figurative trademark. The Panel finds that with such use, the Respondent intentionally created a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website and the services offered therein, in bad faith, within the meaning of paragraph 4(b)(iv) of the Policy.

Furthermore, the Respondent availed of a privacy shield service to protect his identity. While the use of a privacy shield is not necessarily objectionable in itself, in the present case it contributes to the accumulation of elements pointing to bad faith registration and use. Also, the Respondent never replied to the cease-and-desist letter from the Complainant.

Where the overall circumstances of a case point to the respondent's bad faith, and also given the renown of the Complainant's trademarks and the implausibility of any good-faith use by the Respondent of the disputed domain name as per paragraph 4(b) of the Policy, the mere presence of a disclaimer is not sufficient to cure bad faith (see section 3.7 of [WIPO Overview 3.0](#)). Rather, the disclaimer included can be considered as an admission by the Respondent that users may be confused as a result of the disputed domain name and the content of the website.

The fact that currently the disputed domain name does not resolve does not preclude a finding of bad faith in the circumstances of the case.

In these circumstances, the Panel that the Complainant has also satisfied the requirement 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 <gbinsta.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: May 23, 2023