

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Domains By Proxy, LLC / Masud Rana, D-limit Ltd
Case No. D2022-0250

1. The Parties

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

The Respondent is Domains By Proxy, LLC / Masud Rana, D-limit Ltd, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <instafaster.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 25, 2022. On January 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 27, 2022, the Registrar transmitted by email to the Center its verification response:

- (a) confirming it is the Registrar for the disputed domain name;
- (b) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint; and
- (c) confirming that the language of the registration agreement is English.

The Center sent an email communication to the Complainant on January 28, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.

On January 30, 2022, the Center received two emails from the email account identified by the Registrar as the email address of the registrant of the disputed domain name. On January 31, 2022, the Center replied to the emails from the Respondent confirming it was verifying whether the Complaint satisfied the formal requirements of the Policy and directing the Respondent to the online guidelines for preparing a Response.

The Complainant filed an amended Complaint on February 3, 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 the Respondent of the Complaint, and the proceedings commenced on February 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Commencement of the Panel Appointment Process on March 1, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on March 7, 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

The Complainant is the very well-known operator of the online photo- and video-sharing social networking application “Instagram”.

The Complainant was founded in 2010 and commenced providing its online service then. In 2012, the Complainant was acquired by Meta Platforms Inc. (then known as Facebook Inc.). The main channel through which it provides its services is the website at <Instagram.com>. At the time this Complaint was being prepared, the Complainant claims to have over one billion user accounts worldwide. According to data collected by data analytics company Alexa, this website is the 24th most visited website in the world. There are also numerous country-specific domain names based on “Instagram”.

Its services are also available through mobile apps on both the Apple and Android systems. Its iOS app being awarded “App of the Year” in 2011 by Apple Inc. According to data collected by data analytics company App Annie, the iOS app is the third most downloaded app on the App Store.

The Complainant has social media accounts under “Instagram” on its own Instagram services as well as Facebook, Twitter, and LinkedIn. The Complainant’s Facebook page has over 60 million “likes”. Its Twitter account has over 34 million followers.

The word “Insta” has been recognized in online dictionaries as a short hand reference to the Complainant including the Cambridge, Collins, and Urban dictionaries. Numerous press articles, media reports and other, third party documentation use “Insta” as a short hand reference to the Complainant.

Amongst other things, the Complainant owns registered trademarks for INSTAGRAM, including:

(a) United States Registered Trademark No. 4,146,057 in International Class 9 which was registered on May 22, 2012;

(b) European Union Trademark No. 014493886 in International Classes 25, 35, 38, 41, and 45 which was registered on December 24, 2015 (with effect from August 20, 2015); and

(c) International Registration No 1129314 in International Classes 9 and 42 which was registered on March 15, 2012 designating Australia, Czech Republic, the European Union, Israel, Japan, Republic of Korea, Norway, Singapore, and Turkey.

And the Complainant owns registered trademarks for INSTA, including:

(a) United States Registered Trademark No. 5,061,916 in International Class 9 which was registered on October 18, 2016; and

(b) European Union Trademark No. 014810535 in International Class 9 which was registered on May 23, 2018 (with effect from November 19, 2015).

According to the Whois record, the disputed domain name was created on February 14, 2016. In September 2017, when the Complainant's lawyers sent a cease and desist letter to the then registrant, the disputed domain name was held by Khaza Mohammad Shehabuddin. It appears that some point later the disputed domain name was transferred into the name of the Respondent. The nature of the business being conducted from the disputed domain name does not appear to have changed.

The disputed domain name resolves to a website offering social media marketing services (SMM services). As described on the website, SMM services enable customers to "buy" cheap followers and likes and various social media platforms.

Before the Complaint was filed the social media platforms for which followers, likes and views could be "bought" included the Instagram platform.

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. In addition, email correspondence was received by the Center from the email account confirmed by the Registrar as the email address for the registrant of the disputed domain name. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

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

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the registered trademarks INSTAGRAM and INSTA. The Panel accepts have regard to the extent of use of both trademarks that they are both very well-known.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the

geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g., WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7. The date the Complainant's trademarks were registered is also not usually relevant at this stage of the inquiry. As with the other matters already mentioned, however, it may also be a relevant consideration under the other requirements. See e.g., [WIPO Overview 3.0](#), section 1.1.3.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain (gTLD) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" gTLD, the disputed domain name consists of the Complainant's registered trademark INSTA and the term "faster". As this requirement under the Policy is essentially a standing requirement, the addition of this term does not preclude a finding of confusing similarity. See e.g., [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

As "Insta" is also a well-known and commonly used abbreviation for INSTAGRAM, the Panel considers the disputed domain name can also be regarded as confusingly similar to the INSTAGRAM trademark.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] 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) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is 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 trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it in any way.

The disputed domain name is not derived from the Respondent's name, nor of the Respondent's apparent predecessor, Mr Shehabuddin. There is no suggestion of some other name by which the Respondent or Mr. Shehabuddin is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

As noted above, the disputed domain name is being used to provide SMM services. The Complainant points out that the terms of use of its service include prohibitions against:

- (a) impersonating others or providing inaccurate information;
- (b) doing anything unlawful, misleading or fraudulent or for an illegal or unauthorised purpose;
- (c) interfering with or impairing the intended operation of the Instagram service; or
- (d) attempting to create accounts or access or collect information in unauthorized ways, including creating accounts or collecting information in an automated way without Instagram's express permission

In addition, the Complainant contends that users of the Complainant's service are also bound by the Facebook Developer Policies which in clause 3 "Encourage proper use" include a prohibition in participating "in any program that promotes or facilitates the purchase, sale, or exchange of 'Likes', 'Shares', 'Followers', 'Comments', 'Accounts', 'Pages', 'Profiles', 'Groups', or any of our products, features, or functionalities."

The purchase of SMM services of the kind being offered from the Respondent's website, therefore, appears to be in breach of these obligations. See e.g., *Instagram, LLC v. Whois privacy protection service / Olga Sergeeva / Ivan Ivanov / Privacy Protect, LLC (Privacy Protect.org)*, WIPO Case No. [D2020-0521](#) and *Instagram, LLC v. Privacy Protect, LLC (PrivacyProtect.org) / Elnur Alizade*, WIPO Case No. [D2021-1845](#).

The Complainant contends this apparent breach of the user's terms of service illustrates the lack of *bona fides* of the Respondent. For present purposes, it is sufficient to note that the provision of services directed at misleading the public about the number of "likes", "followers", or "views" achieved by a website does not constitute a good faith offering of goods or services for the purposes of the Policy.

Having regard to the manner of use, paragraph 4(c)(iii) of the Policy is inapplicable.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g., *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd* WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

Although the trademarks for INSTA were not registered until after the disputed domain name was created, both the INSTAGRAM and INSTA trademarks were already very well-known by that stage. For example, by February 2016, the Complainant's service had more than 500 million active users each month. The Panel considers it extremely unlikely that the Respondent, or his predecessor Mr Shehabuddin (if they are not the

same person or closely involved with each other), was unaware of the Complainant's trademarks when registering the disputed domain name.¹

That is all the more so having regard to the nature of the services being offered from the Respondent's website which involve a close familiarity with social media and the various services including the Complainant's service.

It is reasonable to infer that the disputed domain name was registered for the purpose for which it is being used – to provide SMM services.

As discussed in section 5.B. above, those services appear to be in breach of the Complainant's policies and appear to be directed to enabling users of the Complainant's services to mislead the public about the number of "likes", "follows", or "views" their site has achieved. Moreover, they do so by use of a domain name confusingly similar to the Complainant's trademarks.

The Panel finds that registration of the confusingly similar disputed domain name to provide such a service, to assist in misleading the public (and in breach of the terms of use), constitutes registration in bad faith under the Policy. In addition, use of the disputed domain name for that purpose constitutes use in bad faith under the Policy.

In circumstances where the Respondent has not sought to claim, let alone establish, that he or she has rights or legitimate interests in the disputed domain name, therefore, the Panel finds the Respondent has registered and used it in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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, <instafaster.com>, be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: March 21, 2022

¹ The Panel notes that the date the disputed domain name was transferred to the Respondent by Mr. Shehabuddin is strictly speaking the date the assessment of registration in good faith should be carried out. See e.g., WIPO Overview 3.0, section 3.9. In any event, it is even less likely that someone in late 2017 (or later) was unaware of the Complainant and its service.