

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. 陈炎 (ideasice)

Case No. D2022-0396

1. The Parties

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

The Respondent is 陈炎 (ideasice), China.

2. The Domain Names and Registrars

The disputed domain names <instagramphoto.asia>, <instagramphotodownload.pro>, <instagramphoto.pro>, and <instagramvideodownload.pro> are registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn). The disputed domain names <instagramphotodownload.cc>, <instagramphoto.info>, and <instagramvideodownload.cc> are registered with Alibaba Cloud Computing (Beijing) Co., Ltd.

Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) and Alibaba Cloud Computing (Beijing) Co., Ltd. are separately and collectively referred to below as the “Registrar”.

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on February 4, 2022. On February 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 9, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 10, 2022 providing the registrant and contact information disclosed by the Registrar and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on the same day.

On February 10, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On the same day, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on February 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 11, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on March 28, 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 provides online photo and video sharing social networking services. It currently has over 2 billion monthly active users. According to Alexa website analytics, the Complainant’s website at “www.instagram.com” is ranked as the 20th most visited website in the world. According to App Annie Top App rankings, the Complainant’s Instagram application was the 2nd most downloaded application worldwide as at January 6, 2022. The Complainant holds trademark registrations for INSTAGRAM, including the following:

- International trademark registration number 1129314, registered on March 15, 2012, specifying goods and services in classes 9 and 42;
- United States trademark registration number 4146057, registered on May 22, 2012, with a claim of first use in commerce on October 6, 2010, specifying goods in class 9; and
- Chinese trademark registration number 10614690, registered on June 14, 2013, specifying services in class 42.

The above trademark registrations remain current.

The Respondent is an individual resident in China. Due to the fact that his contact address in the Registrar’s Whois database is incomplete, the written notice could not be delivered by courier. According to evidence provided by the Complainant, the Respondent has registered other domain names incorporating third party trademarks.

The disputed domain names were all registered on June 25, 2021. Four disputed domain names (*i.e.*, <instagramphotodownload.cc>, <instagramvideodownload.cc>, <instagramphotodownload.pro>, and <instagramvideodownload.pro>) resolve to landing pages displaying pay-per-click (“PPC”) links to websites related to legal matters, or photos, or both. At the top of each landing page is a notice that the disputed domain name may be for sale with a hyperlink to a page on a broker’s website inviting Internet users to make offers to buy the corresponding disputed domain name and that each one starts at USD 2,000. The contact email user name is “ideasice”. Three other disputed domain names (*i.e.*, <instagramphoto.asia>, <instagramphoto.info>, and <instagramphoto.pro>) resolve directly to pages on a broker’s website with the same layout, inviting Internet users to make an offer to buy these disputed domain names and indicating that each one starts at USD 2,000. The contact email user name is “ideasice”.

5. Parties’ Contentions

A. Complainant

The disputed domain names are confusingly similar to the Complainant's INSTAGRAM trademark.

The Respondent has no rights or legitimate interests with respect to the disputed domain names. The Respondent is not a licensee of the Complainant, nor has he been otherwise authorized or allowed by the Complainant to make any use of the INSTAGRAM mark, in a domain name or otherwise. The Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods or services. The Respondent is not commonly known by the disputed domain names. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain names.

The disputed domain names were registered and are being used in bad faith. The INSTAGRAM mark is highly distinctive and exclusively associated with the Complainant. The Respondent registered the disputed domain names in full knowledge of the Complainant's rights. The Respondent registered the disputed domain names primarily for the purpose of selling them to the Complainant within the terms of paragraph 4(b)(i) of the Policy, and to intentionally attract Internet users to his websites by creating a likelihood of confusion within the terms of paragraph 4(b)(iv) of the Policy.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding." The Registrar confirmed that the Registration Agreements for the disputed domain names are in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the disputed domain names are composed of Latin characters, they point to a broker's landing page in English and translation of the Complaint would result in additional expenses and unnecessary delay for the Complainant.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amended Complaint in this proceeding were filed in English. Despite the Center having sent an email regarding the language of the proceeding and the Notification of Complaint to the Respondent's contact email address, the Respondent has not commented on the language of the proceeding or express any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the amended Complaint into Chinese would create an undue burden and delay whereas accepting it as filed without translation does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

6.2 Analysis and Findings

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements with respect to each disputed domain name:

- (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

Based on the evidence presented, the Panel finds that the Complainant has rights in the INSTAGRAM mark.

The disputed domain names wholly incorporate the INSTAGRAM mark as their respective initial elements. They also include the words “photo” or “video” and, in four cases, “download”. Given that the INSTAGRAM trademark remains clearly recognizable within each disputed domain name, the Panel does not consider that the addition of these words avoids a finding of confusing similarity for the purposes of the first element of paragraph 4(a) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8.

The disputed domain names also include a Top-Level Domain (“TLD”) (variously “.asia”, “.cc”, “.info”, or “.pro”). As a mere technical requirement of registration, this element is generally disregarded in the comparison between a domain name and a trademark for the purposes of the first element of paragraph 4(a) of the Policy. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (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.

As regards the first and third circumstances set out above, the Respondent uses four disputed domain names in connection with a landing page that displays PPC links, and he uses all the disputed domain names directly or indirectly in connection with a landing page on a broker’s website that invites Internet users to make offers to buy the disputed domain names. The Complainant submits that the Respondent is not a licensee of the Complainant, nor has he been otherwise authorized or allowed by the Complainant to make any use of the INSTAGRAM mark, in a domain name or otherwise. This evidence indicates that the Respondent is not making a use of the disputed domain names in connection with a *bona fide* offering of

goods or services within the terms of paragraph 4(c)(i) of the Policy, nor is he making a legitimate noncommercial or fair use of the disputed domain names within the terms of paragraph 4(c)(iii) of the Policy.

As regards the second circumstance above, the Registrar has verified that the name of the Respondent is “陈炎” (which may be transcribed as “Chen Yan”) and that his English name, which appears to be an alias, is “ideasice”, not the disputed domain names. There is no evidence indicating that the Respondent has been commonly known by the disputed domain names within the terms of paragraph 4(c)(ii) of the Policy.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent failed to rebut that case because he did not reply to the Complainant’s contentions.

Therefore, based on the record of this proceeding, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith. The first and fourth of these are as follows:

- (i) circumstances indicating that [the respondent has] registered or [the respondent has] acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent’s] documented out-of-pocket costs directly related to the domain name; or

- (iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the respondent’s] web site or location or of a product or service on [the respondent’s] web site or location.

With respect to registration, the Panel observes that the disputed domain names were all registered in 2021, years after the Complainant obtained its trademark registrations for INSTAGRAM, including in China, where the Respondent is resident. The disputed domain names wholly incorporate the INSTAGRAM mark as their respective initial elements, despite the fact that INSTAGRAM is a coined word with no apparent meaning other than as the Complainant’s trademark. The disputed domain names combine the trademark with the words “photo” or “video” and, in four cases, “download”, which demonstrates an awareness of the nature of the Complainant’s photo and video sharing platform. These circumstances all give the Panel reason to find that the Respondent targeted the Complainant’s trademark when he registered the disputed domain names.

With respect to use, the Panel notes that all the disputed domain names are used directly or indirectly with a landing page on a broker’s website advising that they may be available for sale and inviting Internet users to make offers to buy them, with the minimum acceptable offer being USD 2,000. The Panel considers it likely that this price is in excess of the Respondent’s out-of-pocket costs directly related to the disputed domain names. The Panel finds that these circumstances fall within the terms of paragraph 4(b)(i) of the Policy.

Further, the Respondent uses the four disputed domain names <instagramphotodownload.cc>, <instagramvideodownload.cc>, <instagramphotodownload.pro>, and <instagramvideodownload.pro>, which are all confusingly similar to the Complainant’s INSTAGRAM trademark, in connection with landing pages that display PPC links to other websites. Customers searching for the Complainant’s INSTAGRAM software and services are likely to be attracted to these webpages. This use is intentional and either for the Respondent’s own commercial gain, if he is paid to direct traffic to the linked websites, or for the commercial gain of the operators of the linked websites, or both. In each scenario, these circumstances fall within the terms of paragraph 4(b)(iv) of the Policy. See *Express Scripts, Inc. v. Windgather Investments Ltd. / Mr.*

Cartwright, WIPO Case No. [D2007-0267](#).

Therefore, the Panel finds that the disputed domain names have been registered and are being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 names, <instagramphoto.asia>, <instagramphoto.info>, <instagramphoto.pro>, <instagramphotodownload.cc>, <instagramphotodownload.pro>, <instagramvideodownload.cc>, and <instagramvideodownload.pro>, be transferred to the Complainant.

/Matthew Kennedy/
Matthew Kennedy
Sole Panelist
Date: April 11, 2022