

## **ADMINISTRATIVE PANEL DECISION**

Instagram, LLC v. Adem Kaya and Alperen Aktas  
Case No. D2022-1409

### **1. The Parties**

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

The Respondents are Adem Kaya, Turkey; and Alperen Aktas, Turkey.

### **2. The Domain Names and Registrar**

The disputed domain names <instagram-review.org> and <instagramverify.net> are registered with Wild West Domains, LLC.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2022. On April 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 21 and 22, 2022, the Registrar transmitted by email to the Center its verification responses disclosing registrant and contact information for the disputed domain names, which differed from the named Respondents and contact information in the Complaint. The Center sent an email communication to the Complainant on April 25, 2022, providing the registrants and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 27, 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 Respondents of the Complaint, and the proceedings commenced on April 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on May 19, 2022.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on May 20, 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**

Launched in 2010, the Complainant, commonly known as “Insta” or “IG”, is an online photo and video sharing social networking application, presently being ranked the sixth most visited website in the world and the fifth in Turkey.

The Complainant is the owner, amongst others, of the following trademark registrations (Annex 7 to the Complaint):

- United States trademark registration No. 4146057 for INSTAGRAM, registered on May 22, 2012, claiming first use in commerce on October 6, 2010;
- International trademark registration No. 1129314 for INSTAGRAM, registered on March 15, 2012; and
- Turkish trademark registration No. 2013 74099 for INSTAGRAM, registered on May 20, 2015.

The disputed domain names <instagram-review.org> and <instagramverify.net> were registered on July 29, 2021 and August 1, 2021 respectively and do not resolve presently to active webpages.

The disputed domain names were used in connection with a phishing scam (Annex 9 to the Complaint). Emails sent to Instagram users stated that their accounts had been reviewed and the user was found guilty of copyright infringement, and indicated that a form available at “www.instagram-review.org” would have to be filled out within 24 hours so that the user’s account would not be deleted.

The webpage that previously resolved from the disputed domain name <instagramverify.net> was entitled “Copyright | Appeal form”, prominently displaying the Complainant’s logo, and contained the following message:

“As Instagram Support Team, we take care of copyright rules and permanently delete accounts that do not comply with our guidelines, please note that we will delete your account if you do not fill in our objection form within 24 hours.

Click the button below and continue to dispute.”

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant asserts to be one of the world’s leading providers of online social networking services and applications, actively promoting and using its INSTAGRAM trademark throughout the world.

The Complainant submits that the disputed domain names are subject to common control by either the same person or connected parties and for reasons of fairness, equity and efficiency, the Complainant requests consolidation of the multiple Respondents to the same Complaint, given that both disputed domain names:

- i) were used in connection with a highly similar phishing scheme targeting the Complainant’s users; ii) are associated with the same IP ranges (104.21.0.x and 172.67.0.x) and the same ASN (AS13335 Cloudflare Inc. US); iii) have registrants based in Turkey and their “states” listed in the publicly-accessible WhoIs are

both indicated by numbers; iv) were registered within two days of each other; v) were registered with the same Registrar; vi) target the Complainant's INSTAGRAM trademark; vii) share a similar naming pattern (*i.e.*, the Complainant's trademark + dictionary term, with or without a hyphen).

The disputed domain names are, according to the Complainant, confusingly similar to the Complainant's trademark, creating a likelihood of confusion given the reproduction of its trademark which is clearly recognizable as the leading element of the disputed domain names, with the addition of the descriptive terms "review" or "verify".

Moreover, the Complainant asserts that the Respondents have no rights or legitimate interests in respect of the disputed domain names given that:

- (a) the Respondents are not licensees of the Complainant, nor have they been otherwise allowed by the Complainant to make any use of the Complainant's trademark;
- (b) the Respondents have not used the disputed domain names in connection with a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy nor have the disputed domain names been used for legitimate noncommercial or fair use purpose in accordance with paragraph 4(c)(iii) of the Policy given that the use of the disputed domain names in connection with a phishing scheme;
- (c) the Respondents cannot credibly claim to be commonly known by the disputed domain names, or a name corresponding to the disputed domain names.

As to the registration of the disputed domain names in bad faith, the Complainant asserts that the Respondents knew or should have known of the Complainant's trademark rights at the time of the registration of the disputed domain names considering that it has acquired considerable goodwill and renown worldwide. Further, the Respondents' intent to target the Complainant can easily be inferred from the phishing scheme conducted impersonating the Complainant as well as reproducing its trademark and logo.

## **B. Respondents**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth three requirements, which have to be met for this Panel to order the transfer of the disputed domain names to the Complainant:

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

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain names.

Before turning to these questions, however, the Panel needs to address the issue of the consolidation of the multiple Respondents.

### **A. Consolidation of Multiple Respondents**

The Complainant requests that this Panel accept the multiple Respondents in a single proceeding in view of the facts enumerated at the section 5.A. above.

Section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) establishes that “[w]here a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.”

All of the aforementioned criteria are present in this case and therefore this Panel accepts such request considering that it would be more procedurally efficient to have the two disputed domain names dealt with at the same procedure, given that both disputed domain names: (a) were used in connection with a phishing scheme targeting the Complainant’s users (Annex 9 to the Complaint); (b) share a similar naming pattern; (c) share the same IP ranges and ASN; (d) were registered by the Respondents both based in Turkey sharing similar postal addresses; and (e) were registered within two days of each other with the same Registrar.

This Panel is satisfied, in view of the evidence submitted and on the balance of probabilities that the disputed domain names are indeed subject to a common control and that consolidation would be fair and equitable to all Parties.

### **B. Identical or Confusingly Similar**

The Complainant has established its rights in the INSTAGRAM trademark (Annex 7 to the Complaint).

The Panel finds that the disputed domain names reproduce the Complainant’s trademark in its entirety. The addition of the terms “review” and “verify” does not avoid a finding of confusing similarity under the Policy which, as recognized by past UDRP panels, involves a “comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.” ([WIPO Overview 3.0](#), section 1.7.)

The first element of the Policy has therefore been established.

### **C. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a nonexclusive list of circumstances that may indicate the Respondents’ rights to or legitimate interests in the disputed domain names. These circumstances are:

- (i) before any notice of the dispute, the Respondents’ use of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondents (as individuals, businesses, or other organizations) have been commonly known by the disputed domain names, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondents are making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel notes that the Complainant has made out a *prima facie* case that the Respondents lack rights or legitimate interests in the disputed domain names. The burden of production has therefore shifted to the Respondents to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests.

The Respondents, in not responding to the Complaint, have failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain names. This entitles the Panel to draw any such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules.

As seen above, the disputed domain names were previously used in connection with a phishing scheme targeting the Complainant's users, and are currently inactive. Indeed such use cannot be considered here a *bona fide* offering of goods or services nor legitimate noncommercial or fair use under the Policy. Further, there is no evidence on record showing that the Respondents have been commonly known by the disputed domain names.

Therefore, the Panel finds that the Respondents lack rights or legitimate interests in the disputed domain names. The second element of the Policy has also been met.

#### **D. Registered and Used in Bad Faith**

The Policy indicates in paragraph 4(b)(iv) that bad faith registration and use can be found in respect of the disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, the use of the disputed domain names in connection with the phishing scheme described above with the unauthorized reproduction of the Complainant's trademark and logo and emails impersonating the Complainant, characterizes the Respondents' likely intent of commercial gain by profiting from the notoriety of the Complainant's INSTAGRAM trademark.

For the reasons above, the Panel finds that the Respondents have registered and used the disputed domain names in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

Further, the Panel finds that the current non-use of the disputed domain names pointing to error pages does not prevent a finding of bad faith.

Moreover, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. ([WIPO Overview 3.0](#), section 3.1.4.)

The Panel finds that the disputed domain names were registered and are being used in bad faith. The third element of the Policy has therefore been met.

#### **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, <instagram-review.org> and <instagramverify.net>, be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: June 3, 2022