

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Piyanat Sreepho, Instafallo Company Limited
Case No. DCO2022-0002

1. The Parties

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

The Respondent is Piyanat Sreepho, Instafallo Company Limited, Thailand.

2. The Domain Names and Registrar

The disputed domain names <freeinstagram.co>, <instagramfollow.co>, <instagramlike.co>, <instagramliker.co>, and <like4instagram.co> are 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 10, 2022. On January 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 12, 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 January 13, 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 on January 18, 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 January 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 14, 2022.

The Center appointed Keiji Kondo as the sole panelist in this matter on February 23, 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 an online photo and video sharing social networking application. Since it was launched in 2010, the application, which is known as “Instagram”, rapidly developed considerable goodwill and renown worldwide, with 100,000 users in only one week, 1 million registered users in only two months (by December 21, 2010) and over 10 million registered users by September 2011, less than a year after it was launched. Acquired by Meta Platforms, Inc. (formerly Facebook, Inc.) in April 2012, Instagram reached over 100 million monthly active users by February 2013, 400 million monthly active users by September 2015, and 800 million monthly active users by September 2017. Currently, Instagram has more than 1 billion monthly active users worldwide.

The Complainant’s website available at “www.instagram.com” is ranked the 21st most visited website in the world, according to the web information company Alexa. Instagram has consistently ranked amongst the top apps for mobile devices, and has been the recipient of numerous awards, including “App of the Year” in 2011 from Apple Inc. In 2021, Instagram ranked 19th in InterBrand’s Best Global Brands.

Given the exclusive online nature of the Complainant’s business, the Complainant’s domain names consisting of its trade mark are not only the heart of its entire business but also the main way for its millions of users to avail themselves of its services. For instance, the Complainant is the registrant of numerous domain names consisting of or including its INSTAGRAM trade mark under a wide range of generic Top-Level Domains (“gTLDs”) as well as under numerous country code Top-Level Domains (“ccTLDs”).

Furthermore, the Complainant has made substantial investments to develop a strong presence online by being active on the different social media forums available, including Facebook, Twitter, and LinkedIn. For instance, Instagram’s official Facebook page has over 60 million Facebook “likes” and almost 37 million followers on Twitter. These pages are available at the following URLs:

- “https://www.facebook.com/instagram”;
- “https://www.twitter.com/instagram”; and
- “https://www.linkedin.com/company/instagram”.

The Complainant has secured ownership of numerous trade mark registrations for INSTAGRAM in many jurisdictions around the world, such as:

- United States Trademark Registration No. 4146057 for INSTAGRAM, registered on May 22, 2012;
- European Union Trade Mark No. 014493886 for INSTAGRAM, registered on December 24, 2015; and
- International Trademark Registration No. 1129314 for INSTAGRAM, registered on March 15, 2012.

The disputed domain names <freeinstagram.co>, <instagramfollow.co>, <instagramlike.co>, <instagramliker.co>, and <like4instagram.co> were all registered on August 14, 2020.

The disputed domain name <like4instagram.co> is pointing to a parking page with sponsored links. All other disputed domain names, namely <freeinstagram.co>, <instagramfollow.co>, <instagramlike.co>, and <instagramliker.co>, resolve to blank pages.

5. Parties’ Contentions

A. Complainant

Firstly, the Complainant submits that the disputed domain names are confusingly similar to the Complainant’s trade mark.

The disputed domain names incorporate the Complainant's trade mark in its entirety with the addition of the descriptive terms "free", "follow", "like", "liker", and the number "4". The Complainant's trade mark, INSTAGRAM, is clearly recognizable as the leading element of the disputed domain names.

As stated in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8:

"Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

Prior UDRP panels have found similarly-constructed domain names to be confusingly similar to the trade mark at issue. See, e.g., *Instagram, LLC v. Orhan Uzdu*, WIPO Case No. [D2019-2806](#), in which the disputed domain names were <freeinstagramfollowersfast.com>, <igliker.xyz>, <instagramfreefollowers.org>, <instagramrealfollowers.com>, and <vipinstagramtakipci.com>.

The addition of the ccTLD, ".co", may be disregarded for the purposes of assessing confusing similarity, as it is a standard requirement of registration. See [WIPO Overview 3.0](#), section 1.11.1.

For reasons set out above, the Complainant submits that the disputed domain names are confusingly similar to the Complainant's trade mark, in accordance with paragraph 4(a)(i) of the Policy.

Secondly, the Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain names.

As noted in [WIPO Overview 3.0](#), section 2.1:

"While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Complainant asserts that the Respondent is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy that would demonstrate its rights or legitimate interests in the disputed domain names.

The Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy.

The Respondent is not a licensee of the Complainant, nor has the Respondent been otherwise authorized by the Complainant to make any use of its INSTAGRAM trade mark, in a domain name or otherwise. The Complainant has no prior business relationship with the Respondent whatsoever.

As a preliminary matter, the Complainant's Brand Guidelines expressly prohibit any unauthorized third party from using the INSTAGRAM trade mark in a domain name, stating *inter alia* "You may not use or register, or otherwise claim rights in any Instagram trade mark, including as or as part of any trade mark, service mark, company name, trade name, username, or domain registration."

The disputed domain name <like4instagram.co> currently points to a webpage with sponsored links. The Respondent is seeking to profit from the Complainant's goodwill and renown to attract Internet users to

its website for financial gain. Such conduct cannot confer rights or legitimate interests on the Respondent where the Respondent is seeking to unfairly capitalize on the goodwill associated with the Complainant's trade mark. Prior UDRP panels deciding under the Policy have held that "parking pages built around a trade mark (as contrasted with PPC pages built around a dictionary word and used only in connection with the generic or merely descriptive meaning of the word) do not constitute a *bona fide* offering of goods or services pursuant to paragraph 4(c)(i) of the Policy, nor do they constitute a legitimate noncommercial or fair use pursuant to paragraph 4(c)(iii)". See *Ustream, TV, Inc. v. Vertical Axis, Inc*, WIPO Case No. [D2008-0598](#). See also section 2.9 of the [WIPO Overview 3.0](#).

The remaining disputed domain names point to blank pages. Such passive holding of the disputed domain names cannot constitute a *bona fide* offering of goods and services under the Policy. See *Philip Morris USA Inc. v. Gabriel Hall*, WIPO Case No. [D2015-1779](#).

The Respondent cannot credibly claim to be commonly known by the disputed domain names, or a name corresponding to the disputed domain names, within the meaning of paragraph 4(c)(ii) of the Policy. The identity of the Respondent in the Whois records is masked. In any event, the disputed domain names are not being used in the promotion of any business or any other online service that might give rise to the Respondent being commonly known by the disputed domain names. The identity of the Respondent, as revealed by the Registrar, is "Piyana Sreepho, Instafallo Company Limited", which bears no resemblance to the disputed domain names whatsoever.

Nor is the Respondent currently making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers within the meaning of paragraph 4(c)(iii) of the Policy. As described above, the disputed domain name <like4instagram.co> resolves to a parking page with sponsored links. The Respondent is seeking to generate click-through revenue from PPC links placed on the parking page to which this disputed domain name resolves.

With regard to the remaining disputed domain names, there is no evidence showing that the Respondent has made any other substantive use of these disputed domain names of a nature that would otherwise confer rights or legitimate interests on the Respondent pursuant to paragraph 4(c)(iii) of the Policy. The disputed domain names are being passively held and the Respondent does not have any rights or legitimate interests in them. See *Guinness World Records Limited v. Solution Studio*, WIPO Case No. [D2016-0186](#).

The Complainant therefore asserts that the Respondent has no rights or legitimate interests in the disputed domain names, in accordance with paragraph 4(a)(ii) of the Policy.

Thirdly, the Complainant submits that the disputed domain names were registered and are being used in bad faith.

Paragraph 4(b) of the Policy lists four factors which, in particular but without limitation, may be evidence of registration and use of a domain name in bad faith for the purposes of paragraph 4(a)(iii) of the Policy.

It is submitted that paragraphs 4(b)(ii) and 4(b)(iv) of the Policy is of particular relevance in the present case, although there are other factors not listed in paragraph 4(b) of the Policy that also strongly indicate bad faith, as explained in more detail below.

As highlighted above, the Complainant's trade mark is inherently distinctive and well known throughout the world. It has been continuously and extensively used since its launch in 2010 in connection with its online photo-sharing social network, and has rapidly acquired considerable reputation and goodwill worldwide.

Prior UDRP panels have repeatedly recognized the strength and renown of the Complainant's trade mark, and have ordered the transfer of such disputed domain names to the Complainant. See, e.g., *Instagram, LLC v. Saddam Hussain*, WIPO Case No. [D2018-0078](#):

“The INSTAGRAM trademark [...] has been registered and used for several years all over the world, it enjoys a widespread reputation and high degree of recognition as a result of its fame and renown [...].”

See also *Instagram, LLC v. Omer Ulku*, WIPO Case No. [D2018-1700](#):

“Complainant’s INSTA and INSTAGRAM trademarks are well known throughout the world in connection with online photo-sharing social network.”

The Respondent could not credibly argue that it did not have prior knowledge of the Complainant’s trade marks at the time it registered the disputed domain names in 2020, as the Complainant had reached over one billion users worldwide.

In addition, as a result of the well-known character of the INSTAGRAM trade mark, when confronted with a combination of the trade mark together with letters or descriptive terms, many Internet users would be confused and assume that the disputed domain names are in some way connected with the Complainant.

Therefore, the Complainant submits that it is unlikely that the Respondent could have registered the disputed domain names for legitimate purposes other than to somehow create an impression of association between the disputed domain names and the Complainant. See [WIPO Overview 3.0](#), section 3.1.1:

“Particularly where the domain name at issue is identical or confusingly similar to a highly distinctive or famous mark, panels have tended to view with a degree of skepticism a respondent defense that the domain name was merely registered for legitimate speculation [...] as opposed to targeting a specific brand owner.”

The Complainant further submits that by registering at least five disputed domain names targeting the Complainant’s trade mark, the Respondent has engaged in a bad faith pattern of abusive domain name registration within the meaning of paragraph 4(b)(ii) of the Policy.

In light of the above, the Complainant submits that the Respondent registered the disputed domain names having no authorization to make use of the Complainant’s trade mark in a domain name or otherwise, thereby creating a misleading impression of association with the Complainant, in bad faith.

As described above, the Respondent’s use of the disputed domain name <like4instagram.co> is clearly intended for commercial gain, in accordance with paragraph 4(b)(iv) of the Policy, as it is pointing to a parking page displaying pay-per-click (“PPC”) links. Such use of the disputed domain name – from which the Respondent is seeking to obtain financial gain derived from the goodwill and reputation attached to the Complainant’s trade mark – constitutes strong evidence of bad faith. See *BASF SE v. Zhang Xiao*, WIPO Case No. [D2017-2200](#):

“Through either displaying a PPC parking page or using a dynamic redirection scheme on the website at the disputed domain name, Respondent is likely to have made substantive commercial gain by ‘freeriding’ on the reputation of Complainant and its trade marks, which is indicative of Respondent’s bad faith use of the disputed domain name.”

See also *Blue Cross and Blue Shield Association, Empire HealthChoice Assurance, Inc. dba Empire Blue Cross Blue Shield and also dba Empire Blue Cross v. Private Whois Service / Search and Find LLC. / Michigan Insurance Associates / 4 Letter Domains Inc. / New York Health Ins.*, WIPO Case No. [D2010-1699](#):

“The generation of revenue from domain name parking activities is not necessarily activity in bad faith. However, it is use in bad faith within the scope of paragraph 4(b)(iv) of the Policy where the registrant is using the domain name in this manner because of its similarity to a mark or name of another person in the hope and expectation that that similarity would lead to confusion on the part of Internet users and result in an increased number of Internet users being drawn to that domain name parking page.”

It is not necessary for the Respondent itself to have profited directly from those commercial links in order to establish bad faith use. See section 3.5 of the [WIPO Overview 3.0](#).

With regard to the disputed domain names <freeinstagram.co>, <instagramfollow.co>, <instagramlike.co>, and <instagramliker.co>, to the best of the Complainant's knowledge, the Respondent has not made any apparent substantive use of them. The Complainant submits that such non-use of the disputed domain names constitutes passive holding, which would not prevent a finding of bad faith. See WIPO overview 3.0, section 3.3:

"From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

See also *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Complainant submits that three of the abovementioned factors apply in the present case:

(i) The Complainant's INSTAGRAM trade mark is well known internationally. As a result of its longstanding and widespread use, the INSTAGRAM trade mark has become exclusively associated with the Complainant. The Complainant submits that when confronted with the combination of the Complainant's trade mark together with the terms "free", "follow", "like", "liker" as well as the number "4", many Internet users would be confused and wrongly assume that these disputed domain names are owned by or otherwise endorsed by the Complainant.

(ii) There is no evidence of the Respondent's actual or contemplated *bona fide* use of these disputed domain names. To the best of the Complainant's knowledge, all these disputed domain names have been passively held by the Respondent and it seems unlikely that the Respondent will produce any evidence of actual or contemplated good-faith use of these disputed domain names.

(iii) In light of the nature of the disputed domain names themselves, *i.e.*, the combination of the Complainant's INSTAGRAM trade mark together with descriptive terms, these disputed domain names carry with them a high risk of implied affiliation with the Complainant. Simply put, the Complainant cannot conceive of any *bona fide* use that the Respondent could make of the disputed domain names that would not result in creating a misleading impression of association with the Complainant.

Given the overwhelming renown of the Complainant's INSTAGRAM trade mark worldwide, and the nature of the disputed domain names themselves, there simply cannot be any actual or contemplated good-faith use of the disputed domain names by the Respondent or a third party other than the Complainant as it would invariably result in misleading diversion and unfair taking advantage of the Complainant's rights. As such, the Complainant submits that the presence of the disputed domain names in the hands of the Respondent represents an abusive threat hanging over the head of the Complainant (*i.e.*, an abuse capable of being triggered by the Respondent or by any buyer of the disputed domain names at any time) and therefore a continuing abusive use. See *Conair Corp. v. Pan Pin, Hong Kong Shunda International Co. Limited*, WIPO Case No. [D2014-1564](#).

In view of the above, the Complainant asserts that the disputed domain names were registered and are being used in bad faith, in accordance with paragraph 4(a)(iii) of the Policy.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The confusing similarity test of the first UDRP element serves as a standing requirement. In the present case, the disputed domain names incorporate the Complainant's trade mark INSTAGRAM in its entirety, and the Complainant's trade mark INSTAGRAM is clearly recognizable in all of the disputed domain names. The addition of the terms "free", "follow", "like", "liker", and the number "4" does not prevent a finding of confusing similarity under the first element.

It is well established that the addition of a TLD, may be disregarded for the purposes of assessing confusing similarity, as it is a standard requirement of registration.

Accordingly, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trade mark within the meaning of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has never authorized the Respondent to register any domain name incorporating its trade mark.

The Respondent's name itself is in no way similar to the Complainant's trade mark INSTAGRAM. Although the name of the Respondent's organization, "Instafallo" includes the part "Insta", the remaining part "fallo", which could be a Spanish word, is not at all similar to "gram" either in appearance or in meaning. Therefore, it is inconceivable that the Respondent has been commonly known by the disputed domain names.

The disputed domain name <like4instagram.co> is pointing to a parking page with sponsored links. All other disputed domain names, namely <freeinstagram.co>, <instagramfollow.co>, <instagramlike.co>, and <instagramliker.co>, resolve to blank pages. Such use of the disputed domain names would not be regarded as a *bona fide* offering of goods or services, nor as a legitimate noncommercial or fair use.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names within the meaning of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The disputed domain names were all registered on August 14, 2020. On the other hand, the Complainant's online photo and video sharing social networking application was launched in 2010, and the Complainant's trade mark was registered in the United States in 2012.

Considering that the Complainant's trade mark is well known especially among Internet users, it is inconceivable that the Respondent was not aware of the Complainant's trade mark INSTAGRAM when the disputed domain names were registered. The Panel finds that the Respondent intentionally chose the disputed domain names to cause confusion with the Complainant's trade mark INSTAGRAM. Therefore, the Panel concludes that the disputed domain names were registered in bad faith.

The Respondent uses the disputed domain name <like4instagram.co> to direct Internet users to a parking page displaying PPC links. Because of the similarity between the Complainant's trade mark and the disputed domain name, it is likely that the use by the Respondent would cause confusion on the part of Internet users, and result in an increased number of Internet users being drawn to the Respondent's parking

page. The Respondent should have expected to generate financial gain derived from the goodwill and reputation attached to the Complainant's trade mark. Therefore, the Panel concludes that the disputed domain name <like4instagram.co> is being used in bad faith.

The Respondent does not use the remaining disputed domain names. Considering that the Complainant's prior registered trade mark INSTAGRAM is very famous, and that the Respondent registered all of the disputed domain names on the same day, and further considering that the Respondent did not reply to the Complainant's contentions, the Panel concludes that the Respondent's non-use of the remaining disputed domain names under the circumstances constitutes use in bad faith. By holding these disputed domain names, the Respondent may later generate financial gain by creating more parking pages, or selling them to third parties who may expect to use them for commercial gain by creating confusion with the Complainant's trade mark.

Accordingly, the Panel concludes that all of the disputed domain names were registered in bad faith, and are also being used in bad faith within the meaning 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 names <freeinstagram.co>, <instagramfollow.co>, <instagramlike.co>, <instagramliker.co>, and <like4instagram.co> be transferred to the Complainant.

/Keiji Kondo/

Keiji Kondo

Sole Panelist

Date: March 8, 2022