

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Repossessed by Go Daddy Case No. D2023-0544

1. The Parties

Complainant is Instagram, LLC, United States of America, represented by Tucker Ellis, LLP, United States of America (“United States” or “U.S.”)

Respondent is Repossessed by Go Daddy, United States.

2. The Domain Name and Registrar

The disputed domain name <instagramloginpage.com> (the “Domain Name”) 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 February 3, 2023. On February 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 8, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details for the Domain Name. The Registrar, who is also Respondent, indicated that they were “willing to turn over the domain name to the complainant with a properly executed standard settlement agreement”.

On February 9, 2023, the Center provided this information to Complainant. On February 20, 2023, counsel for Complainant responded with their desire to proceed with the Complaint against Respondent.

The Center verified that the 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 Respondent of the Complaint, and the proceedings commenced on March 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 21, 2023. Respondent did not submit any formal response. The Center informed the Parties of its commencement of Panel appointment process on March 22, 2023.

The Center appointed John C. McElwaine as the sole panelist in this matter on March 29, 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

Complainant is the operator of the Instagram social networking service and mobile application. Relevant to this matter, Complainant is the owner of INSTAGRAM trademark registrations in multiple countries and jurisdictions, including registration in the United States for INSTAGRAM, U.S. Reg. No. 4146057, which was registered on May 22, 2012.

The Domain Name was registered on March 11, 2022. At the time of filing of the Complaint, the Domain Name did not resolve to an active website.

5. Parties' Contentions

A. Complainant

With respect to the first element of the Policy, Complainant asserts that since 2010 it has used and owns exclusive rights to the Instagram trademarks and service marks. Collectively, Complainant's registered and common law trademark rights in the INSTAGRAM trademarks and service marks are referred to as the "INSTAGRAM Mark". Complainant alleges that the Domain Name is identical to Complainant's INSTAGRAM Mark differing only by the addition of the descriptive terms "login" and "page".

With respect to the second element of the Policy, Complainant contends that it has neither licensed nor authorized Respondent to use the INSTGRAM Mark, nor does Respondent have any legal relationship with Complainant that would entitle Respondent to use the INSTAGRAM Mark. Complainant also alleges that neither the Whois data for the Domain Name nor Respondent's use of the Domain Name supports that Respondent is known by the Domain Name. Complainant further alleges that Respondent has not made and cannot now make *bona fide* use of the Domain Name because it has been repossessed and is on at least one block list for use in relation to spam, malware, or other domain name abuse. Complainant points out that prior panels have held that evidence of such domain name abuse supports a finding that a respondent is not making a *bona fide* offering of goods or services.

With respect to the third element of the Policy, Complainant asserts that Respondent's bad faith is evidenced by the fact that the Domain Name is listed on one or more block lists indicating that it has been used in connection with spam, malware, or other domain name abuse. Complainant also alleges that the registration of a confusingly similar domain name that is obviously connected with a particular trademark owner by someone with no connection with the trademark owner suggests bad faith. Lastly, Complainant contends that the INSTAGRAM Mark is famous and that there are no circumstances under which use of the Domain Name could plausibly be in good faith under the Policy.

B. Respondent

Respondent did not reply to Complainant's contentions in the Complaint, but did state that they were "willing to turn over the domain name to [Complainant] with a properly executed standard settlement agreement."

6. Discussion and Findings

In accordance with paragraph 4 of the UDRP, Complainant must prove its assertions with actual evidence demonstrating;

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

However, in this matter, it is apparent that the Registrar has repossessed or seized the Domain Name due to prior bad faith use of the Domain Name in relation to spam, malware, or other domain name abuse. The Registrar, who is also Respondent in this proceeding by virtue of its seizure of the Domain Name, has clearly indicated its willingness to transfer the Domain Name to Complainant.

As discussed in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.10, "[w]here parties to a UDRP proceeding have not been able to settle their dispute prior to the issuance of a panel decision using the "standard settlement process" described above, but where the respondent has nevertheless given its consent on the record to the transfer (or cancellation) remedy sought by the complainant, many panels will order the requested remedy solely on the basis of such consent. In such cases, the panel gives effect to an understood party agreement as to the disposition of their case (whether by virtue of deemed admission, or on a no-fault basis)". Here, Respondent has indicated its consent to transfer the Domain Name.

In addition, the Panel notes that there is no doubt that Complainant owns valid and existing trademark rights in the well-known INSTAGRAM Mark, that the Domain Name is confusingly similar to the INSTAGRAM Mark, that Respondent has no rights or legitimate interests in the Domain Name by virtue of the bad faith use to which it has been put and its repossession by the Registrar as a result of it being flagged for spam, malware, or other abuse, and that it was clearly registered and used in bad faith in a manner that resulted in the Domain Name being placed on a block list and seized by the Registrar.

Accordingly, on the basis of the above, the Panel will order such a transfer to Complainant.

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 Domain Name, <instagramloginpage.com>, be transferred to Complainant.

/John C McElwaine/
John C McElwaine
Sole Panelist
Date: April 12, 2023