

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. M. M., OMC Chambers
Case No. D2023-0849

1. The Parties

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

The Respondent is M. M., OMC Chambers, United Kingdom.

2. The Domain Names and Registrar

The disputed domain names <iknstagram.com>, <inshagram.com>, <instagraqm.com>, <instagraxm.com>, <instagrfam.com>, <instagrwm.com>, <instagrxxm.com>, <instagr4am.com>, <instagr5am.com>, <instag5am.com>, <instazgram.com>, <instwagram.com>, <instxagram.com>, <instxgram.com>, <insxtagram.com>, <ins6agram.com>, <inzstagram.com>, <i8nstagram.com>, <i9nstagram.com>, <wwwinstsgram.com>, and <9instagram.com> are registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 24, 2023. On February 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On February 24, 2023, 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 (Whois Privacy Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 28, 2023, 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 March 3, 2023.

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 March 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 26, 2023. The Center received an email communication from the Complainant on March 13, 2023, responding to an email from the Respondent on March 6, 2023, to which

the Center had not been copied. The Respondent did not submit any formal response. Accordingly, the Center notified the Respondent's default on March 30, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on April 4, 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

The Complainant is an online photo and video-sharing social networking application. Since its launch in 2010, it became a fast growing photo/video sharing and editing software and online social network, with more than 1 billion monthly active accounts worldwide.

The Complainant owns numerous trademark registrations for INSTAGRAM in many jurisdictions around the world, including, for instance, International trademark registration No. 1129314, registered on March 15, 2012.

The Complainant operates via its official website at "www.instagram.com".

The disputed domain names were registered as follows:

<9instagram.com> on May 20, 2022;
<i8nstagram.com> on May 20, 2022;
<i9nstagram.com> on May 20, 2022;
<iknstagram.com> on May 24, 2022;
<ins6agram.com> on May 20, 2022;
<inshagram.com> on May 24, 2022;
<instag5am.com> on May 20, 2022;
<instagr4am.com> on May 20, 2022;
<instagr5am.com> on May 20, 2022;
<instagraqm.com> on May 20, 2022;
<instagraxm.com> on May 24, 2022;
<instagrfam.com> on May 20, 2022;
<instagrwam.com> on May 20, 2022;
<instagrxam.com> on May 24, 2022;
<instazgram.com> on May 20, 2022;
<instwagram.com> on May 24, 2022;
<instxagram.com> on May 20, 2022;
<instxgram.com> on May 24, 2022;
<insxstagram.com> on May 20, 2022;
<inzstagram.com> on May 20, 2022;
<wwwinstsgram.com> on May 22, 2022.

The disputed domain names redirected to a gambling website at "www.lotto60.com". Upon receipt of the Complaint, the Respondent suggested to settle by transferring the disputed domain names to the Complainant and also the Respondent ceased the redirection of the disputed domain names making them not resolving to any active websites.

5. Parties' Contentions

A. Complainant

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

disputed domain names incorporate obvious misspellings of the Complainant's trademark adding or substituting letters and/or numbers, which are adjacent on a standard QWERTY keyboard. The disputed domain names are visually and phonetically similar to the Complainant's trademark. The disputed domain names also consist of misspellings of the Complainant's domain name <instagram.com>. The addition of the generic Top-Level Domain ("gTLD") ".com" in the disputed domain names may be disregarded for purposes of assessing confusing similarity, as it is viewed as a standard requirement of registration.

The Respondent has no rights or legitimate interests in the disputed domain names. The Respondent is not a licensee of the Complainant. The Respondent is not affiliated with the Complainant in any way. The Complainant has not granted any authorization for the Respondent to make use of its trademark, in a domain name or otherwise. The Respondent cannot assert that prior to any notice of this dispute it was using, or had made demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services. The Respondent is using the disputed domain names to redirect to a webpage available at "www.lotto60.com", which is unrelated to the Complainant. Therefore, the Internet users seeking the Complainant's official website may well mistype the domain name <instagram.com> and be diverted to the third party web page to which the disputed domain names redirect. Such use of the disputed domain names does not amount to a *bona fide* offering of goods or services. Nor is there any evidence of the Respondent having made demonstrable preparations to use the disputed domain names in connection with a *bona fide* offering of goods or services, such as evidence of business formation-related due diligence/legal advice/correspondence, evidence of credible investment in website development or promotional materials such as advertising, letterhead, or business cards, proof of a genuine (*i.e.*, not pretextual) business plan utilizing the disputed domain names, and credible signs of pursuit of the business plan, *bona fide* registration and use of related domain names, or other evidence generally pointing to a lack of indicia of cybersquatting intent. The Respondent cannot credibly claim to be commonly known by the disputed domain names, or a name corresponding to the disputed domain names. The Respondent is listed in the Whois records as "M. M.", which bears no resemblance to the disputed domain names. The Respondent has not secured any trademarks for "instagram" or any variation thereof, as reflected in the disputed domain names. The Respondent currently is not making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers.

The disputed domain names were registered and are being used in bad faith. As highlighted above, the Complainant's trademark is inherently distinctive and well known throughout the world. The Respondent could not credibly argue that it did not have prior knowledge of the Complainant's trademarks at the time it registered the disputed domain names in 2022. The Respondent registered the disputed domain names containing obvious misspellings of the Complainant's trademark that consist of adjacent letters on a QWERTY keyboard, and/or additional numbers, in full knowledge of the Complainant's rights. The Respondent registered the disputed domain names having no authorization to make use of the Complainant's trademark in a domain name or otherwise, thereby creating a misleading impression of association with the Complainant, in bad faith. The Respondent's registration of the disputed domain names using a privacy service to conceal its identity, may be considered further evidence of the Respondent's bad faith. The disputed domain names consist of misspellings of the Complainant's trademark, and domain name <instagram.com>. Internet users seeking the Complainant's website that make a typographical error when entering the Complainant's domain name into a web browser may be misdirected to the web page to which the disputed domain names redirect. Such activity constitutes a disruption of the Complainant's business, amounting to bad faith use of the disputed domain names.

B. Respondent

The Respondent did not reply to the Complainant's contentions. In the email communication copied to the Center from the Complainant, received on March 13, 2023, in response to an email from the Respondent on March 6, 2023, the Respondent offered to settle the dispute by deactivating the disputed domain names and offering to transfer the disputed domain names to the Complainant.

6. Discussion and Findings

A. Consent to Transfer

Section 4.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) provides that where parties to a UDRP proceeding have not been able to settle their dispute prior to the issuance of a panel decision, but where the respondent has nevertheless given its consent on the record to the transfer remedy sought by the complainant, many panels will order the requested remedy solely on the basis of such consent. In some cases, despite such respondent consent, a panel may in its discretion still find it appropriate to proceed to a substantive decision on the merits, including where the complainant has not agreed to accept such consent and has expressed a preference for a recorded decision.

The Panel is minded to treat the Respondent’s communication of March 6, 2023 directing “settle this case and promptly transfer these 21 names to your client” as a consent to transfer the disputed domain names, however, the Panel will nonetheless proceed to a full substantive decision noting the Complainant’s communication of March 13, 2023, requesting a full decision on the merits

B. Identical or Confusingly Similar

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable gTLD in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards gTLD “.com” for the purposes of the confusing similarity test.

According to section 1.9 of the [WIPO Overview 3.0](#), a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. The Panel finds that the disputed domain names consist of intentional misspellings of the Complainant’s trademark.

Also, according to section 1.8 of the [WIPO Overview 3.0](#), 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 Panel finds that the addition of “www” to the disputed domain name <wwwinstsgram.com> containing also misspelled Complainant’s trademark does not prevent finding of confusing similarity between the disputed domain name and the Complainant’s trademark.

Considering the above the Panel finds the disputed domain names are confusingly similar to the Complainant’s trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain names.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain names.

The available evidence do not confirm that the Respondent is commonly known by the disputed domain names, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain names could

be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

According to section 2.2 of the [WIPO Overview 3.0](#), non-exhaustive examples of prior use, or demonstrable preparations to use the domain name, in connection with a *bona fide* offering of goods or services may include: (i) evidence of business formation-related due diligence/legal advice/correspondence, (ii) evidence of credible investment in website development or promotional materials such as advertising, letterhead, or business cards (iii) proof of a genuine (*i.e.*, not pretextual) business plan utilizing the domain name, and credible signs of pursuit of the business plan, (iv) *bona fide* registration and use of related domain names, and (v) other evidence generally pointing to a lack of indicia of cybersquatting intent. The Panel finds that the use of the disputed domain names before the present dispute does not provide for any of the above evidence of the prior use or demonstrable preparations to use the disputed domain names with a *bona fide* offering of goods or services.

The Respondent has no rights or legitimate interests in the disputed domain names not resolving to active websites at the time of the decision in this case (see, e.g., *Philip Morris USA Inc. v. Daniele Tornatore*, WIPO Case No. [D2016-1302](#)).

Considering the above, the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain names. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

According to section 3.1.4 of the [WIPO Overview 3.0](#), 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. The Panel is convinced that the Complainant's trademark is well established through long and widespread use and the Complainant has acquired a significant reputation and level of goodwill in its trademark both in the United States and internationally. Thus, the Panel finds that the disputed domain names confusingly similar to the Complainant's trademark were registered in bad faith.

The disputed domain names consist of misspelled Complainant's trademark, which shows the Respondent attempt to take unfair advantage of Internet users who make a typing mistake when trying to reach the Complainant's official website, which confirms the bad faith registration (see, e.g. *Philip Morris USA Inc. v. Private Registration / tongliang wang*, WIPO Case No. [D2019-1041](#)).

According to section 3.1 of the [WIPO Overview 3.0](#), bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. To facilitate assessment of whether this has occurred, and bearing in mind that the burden of proof rests with the complainant, paragraph 4(b) of the Policy provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website 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 website or location or of a product or service on the respondent's website or location.

In this regard, the Panel finds that at least the third and the fourth of the above scenarios apply to the present case confirming the Respondent's bad faith.

Although at the time of this decision the disputed domain names resolve to inactive webpages, its previous bad faith use and lack of explanation of possible good faith use from the Respondent makes any good faith use of the disputed domain names implausible. Thus, the current passive holding of the disputed domain names does not prevent a finding of bad faith (see section 3.3 of the [WIPO Overview 3.0](#)).

Moreover, the Respondent used a privacy service to register the disputed domain names. According to section 3.6 of the [WIPO Overview 3.0](#), the use of a privacy or proxy service merely to avoid being notified of a UDRP proceeding, may support an inference of bad faith; a respondent filing a response may refute such inference. However, no such response was provided by the Respondent. The Panel finds that such use of the privacy service here confirms registration of the disputed domain names in bad faith.

Considering the above the Panel finds the disputed domain names were registered and are being used in bad faith. Therefore, the Complainant has established its case under 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, <9instagram.com>, <i8nstagram.com>, <i9nstagram.com>, <iknstagram.com>, <ins6agram.com>, <inshagram.com>, <instag5am.com>, <instagr4am.com>, <instagr5am.com>, <instagraqm.com>, <instagraxm.com>, <instagrfam.com>, <instagrwm.com>, <instagr5am.com>, <instazgram.com>, <instwagram.com>, <instxagram.com>, <instxgram.com>, <insxtagram.com>, <inzstagram.com>, and <wwwinstsgram.com>, be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: April 14, 2023