

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Bony Nakhale

Case No. D2023-1112

1. The Parties

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

Respondent is Bony Nakhale, India.

2. The Domain Name and Registrar

The disputed domain name <iglookup.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 13, 2023. On March 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 14, 2023, the Registrar transmitted by email to the Center its verification response confirming Respondent as the underlying listed registrant and providing the contact details.

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 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 6, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 11, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on April 24, 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 a company organized under the laws of the United States which operates the online photo and video sharing social network application “Instagram”.

Complainant has provided evidence that it is the registered owner of numerous trademarks worldwide relating to its company name and brands “Instagram” and “IG”, including the following:

- Word mark IG, European Union Intellectual Property Office (EUIPO), registration number: 017946393, registration date: January 31, 2019, status: active.

Moreover, Complainant has evidenced to own various domain names relating to its company name, brands and trademarks, *inter alia*, since 2004 the domain name <instagram.com>, used to run the “Instagram” social network application.

Respondent, according to the Whois information for the disputed domain name, is a resident of India who registered the disputed domain name on February 25, 2020, which resolves to a website at “www.iglookup.com”, purporting to offer a platform helping to view private content such as photos on Complainant’s Instagram social network application. This website prominently displays a logo having the same “look and feel” as Complainant’s official Instagram logo and – as evidenced by Complainant – included at some point before the filing of the Complaint other commercial banners; it also contains a “Trademark Notice” stating:

“This page gives you an opportunity to get access to private Instagram profiles. The word “Instagram” is a registered trademark of INSTAGRAM, INC. This trademark is used for fairly purpose. We are not affiliated with Instagram and INSTAGRAM, INC in any way. NOTE: This webpage is developed for educational purpose only.”

On January 3, 2023, Complainant sent a cease-and-desist letter through its legal representatives to Respondent, to which Respondent did not reply.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties’ Contentions

A. Complainant

Complainant contends that its social network application “Instagram” is commonly known as “IG” and is worldwide renowned as the world’s fastest growing photo/video-sharing and editing software and online social network, with more than 2 billion monthly active accounts worldwide and constantly ranked amongst the top “apps” for mobile devices.

Complainant submits that the disputed domain name is confusingly similar to Complainant’s IG trademark as it comprises the latter in its entirety as the leading element of the disputed domain name, together with the element “lookup” as a suffix. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent neither is a licensee of Complainant nor is Respondent affiliated with Complainant in any way and has not been granted any authorization to make use of Complainant’s IG trademark, in a domain name or otherwise, (2) Respondent’s name bears no resemblance to the disputed domain name and Respondent does not appear to have acquired any trademark registrations for “IG” or “IGLOOKUP” as reflected in the disputed domain name, (3) Respondent’s website under the disputed domain name purportedly provides a tool for the viewing of content from private Instagram profiles, and users attempting to do this are redirected to third-party websites or encouraged to download suspicious software, (4) Respondent is neither providing services for the proper use of Complainant’s product nor is Respondent’s website accurately and prominently disclosing its lack of

relationship with Complainant, which is why the so-called “Oki Data” criteria are not fulfilled, and (5) the disclaimer at the bottom of Respondent’s website does not render Respondent’s activities *bona fide*, as Complainant would never consent to its trademark being used in order to market a product that violates Complainant’s terms of use and its Meta Developer policies. Finally, Complainant argues that Respondent registered and is using the disputed domain name in bad faith since (1) Complainant’s IG trademark, which is a common abbreviation for “Instagram”, is inherently distinctive and well-known throughout the world in connection with Complainant’s photo-sharing social network, (2) since Respondent registered the disputed domain name, it has taken steps to set up a website purportedly providing a tool for viewing content from Instagram, in violation of Complainant’s terms of use and its Meta Developer policies, (3) Respondent has engaged in a pattern of conduct by registering multiple domain names targeting the rights of third parties, as evidenced by previous UDRP proceedings in which the panel ordered transfer of the disputed domain name from Respondent to the respective complainant, and (4) Respondent’s use of the disputed domain name is intended for commercial gain, as the website under the disputed domain name displays commercial banners, or is to spread malware by asking users to download suspicious software.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent’s default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent’s failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

The Panel concludes that the disputed domain name <iglookup.com> is confusingly similar to the IG trademark in which Complainant has rights.

The disputed domain name incorporates the IG trademark in its entirety. Numerous UDRP panels have recognized that where a domain name incorporates a trademark in its entirety, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7). Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists, that the addition of other terms (whether e.g. descriptive or otherwise) would not prevent the finding of confusing similarity under the first element of the UDRP (see [WIPO Overview 3.0](#), section 1.8). Accordingly, the addition of the term “lookup” does not prevent the Panel to find confusing similarity arising from the incorporation of Complainant’s entire IG trademark in the disputed domain name.

Therefore, Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent has not been authorized to use Complainant's IG trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name and Respondent does not appear to have any trademark rights associated with the terms "ig" and/or "iglookup" on its own. To the contrary, the disputed domain name resolves to a website at "www.iglookup.com", purporting to offer a platform helping to view private content such as photos on Complainant's Instagram social network application, thereby prominently displaying a logo having the same "look and feel" as Complainant's official Instagram logo and, at some point, other commercial banners. Such making use of the disputed domain name neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of the Policy (not even under the so-called "Ok! Data" principles which would have required Respondent e.g. to offer Complainant's social network services at issue as such, which Respondent obviously does not, see [WIPO Overview 3.0](#), section 2.8).

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in respect of the disputed domain name. Now, the burden of production shifts to Respondent to come forward with appropriate allegations or evidence demonstrating such rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.1). Given that Respondent has defaulted, it has not met that burden.

Therefore, the Panel finds that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

The circumstances to this case leave no doubts that Respondent was fully aware of Complainant's rights in the IG trademark (notwithstanding its claimed distinctive and well-known character throughout the world in connection with Complainant's photo-sharing social network) when registering the disputed domain name and that the latter is clearly directed thereto. Moreover, using the disputed domain name, which is confusingly similar to Complainant's IG trademark, to run a website at "www.iglookup.com", purporting to offer a platform helping to view private content such as photos on Complainant's Instagram social network application, thereby prominently displaying a logo having the same "look and feel" as Complainant's official Instagram logo and other commercial banners without any authorization to do so, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's IG trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. The fact that the website under the disputed domain name contains a disclaimer headed "Trademark Notice" stating that Respondent is not affiliated with Complainant in any way, is not in contrast to this finding of bad faith. Neither is Respondent legitimately providing services related to Complainant's IG trademark as such (see section B. above) nor has Respondent undertaken reasonable steps to avoid unfairly passing itself off as related to Complainant, but to the contrary uses e.g. a logo having the same "look and feel" as Complainant's official Instagram logo, which is why – given the overall circumstances of this case – the mere existence of such disclaimer cannot cure bad faith found on the part of Respondent (see [WIPO overview 3.0](#), section 3.7).

In this context, it finally also carries weight in the eyes of the Panel that Respondent obviously provided false or incomplete contact information in the Whois when registering the disputed domain name since, according

to the email correspondence between the Center and the postal courier DHL, the Written Notice on the Notification of Complaint dated March 17, 2023 could not be delivered due to a bad address. This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy set forth by paragraph 4(a)(iii).

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 name <iglookup.com> be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: May 2, 2023