

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Rahman Shaikh
Case No. D2023-1247

1. The Parties

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

The Respondent is Rahman Shaikh, India.

2. The Domain Name and Registrar

The disputed domain name <instafollows.org> (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 March 21, 2023. On March 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 23, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 24, 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 29, 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 April 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 26, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on May 10, 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 a United States company established in 2010 that operates a well-known social media network under the trade mark INSTAGRAM (the “INSTAGRAM Mark”) often abbreviated to “INSTA”, that specialises in online photo and video sharing. The Complainant’s Instagram product was launched in 2010 and has more than 2 billion monthly active accounts. Its Instagram app is the 8th most downloaded app for iOS phones worldwide.

The Complainant is the owner of a trade mark registration in the United States for the word mark INSTA (the “INSTA Mark”) No. 5061916 registered on October 18, 2016 for downloadable computer software in class 9. It is also the owner of trade mark registrations in the United States and the European Union for the INSTAGRAM Mark, including United States trademark No. 4146057 registered on May 22, 2012.

The Domain Name was registered on February 23, 2021. The Domain Name resolves to a website (the “Respondent’s Website”) where the Respondent purports to offer a service allowing viewers to buy likes and followers on the Complainant’s Instagram service. The purchasing of followers on Instagram would be expected to involve the creation of false accounts or hacking into existing accounts which would breach the Complainant’s terms of service.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, the Complainant contends:

- (i) that the Domain Name is confusingly similar to the Complainant’s INSTA Mark as it consists of the INSTA Mark in its entirety with the addition of the descriptive term “follows”;
- (ii) that the Respondent has no rights nor any legitimate interests in respect of the Domain Name. The Respondent is not commonly known by the Domain Name, nor has it conducted a legitimate business under the Domain Name. The Complainant has not authorized or licensed the Respondent to use the INSTA Mark. There is no noncommercial use of the Domain Name. The use of the Domain Name to purport to offer a service for purchasing Instagram followers involves the Respondent engaging in fraudulent conduct. Such a use is not *bona fide*; and
- (iii) that the Domain Name has been registered and is being used in bad faith. Given the reputation of the Complainant’s well-known INSTA Mark and the use to which the Domain Name has been put, it is inconceivable that the Respondent registered the Domain Name unaware of the Complainant’s rights. The Domain Name resolves to a website which offers a service that likely involves some form of fraudulent operation. This conduct amounts to registration and use of the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

It appears from the evidence submitted by the Complainant that the Respondent has used the Domain Name

to operate a website that purports to be able to supply individuals with Instagram “likes” and/or “followers”. If such services are not real, then the Respondent is engaging in fraudulent conduct. If such services are real then the Respondent, in providing these followers, is engaged in the process of making up fake accounts and/or hacking into existing accounts. Such conduct may be fraudulent and is not a *bona fide* offering of goods or services.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Respondent is using the Domain Name for a website purporting to offer a service that would seem to involve the creation of false Instagram accounts. In previous UDRP decisions such conduct has been found to be evidence of registration and use in bad faith, see *Instagram, LLC v. Whois privacy protection service / Olga Sergeeva / Ivan Ivanov / Privacy Protect, LLC (Privacy Protect.org)*, WIPO Case No. [D2020-0521](#), in which the panel described the then respondent’s conduct (essentially identical to the present Respondent’s conduct) as follows:

“The Panel is not convinced by the arguments of the Respondent, which are not supported by any evidence or explanation how its users would receive large numbers of genuine “followers”, “likes”, “views” and “comments” in such short periods of time legitimately []. The Panel is not aware how this could possibly happen without some type of fraud or other illegitimate conduct. The elements of all of the disputed domain names and the content and appearance of the associated websites shows that they are all focused on the Complainant and its Instagram service, which makes the statement of the Respondent that it was not targeting the Complainant simply not credible.”

and

“Taking the above into account, the Panel accepts that it is more likely than not that the Respondent has registered the disputed domain names with knowledge of the Complainant and targeting the INSTA and INSTAGRAM trademarks (or its abbreviated form INSTA) in an attempt to attract traffic to the disputed domain names and to offer Internet users illegitimate services that destroy the authenticity of the user experience sought by Instagram and damage the reputation of the Complainant.”

The Panel agrees with the conclusions of the panel above and finds that the Respondent has registered and used the Domain Name in bad faith.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <instafollows.org> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: May 17, 2023