

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Rahaf Adnan
Case No. D2023-1433

1. The Parties

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

The Respondent is Rahaf Adnan, Jordan.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 3, 2023. On April 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 4, 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 (Domain Admin, Domain Privacy Service FBO Registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 6, 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 April 12, 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 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 5, 2023.

The Respondent informally responded to the Center’s notification of default on May 9, 2023.

The Center appointed Alistair Payne 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 very well reputed global online photo and video sharing social networking application and currently has over 1 billion monthly active users and 500 million daily active users and is ranked the 18th most visited site in the world according to web information company, Alexa. It owns numerous trade mark registrations worldwide for the word mark INSTAGRAM including United States Trademark Registration No. 4,146,057, INSTAGRAM, registered on May 22, 2012 and European Union Trade Mark No. 014493886 for INSTAGRAM, registered on December 24, 2015. The Complainant also owns various domain names incorporating its INSTAGRAM trade mark, including <instagram.net> and <instagram.com>.

The disputed domain name was registered on July 3, 2021 and resolves to a page which indicates a server error. The disputed domain name has been reported as unsafe due to the presence of harmful content and has been flagged by several security vendors as malicious in connection with phishing and malware.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name incorporates the Complainant's INSTAGRAM mark and adds the word "crypto" which it says is descriptive. The Complainant says that this does not remove the confusing similarity between the disputed domain name and the INSTAGRAM mark and therefore that the disputed domain name is not distinguishable from the Complainant's INSTAGRAM mark and is accordingly confusingly similar to it.

The Complainant asserts that it has neither licensed nor authorised the Respondent to use the Complainant's INSTAGRAM mark and does not have any legal relationship with the Complainant that would entitle the Respondent to use the INSTAGRAM mark. Further, says the Complainant, neither the Whois data for the disputed domain name, nor the Respondent's use of the disputed domain name, supports a conclusion that the Respondent is known by the disputed domain name. Additionally, the Complainant, who says that it monitors the use of its INSTAGRAM mark, maintains that it is not aware of the Respondent being known by the disputed domain name in any other way.

The Complainant says that the Respondent has no legitimate reason for using the INSTAGRAM mark within the disputed domain name and that the disputed domain name resolves to an error message. The Complainant says that the disputed domain name is on one or more block lists indicating that it has been used in connection with spam, malware, or other domain name abuse. The Complainant notes that the disputed domain name was also flagged by several security vendors as being malicious in connection with phishing and malware which it says is not *bona fide* offering of goods or services. The Complainant states that the alleged use is neither a legitimate noncommercial or fair use of the disputed domain name.

As far as bad faith is concerned the Complainant submits that the Respondent has registered the disputed domain name which is confusingly similar to the Complainant's INSTAGRAM mark. The Complainant says that the Respondent registered the disputed domain name on July 3, 2021, which postdates the registration and use of the INSTAGRAM mark by many years and as the INSTAGRAM mark is so obviously connected with the Complainant and its well-publicised mobile application, the Respondent must have been aware of the Complainant's mark and business but chose knowingly to register it regardless.

The Complainant asserts that given the fame of the Complainant's INSTAGRAM mark and the Respondent's unauthorised incorporation of the INSTAGRAM mark into the disputed domain name, there are no

circumstances under which the Respondent's use of it could plausibly be in good faith under the Policy.

As far as use in bad faith is concerned the Complainant says that the Respondent's bad faith is evidenced by the fact that the disputed domain name has been reported as containing harmful content and was flagged as malicious in connection with phishing, malware, and other suspicious activity. The Complainant asserts that the registration of a confusingly similar domain name that is obviously connected with a particular trade mark owned by someone with no connection with the trade mark owner suggests bad faith (see *Instagram, LLC v. Asif Ibrahim*, WIPO Case No. [D2020-2552](#) (March 12, 2020).and see *Instagram, LLC v. Fahrettin Turgut*, WIPO Case No. [D2020-2751](#) (December 17, 2020).

B. Respondent

The Respondent did not reply to the Complainant's contentions. The Respondent informally responded to the Center's notification of default on May 9, 2023 stating: "This is my domain name and I wanna sell it if anybody wants to discuss any details with me, please let me know, and thanks" and "Please I need to talk to anyone here 1:1 I don't understand any of these emails Thanks Rahaf".

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns numerous trade mark registrations worldwide for the word mark INSTAGRAM including United States Trademark Registration No. 4,146,057, INSTAGRAM, registered on May 22, 2012 and European Union Trade Mark No. 014493886 for INSTAGRAM, registered on December 24, 2015. The disputed domain name wholly incorporates the Complainant's INSTAGRAM mark and is therefore confusingly similar to it. The inclusion of the English word "crypto" does not prevent a finding of confusing similarity. As a result, the Complaint succeeds under the first element of the Policy.

B. Rights or Legitimate Interests

The Complainant has asserted that it has neither licensed nor authorised the Respondent to use the Complainant's INSTAGRAM mark and that it does not have any legal relationship with the Complainant that would entitle the Respondent to use the INSTAGRAM mark. The Complainant has also submitted that neither the Whois data for the disputed domain name, nor the Respondent's use of the disputed domain name, supports any conclusion that the Respondent is known by the disputed domain name. Additionally, the Complainant has submitted that it is not aware of the Respondent being known by the disputed domain name.

The disputed domain name resolves to an error message and the Complainant has maintained that the Respondent has no legitimate reason for using the INSTAGRAM mark within the disputed domain name. The Complainant has also asserted that the disputed domain name is on one or more block lists indicating that it has been used in connection with spam, malware, or other domain name abuse. The Complainant also asserts that the disputed domain name was flagged by several security vendors as being malicious in connection with phishing and malware, which is not a *bona fide* offering of goods or services and has provided some evidence in this regard. The Complainant has asserted that this is neither a legitimate noncommercial nor fair use of the disputed domain name.

In these circumstances, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent. For this reason, and as set out under Part C below, the Panel finds that the Complaint succeeds under this element of the Policy.

C. Registered and Used in Bad Faith

The disputed domain name was registered in July 2021. This post-dates by many years the Complainant's registration in 2012 of its United States trademark no. 4,146,057 for INSTAGRAM. The Complainant's INSTAGRAM mark is a very distinctive coined mark used by the Complainant for its global platform, which is amongst the most well-known social media platforms. The disputed domain name resolves to an error page and the probability is more likely than not, as discussed below, that it will be used for illegitimate purposes. In these circumstances, it is most likely that the Respondent was well aware of the Complainant and its INSTAGRAM platform upon registration of the disputed domain name.

The disputed domain name does not resolve to an active website but only to a site featuring an error message and there is no evidence that it has been used to date to resolve to an active website. Previous panels have found that factors that have been considered relevant in applying the passive holding in bad faith doctrine, where there is no apparent use of the disputed domain name, 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.

In this case, the INSTAGRAM trade mark is a coined term that is highly distinctive and is extremely well reputed globally. The Respondent has failed to submit a response or to provide any use of actual or contemplated good faith use. The Panel notes that the disputed domain name was registered in the name of a privacy service in an attempt to conceal its identity. In these circumstances, it seems to the Panel entirely implausible that the Respondent could use the disputed domain name in good faith for a *bona fide* activity. This all the more so as the Complainant has submitted various assessments or reports that the disputed domain name either contains harmful content or has been flagged as being malicious in connection with phishing, malware, and other suspicious activity. In the circumstances, the Panel finds that this case meets the requirements of the passive holding in bad faith doctrine and that the disputed domain name has accordingly been used in bad faith.

In addition, considering that the INSTAGRAM mark is so well reputed globally, the mere use of it in the disputed domain name without authorisation, creates a presumption of bad faith (See Section 3.1.4 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Previous panels have also recognised that the registration of a confusingly similar domain name that is obviously connected with a particular trade mark owned by someone with no connection to the trademark owner suggests bad faith (see *Instagram, LLC v. Asif Ibrahim*, WIPO Case No. [D2020-2552](#) (March 12, 2020) and see *Instagram, LLC v. Fahrettin Turgut*, WIPO Case No. [D2020-2751](#) (December 17, 2020).

Accordingly, the Panel finds that the disputed domain name has been both registered and used in bad faith and that the Complaint also succeeds under this element 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 name <instagramcrypto.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: May 24, 2023