ARBITRATION
AND
MEDIATION CENTER

WIPO
WORLD
INTELLECTUAL PROPERTY
ORGANIZATION

ADMINISTRATIVE PANEL DECISION
Instagram, LLC v. Fineline Developer
Case No. D2023-3230

1. The Parties

The Complainant is Instagram, LLC, United States of America ("United States"), represented by Greenberg Traurig, LLP, United States of America.

The Respondent is Fineline Developer, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <instagramproapk.download> is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 27, 2023. On July 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 27, 2923, 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 (PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 31, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant replied to the Center's invitation on August 9, 2023 informing it wishes not to amend the complaint.

On July 31, 2023, the Center received an email communication on behalf of an individual named Qaswar Abbas, sent from the registrant's email address provided by the Registrar in the verification response in which this individual informed that it registered the disputed domain name. On August 15, 2023, the Center received another email communication form the same individual.

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 the Respondent of the Complaint, and the proceedings commenced on August 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 5, 2023. The Respondent did not submit any formal response to the complaint. Accordingly, the Center notified the Parties of the Commencement of Panel Appointment Process on September 6, 2023.

The Center appointed Edoardo Fano as the sole panelist in this matter on September 11, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to [the] Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a formal response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is Instagram, LLC, a U.S. company providing a world-famous online photo and video sharing social networking application, founded in 2010 and acquired by Meta Platforms, Inc. (formerly known as Facebook, Inc.) in 2012, owning several trademark registrations for INSTAGRAM, among which:

- International Trademark Registration No. 1129314 for INSTAGRAM, registered on March 15, 2012;

- United States Trademark Registration No. 4146057 for INSTAGRAM, registered on May 22, 2012;

- European Union Trademark Registration No. 014493886 for INSTAGRAM, registered on December 24, 2015.

The Complainant operates on the Internet at the main website "www.instagram.com", as well as with many other generic Top-Level Domains ("gTLDs") and country code Top-Level Domains ("ccTLDs") including the trademark INSTAGRAM.

The Complainant provided evidence in support of the above.

According to the WhoIs records, the disputed domain name was registered on February 21, 2023, and it resolves to a website in which the Complainant's trademark, logo, colors and favicon are reproduced and a modified mobile application of the Complainant's Instagram app is purportedly offered.

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 disputed domain name.

Notably, the Complainant states that the disputed domain name is confusingly similar to its trademark INSTAGRAM, as the disputed domain name wholly contains the Complainant's trademark with the addition of the terms "pro" and "apk".

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name resolves to a website in which the Complainant's trademark, logo, colors and favicon are reproduced and a modified mobile application of the Complainant's Instagram app is purportedly offered, in breach of the Complainant's Terms of Use as well as the Meta's Developer Policies.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's trademark INSTAGRAM is distinctive and well known. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain name and the Complainant contends that the use of the disputed domain name to impersonate the Complainant and attract, for commercial gain, Internet users to the Respondent's website, creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, qualifies as bad faith registration and use.

B. Respondent

The Respondent has made no formal reply to the Complainant's contentions. However, as noted above, an individual named Qaswar Abbas sent the following informal email communications to the Center from the registrant's email address provided by the Registrar in the verification response:

"I am the owner of the domain instagramproapk.download I have registered this domain on my name and on my company details. tell me which information you want i will give you. Name: Qaswar Abbas Nationality : Pakistan National identity Number […] Business Qaswar LTD i also have a uk company on my name and all the details are on my name." (July 31, 2023);

"Yes, I confirm." (August 15, 2023).

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to submit a formal response, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 4.3.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

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

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 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 disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. WIPO Overview 3.0, section 1.7.

While the addition of other terms, here "pro" and "apk", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. WIPO Overview 3.0, section 1.8.

It is also well accepted that a generic Top-Level Domain, in this case ".download", is typically ignored when assessing the similarity between a trademark and a domain name. WIPO Overview 3.0, section 1.11.1.

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 disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity (*e.g.*, the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. WIPO Overview 3.0, section 2.13.1.

Moreover, the Panel finds that the composition of the disputed domain name carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. WIPO Overview 3.0, section 2.5.1.

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.

In the present case, regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant's trademark INSTAGRAM in the field of online photo and video sharing social networking application is clearly established, and the Panel finds that the Respondent must have known of the Complainant, and deliberately registered the disputed domain name in bad faith, especially because in the website at the disputed domain name the Complainant's trademark, logo, colors and favicon are reproduced and a modified mobile application of the Complainant's Instagram app is purportedly offered.

The Panel further notes that the disputed domain name was also being used in bad faith since the Respondent is trying to attract Internet users to its website by creating likelihood of confusion with the Complainant's trademark as to the disputed domain name's source, sponsorship, affiliation or endorsement, an activity clearly detrimental to the Complainant's business.

Panels have held that the use of a domain name for illegal activity (*e.g.*, the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. WIPO Overview 3.0, section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The above suggests to the Panel that the Respondent intentionally registered and was using the disputed domain name in order both to disrupt the Complainant's business, and to attract Internet users to its website in accordance with paragraph 4(b)(iv) of the Policy.

Furthermore, the Panel considers that the nature of the inherently misleading disputed domain name, which includes the Complainant's trademark in its entirety with the mere addition of the terms "pro" (standing for "professional"), and "apk" (standing for "Android package"), namely referring both to the Complainant's field of activity, further supports a finding of bad faith. WIPO Overview 3.0, section 3.2.1.

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 disputed domain name, <instagramproapk.download> be transferred to the Complainant.

/Edoardo Fano/
Edoardo Fano
Sole Panelist
Date: September 25, 2023