

## **ADMINISTRATIVE PANEL DECISION**

Instagram, LLC v. Fuat Kizilaslan, Fatih  
Case No. D2022-1031

### **1. The Parties**

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

The Respondent is Fuat Kizilaslan, Fatih, Turkey.

### **2. The Domain Names and Registrar**

The disputed domain names <instafans.net> and <instagrambegenin.com> are registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 24, 2022. On March 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 25, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the 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 the Respondent of the Complaint, and the proceedings commenced on March 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 21, 2022.

The Center appointed Alistair Payne as the sole panelist in this matter on April 27, 2022. 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 the very well-known global online photo and video sharing social networking application and currently has over one billion monthly active users. It owns numerous trade mark registrations worldwide for the word mark INSTAGRAM including United States trade mark registration No. 4146057, registered on May 22, 2012 and Turkish trade mark registration No. 2012/85440, registered on April 28, 2015. The Complainant also owns various domain names incorporating its INSTAGRAM trade mark, including <instagram.com>. The Complainant also owns United States trade mark registration No. 5061916 for INSTA, registered on October 18, 2016 and European Union trade mark registration No. 014810535 for INSTA, registered on May 23, 2018.

The Respondent registered the disputed domain name <instafans.net> on November 11, 2019. On November 18, 2021, the disputed domain name <instafans.net> resolved to a website that purported to be able to help subscribers to obtain free Instagram followers. This website featured a logo that was a modified version of the Complainant's logo trade mark registered as European Union trade mark No. 015442502 registered on September 21, 2016. By the time of filing of the Complaint, this disputed domain name resolved to a website displaying information about VMware products.

The Respondent also registered the disputed domain name <instagrambegenin.com> on December 9, 2016. As of November 18, 2021, this disputed domain name redirected to a website which was a webpage entitled "Stalker Analyzer" which required users to enter their Instagram usernames and passwords in order to access its services. However, by the time of filing of the Complaint, the disputed domain name <instagrambegenin.com> did not resolve to an active website.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant submits that it owns registered trade mark rights for its INSTAGRAM and INSTA marks as set out above. It also says that the inclusion of the Complainant's INSTA trade mark in its entirety in <instafans.net> and of INSTAGRAM in <instagrambegenin.com> is sufficient to establish confusing similarity between each of them and the Complainant's respective trade marks. Further, it says that the addition respectively of the terms "fans" and "begenin" (which it says means "like it" in Turkish) to the Complainant's INSTA and INSTAGRAM trade marks respectively, does not prevent a finding of confusing similarity.

The Complainant notes that the Respondent is not a licensee of the Complainant, nor has the Respondent been otherwise authorised by the Complainant to make any use of its INSTA or INSTAGRAM trade marks, or any variation thereof, in a domain name or otherwise. It also says that the Respondent cannot assert that prior to any notice of this dispute it was using, or had made demonstrable preparations to use, either of the disputed domain names in connection with a *bona fide* offering of goods or services, in accordance with paragraph 4(c)(i) of the Policy. It notes that the disputed domain name <instafans.net> previously resolved to a website that purported to be able to help subscribers to obtain free Instagram followers which it says breaches the Complainant's Terms of Use as well as Facebook's Developer policies. It further notes that the disputed domain name <instagrambegenin.com> formerly redirected to a website which was a webpage entitled "Stalker Analyzer" that required users to enter their Instagram usernames and passwords in order to access its services, which it says was a malicious attempt to obtain confidential login credentials of users, which cannot be a *bona fide* offering of goods and services.

It also says that there is no evidence to suggest that the Respondent is commonly known by either of the disputed domain names, as contemplated by paragraph 4(c)(ii) of the Policy. Neither, says the Complainant, is there any evidence that the Respondent is making a legitimate noncommercial or fair use of either of the disputed domain names. It says that the provision of a tool enabling Internet users to artificially increase the number of their followers, as was previously available on the site at "www.instafans.net", does not amount to a legitimate noncommercial or fair use. It also submits that inviting Internet users to enter their Instagram

login credentials on the website redirected from the disputed domain name <instagrambegenin.com> in an attempt to gain unauthorised access to Instagram users' accounts cannot be considered either legitimate noncommercial or fair use within the Policy. Neither it submits, does the fact that the Respondent no longer appears to be making any active use of either of the disputed domain names give rise to any rights or legitimate interests in them.

In terms of registration in bad faith, the Complainant submits that the INSTAGRAM and INSTA marks are highly distinctive and as a result of very considerable use and have developed a reputation such that they are exclusively associated with the Complainant. It says that its trade marks are inherently distinctive and well known throughout the world in connection with its online photo-sharing social network and that the INSTAGRAM trade mark has been continuously and extensively used since its launch in 2010, and has rapidly acquired considerable reputation and goodwill worldwide. The Complainant submits that the Respondent could not credibly argue that it did not have knowledge of Instagram or its INSTAGRAM and INSTA trade marks when registering the disputed domain names respectively, in 2016 and 2019.

In any event, says the Complainant, the Respondent's intent to target the Complainant when registering the disputed domain names may be inferred from the prior contents of the websites, which made explicit reference to the Complainant. The Complainant also submits that the Respondent could not credibly argue that it did not have knowledge of the Complainant's mark when registering the disputed domain names in 2016 and 2019, by which time Instagram had amassed over 500 million and one billion monthly active users respectively.

In terms of use in bad faith, the Complainant submits that the Respondent is using each of the disputed domain names to intentionally attract, for commercial gain, Internet users to a website under the Respondent's control by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website, in accordance with paragraph 4(b)(iv) of the Policy. The Complainant says that the disputed domain name <instagrambegenin.com> has been used by the Respondent to invite Internet users to provide their Instagram login credentials in a fraudulent phishing attempt. It says that the disputed domain name <instafans.net> has been used by the Respondent to sell "likes" and "followers" over and above a certain threshold, noting that the website to which it was previously pointing states that blogs and articles earn 5,000 free fans which have a "value" of USD 30. This says the Respondent is in breach of the Complainant's Terms of Use and Facebook's Developer Policies.

## **B. Respondent**

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

## **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 trade mark Registration No. 4146057, registered on May 22, 2012 and Turkish trade mark registration No. 2012/85440, registered on April 28, 2015. It has also demonstrated that it owns United States trade mark registration No. 5061916 for INSTA, registered on October 18, 2016 and European Union trade mark registration No. 014810535 for INSTA, registered on May 23, 2018.

The disputed domain name <instafans.net> wholly incorporates the Complainant's INSTA mark and the disputed domain name <instagrambegenin.com> wholly incorporates the Complainant's INSTAGRAM mark. Neither the addition of the common English word "fans" in the disputed domain name <instafans.net> nor the addition of "begenin" (which the Panel understands to mean "like it" in Turkish) in the disputed domain name <instagrambegenin.com> prevents a finding of confusing similarity. As a result, the Panel finds that each of the disputed domain names is confusingly similar to one or other of the Complainant's trade mark

registrations and the Complaint succeeds under this element of the Policy.

## **B. Rights or Legitimate Interests**

The Complainant has submitted that the Respondent is not a licensee of the Complainant and that it has not authorised the Respondent to make any use of its INSTAGRAM or INSTA trade marks, or any variation thereof, in a domain name or otherwise. It has also submitted that 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 name in connection with a *bona fide* offering of goods or services, in accordance with paragraph 4(c)(i) of the Policy.

The Complainant has also asserted that there is no evidence to suggest that the Respondent is commonly known by the disputed domain name, as contemplated by paragraph 4(c)(ii) of the Policy. In particular, the Complainant has submitted that the Respondent's identity is hidden behind a privacy service or a redacted name and these names bear no resemblance to the disputed domain name. It has also asserted that the provision of a tool enabling Internet users to artificially increase the number of their followers, as was previously available on the site at "www.instafans.net", does not amount to a legitimate noncommercial or fair use. It also submitted that inviting Internet users to enter their Instagram login credentials on the website redirected from the disputed domain name <instagrambegenin.com> most likely in an attempt to gain unauthorised access to Instagram users' accounts, cannot be considered either legitimate noncommercial or fair use within the Policy and that the Respondent is therefore not making a legitimate noncommercial or fair use of this disputed domain name.

Further, according to the evidence submitted by the Complainant, the website redirected from the disputed domain name <instagrambegenin.com> contained the following disclaimer at the bottom of the homepage that: "This site is not affiliated with Instagram. Your transactions are carried out using the Instagram API system with your username and password." The Panel notes that it did not identify that the Complainant is the owner of the INSTAGRAM trademark, and it did not prominently and clearly indicate that the Respondent had no relationship with the Complainant. Moreover, the website actually required Instagram usernames and passwords to log in, which would naturally carry a risk of confusing Internet users into believing that the website might be associated with the Complainant.

Overall, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or interests in either of the disputed domain names which has not been rebutted by the Respondent. For this reason and as set out below, the Panel finds that the Complaint also succeeds under this element of the Policy.

## **C. Registered and Used in Bad Faith**

The Panel finds that the Complainant's INSTAGRAM and INSTA marks are highly distinctive and are exclusively associated with the Complainant. These marks were registered before the disputed domain names and are undoubtedly very well known throughout the world in connection with the Complainant's online photo-sharing social network and enjoy very considerable reputation and goodwill in many countries worldwide, including in Turkey where the Respondent appears to be based. The Panel agrees with the Complainant that considering this degree of renown and the functions and content, as described above, on the websites at the respective disputed domain names, the Respondent could not credibly argue that it did not have knowledge of the INSTAGRAM or INSTA marks in relation to the Complainant's Instagram website when it registered each of the disputed domain names in 2016 and 2019 respectively.

Both of the disputed domain names have previously been used by the Respondent without the Complainant's consent or authority in a manner or for purposes that amount to use in bad faith.

The Respondent previously used the <instafans.net> disputed domain name to resolve to a website that provided a tool that enables Internet users to artificially increase the number of their followers. The Panel finds that without the Complainant's consent such use amounts to evidence of bad faith. Further, the

Respondent previously invited Internet users to enter their Instagram login credentials on the website redirected from the disputed domain name <instagrambegenin.com>, most likely in an attempt to gain unauthorised access to Instagram users' accounts. Although there was a disclaimer on this redirected website, the Panel finds that under overall circumstances of this case, the mere existence of a disclaimer cannot cure such bad faith. The Respondent has failed to explain this conduct or to rebut this inference and therefore the Panel finds that this use of the disputed domain name <instagrambegenin.com> also amounts to bad faith.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's trade mark as to the source, sponsorship, affiliation or endorsement of the website.

The Panel finds that the Respondent has previously used each of the disputed domain names intentionally to confuse and divert Internet users to the respective websites for its own financial gain. Internet users arriving at either website to which each disputed domain name resolved in the past may have been confused into thinking that the site was authorised by or had some connection with the Complainant, particularly in view of the many references to "Instagram" on both websites and the use of a device mark on the "www.instafans.net" website that looked very similar to the Complainant's device mark. It is apparent, as described earlier, that the Respondent's use of the disputed domain name in either case was for its own financial benefit. The Panel finds that these circumstances also fulfill the requirements of paragraph 4(b)(iv) of the Policy which amounts to evidence of registration and use in bad faith of each of the disputed domain names.

Although the use of the disputed domain names changed at the time of filing of the Complaint, the Panel finds that such change does not prevent a finding of bad faith.

Accordingly, the Panel finds that both of the disputed domain names have been 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 names <instafans.net> and <instagrambegenin.com> be transferred to the Complainant.

/Alistair Payne/

**Alistair Payne**

Sole Panelist

Date: May 11, 2022