

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc., Instagram, LLC v. Domains By Proxy, LLC /
Tim Ordonez
Case No. D2022-1789

1. The Parties

The Complainants are Meta Platforms, Inc. and Instagram, LLC, United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is Domains By Proxy, LLC, United States / Tim Ordonez, United States.

2. The Domain Names and Registrar

The disputed domain names <metainstagramdownload.com>, <metainstagramdownload.info>, <metainstagramdownload.live>, <metainstagramdownload.net>, <metainstagramdownload.online>, and <metainstagramdownload.xyz> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 18, 2022. On May 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 19, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 24, 2022, 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 May 25, 2022.

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 May 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 16, 2022. The Respondent did not submit any response. Accordingly,

the Center notified the Respondent's default on June 17, 2022.

The Center appointed William F. Hamilton as the sole panelist in this matter on June 21, 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 Meta Platforms, Inc ("Meta") operates, *inter alia*, Facebook, Instagram, Meta Quest (formerly Oculus), Novi, Portal, and WhatsApp. The Complainant is an internationally renowned social technology company. Facebook has nearly 3 billion monthly active users worldwide.

Facebook's website is available at "www.facebook.com".

The Complainant Instagram, LLC ("Instagram") is a world-renowned online photo and video sharing social-networking application. Instagram is a wholly owned subsidiary of Meta. Instagram has more than 1 billion monthly active users worldwide.

Instagram's website is available at "www.instagram.com".

The Complainants have secured ownership of numerous trademark registrations for the marks META and INSTAGRAM in many jurisdictions throughout the world, including but not limited to the following:

- United States Trademark Registration No. 5548121 for the mark META, registered on August 28, 2018;
- United States Trademark Registration No. 4,146,057 for the mark INSTAGRAM, registered on May 22, 2012.

The META and INSTAGRAM marks will be referred to herein sometimes as the "Marks".

The disputed domain names were registered on December 6, 2021.

The disputed domain names do not resolve to active websites.

5. Parties' Contentions

A. Complainant

The Complainants assert that the disputed domain names are confusingly similar to the Complainants' Marks because the disputed domain names wholly incorporate the Complainants' Marks and are only distinguished from the Marks by the addition of the dictionary word "download" followed by a variety of generic Top-Level Domain ("gTLDs"). The Complainants assert that the Respondent has not used the Marks or the disputed domain names in any *bona fide* business and has never obtained the permission of the Complainants to use the Marks or the disputed domain names. Finally, the Complainants assert that the Respondent registered and used the disputed domain names in bad faith with full knowledge of the Complainants' Marks.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

Consolidation:

The Complainants request consolidation of the Complainants' claims into a single proceeding because with respect to each of the six disputed domain names: (i) the Respondent is identical, (ii) the dates of registration are identical, (iii) the Complainants are identical, and (iv) the method of composition of the disputed domain names is identical. The Panel finds that the Complainants' arguments are well-taken. The Panel orders consolidation and will address the Complainants' claims regarding the six disputed domain names in this single proceeding.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain names are confusingly similar to the Marks. The disputed domain names entirely incorporate the Marks with the addition of the term "download" and varying gTLDs. A domain name which wholly incorporates a complainant's registered mark is sufficient to establish confusingly similarity for the purposes of the Policy when, as here, the Marks are clearly recognizable within the disputed domain names notwithstanding the addition of the term "download". See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8 ("where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographic, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element")

The generic gTLDs of the disputed domain names may be disregarded for the purposes of assessment under the first element, as they are viewed as a standard registration requirement. See [WIPO Overview 3.0](#), section 1.11.1; *Monster Energy Company, a Delaware Corporation v. J.H.M. den Ouden*, WIPO Case No. [D2016-1759](#); *International Business Machines Corporation v. Sledge, Inc. / Frank Sledge*, WIPO Case No. [D2014-0581](#).

B. Rights or Legitimate Interests

The Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain names.

The Complainants have specifically disavowed providing the Respondent with permission to use the disputed domain names or the Marks. The Respondent is not affiliated with the Complainants in any way and does not have any business relationship with the Complainants. There is no evidence that the Respondent has conducted any *bona fide* business under the disputed domain names or is commonly known by the disputed domain names. *Compagnie de Saint Gobain v. Com-Union Corp.*, WIPO Case No. [D2000-0020](#).

The Complainants have thus established a *prima facie* case in their favor, which shifts the burden of production on this point to the Respondent. The Respondent, however, has failed to come forth with any evidence showing any rights or legitimate interests in the disputed domain names.

Moreover, the prominent placement of the Complainants' Marks in the disputed domain names falsely suggests that the disputed domain names will resolve to websites related to the Complainants' products and services.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, bad faith may be established by any one of the following scenarios:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the

purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Panel finds that the disputed domain names were registered and used in bad faith.

Common sense compels the conclusion that the Respondent was aware of the Complainants' famous and well-known Marks when registering the disputed domain names and intentionally registered the disputed domain names to strongly suggest to unsuspecting Internet users that the disputed domain names will resolve to websites featuring files to "download" that are associated with the Complainants' products and services.

The disputed domain names do not resolve to active websites. The fact that the disputed domain names remain inactive does not prevent a finding of bad faith under the doctrine of passive holding. Moreover, noting the composition of the disputed domain names, it is difficult to conceive of any use that the Respondent might make of the disputed domain names without the Complainant's consent that would not involve bad faith. *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#) (where the reputation of a complainant in a given mark is significant and the mark bears strong similarities to the disputed domain name, the likelihood of confusion is such that bad faith may be inferred).

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 <metainstagramdownload.com>, <metainstagramdownload.info>, <metainstagramdownload.live>, <metainstagramdownload.net>, <metainstagramdownload.online>, and <metainstagramdownload.xyz> be transferred to the Complainant Meta Platforms, Inc.

/William F. Hamilton/

William F. Hamilton

Sole Panelist

Date: July 1, 2022