

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Domain Admin, FBS INC, Whoisprotection.biz / Serkan ARI
Case No. D2022-1923

1. The Parties

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

The Respondent is Domain Admin, FBS INC, Whoisprotection.biz, Türkiye / Serkan ARI, Türkiye.

2. The Domain Names and Registrars

The disputed domain names <instafanatik.com> and <instafanatik.net> are registered with FBS Inc. (the “Registrar 1”).

The disputed domain name <panelinsta.com> is registered with Isimtescil Bilişim A.Ş. (the “Registrar 2”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 27, 2022. On May 28, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On May 30, 2022, both Registrars 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”).

On May 30, 2022, the Center sent an email communication regarding the language of the proceeding in English and Turkish. The Complainant submitted a request to proceed in English. On the same day, the Respondent submitted email communications in English and Turkish stating that he would be willing to transfer the disputed domain names to the Complainant.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint in both English and Turkish, and the proceedings commenced on June 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 28, 2022. The Respondent did not submit any formal response. Accordingly, the Center notified the parties of the commencement of panel appointment process on June 29, 2022. The Respondent submitted an informal email on the same day.

The Center appointed Gökhan Gökçe as the sole panelist in this matter on July 1, 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, commonly known as “Insta” or “IG”, is an online photo and video sharing social networking application. Launched in 2010 and acquired by Facebook, Inc. in 2012, the Complainant has more than one billion monthly active users from all over the world. The Complainant’s website “www.instagram.com” is ranked as the twenty-fourth most visited website in the world and fourth most visited website in Türkiye, according to web information company Alexa.

The Complainant owns numerous trademark registrations for INSTAGRAM in jurisdictions throughout the world, including in Türkiye where the Respondent is reportedly based. Such trademark registrations include but are not limited to the following:

- Turkish Trademark No. 2012 85440, INSTAGRAM, registered on April 28, 2015;
- Turkish Trademark No. 2013 74099, INSTAGRAM, registered on May 20, 2015;
- Turkish device logo Trademark No. 2013 74082, registered on May 20, 2015;
- Turkish Trademark No. 2015 95210, INSTA, registered on June 27, 2016;
- Turkish Trademark No. 2017 118173, INSTA, registered on November 30, 2018;
- European Union Trademark No. 014810535, INSTA, registered on May 23, 2018;
- United States Trademark No. 5061916, INSTA, registered on October 18, 2016;
- European Union Trademark No. 012111746, INSTAGRAM, registered on March 6, 2014;
- United States Trademark No. 4146057, INSTAGRAM, registered on May 22, 2012.

The registration dates of the disputed domain names are as follows:

- <instafanatik.com> on August 30, 2017;
- <instafanatik.net> on August 30, 2017;
- <panelinsta.com> on May 23, 2016.

The Respondent is an individual reportedly located at Türkiye.

The Complainant submitted evidence (Annex 9, 10, 11 to the Complaint) which show that the disputed domain names were linked to English and Turkish websites. Pursuant to Annex 9 of the Complaint, the disputed domain name <instafanatik.com> was used to point to a website in Turkish that purported to provide services (through an application) allowing Instagram users to “gain thousands of followers” and “perform actions such as Followers, Likes, Comments for your account”. Pursuant to Annex 10 of the Complaint, the disputed domain name <instafanatik.net> was used to resolve to a website in Turkish providing highly similar services to increase Instagram followers, likes and views. Users were also encouraged to gain “credits” to benefit from the services. Pursuant to Annex 11 of the , the disputed domain name <panelinsta.com> was used to point to a website that offered the services via different packages, featuring different services and pricing (e.g., TRY 25 for 1000 Turkish followers, TRY 90 for 10,000 Turkish followers, TRY 100 for automatic photo likes).

At the time of this decision, the Panel notes that the disputed domain names were inactive, thus there were no content provided.

On January 19, 2022, the Complainant sent a cease-and-desist letter to the Respondent, with a follow-up e-mail dated January 26, 2022, without receiving any answer.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain names.

The Complainant is of the opinion that the disputed domain names are confusingly similar to their INSTAGRAM and INSTA trademarks.

Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain names. It is rather argued that the disputed domain names falsely suggest that there is some official or authorized link between the Complainant and the Respondent.

Finally, it is argued that the Respondent has registered and are using the disputed domain names in bad faith. The Complainant particularly argues that the Respondent must have been well aware of the Complainant's trademarks, when registering and using the disputed domain names.

B. Respondent

The Respondent submitted informal e-mail communications without any substantive content but did not formally reply to the Complainant's contentions. In his e-mail dated May 30, 2022, the Respondent indicated that he would agree to transfer the disputed domain names.

6. Discussion and Findings

6.1. Procedural Issue: Language of Proceeding

Paragraph 11(a) of the Rules provides that: "Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

Although the language of the Registration Agreements for the disputed domain names is Turkish, the Complainant argues that the language of the administrative proceeding should be English for the following reasons:

-The website previously associated with the disputed domain name <panelista.com> prominently displayed the English sentence "very easy to raise followers" at the top of the screen, which strongly suggests that the Respondent understands English;

- After the disputed domain names <panelinsta.com> and <instafanatik.net> stopped pointing to their initial websites, they temporarily resolved either to a webpage indicating both in Turkish and in English that "Our website is being updated. We will be with you again in a short time" or to an index page in English displaying "Name, Last Modified, Size description", which constitutes additional evidence of the Respondent's

understanding of English.

Additionally, the Complainant, which is not proficient in Turkish, will have to incur considerable expense if it is forced to translate the Complaint into Turkish. Noting that the Respondent was notified of the present proceeding in both English and Turkish, and noting that the Respondent did not comment on the language of the proceeding, and the Respondent's subsequent failure to file any substantive response to the Complaint, the Panel determines English to be the language of this proceeding.

6.2. Substantive Issues

Paragraph 15(a) of the Rules requires the Panel to decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the Complainant bears the burden of showing:

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

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. (*Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#))

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See, section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the [WIPO Overview 3.0](#).

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having trademark rights in INSTAGRAM and INSTA. As evidenced in the Complaint, the Complainant is the owner of various INSTAGRAM and INSTA trademarks, which, according to the case file (Annex 7 to the Complaint) are registered in many jurisdictions, including Türkiye.

The disputed domain names fully incorporate the mark INSTA as a distinctive part of the disputed domain names. This is sufficient to establish confusing similarity (*Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#); *Instagram, LLC v. Sedat Das, Arda Arda, Domain Admin, whoisprotection biz, Domain Admin Domain Admin, whoisprotection biz*, WIPO Case No. [D2016-2382](#)). Furthermore, the disputed domain names incorporate in its entirety the "insta" portion of the INSTAGRAM trademark of the Complainant, namely its dominant element. The dominant feature "insta" of the mark is recognisable in the disputed domain names thereby making it confusingly similar to the INSTAGRAM trademark (*Instagram, LLC v. Sedat Das, Arda Arda, Domain Admin, whoisprotection biz, Domain Admin Domain Admin, whoisprotection biz, supra*; *Philip Morris USA Inc. v. Steven Scully, J&S Auto Repair*, WIPO Case No. [D2015-1001](#); *RapidShare AG, Christian Schmid v. Protected Domain Services/Dmytro Gerasymenko*, WIPO Case No. [D2010-1071](#); [WIPO Overview 3.0](#), section 1.7).

The words “panel” and “fanatik” (“fanatic” in English) which are added in the disputed domain names do not prevent a confusing similarity between them and the Complainant’s trademarks since the Complainant’s INSTA trademark is easily recognizable within the disputed domain names and the disputed domain names incorporate the dominant feature of the Complainant’s INSTAGRAM trademarks. (*Instagram, LLC and WhatsApp, LLC v. Sergienko Mihail Aleksandrovich and Novruzov Elshan Sadagatovich*, WIPO Case No. [D2021-1125](#), *Nintendo of America Inc. v. Fernando Sascha Gutierrez*, WIPO Case No. [D2009-0434](#), [WIPO Overview 3.0](#), sections 1.7 and 1.8).

The generic Top-Level-Domain (“gTLD”) “.com” and “.net” are disregarded for the purposes of confusing similarity test, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons only (see, *Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#), [WIPO Overview 3.0](#), section 1.11.1).

B. Rights or Legitimate Interests

The Panel further finds that in the absence of an official Response, the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain names.

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent’s lack of rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain names in order to meet the requirements of paragraph 4(a)(ii) of the Policy. (*Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#))

The Complainant has submitted that the Respondent is not a licensee of the Complainant and that it has not authorized the Respondent to make any use of its INSTAGRAM or INSTA trademarks, or any variation thereof, in domain names or otherwise. It has also submitted that the Respondent cannot assert that prior to any notice of this dispute he was using, or had made demonstrable preparations to use, 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.

Considering the Annexes 9, 10 and 11 of the Complaint, the Respondent previously used the disputed domain names to purportedly offer paid services dedicated to Instagram promotion by enabling users to artificially increase Instagram followers, likes and views. Prior UDRP panels have recognized that service providers using a domain name containing a third-party trademark may be making a *bona fide* offering of goods or services and thus have a legitimate interest in such domain name under certain requirements (*Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)). For present purposes, such requirements do not exist and it is sufficient to note that the provision of services directed at misleading the public about the number of “likes”, “followers”, or “views” achieved by a website does not constitute such good faith offering of goods or services for the purposes of the Policy.

Consequently, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain names, and the Complainant has proven the second 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 <instafanatik.com> and <instafanatik.net > and are undoubtedly very well known throughout the world in connection with the Complainant’s online photo-sharing social networking application and enjoy very considerable reputation and goodwill in many countries worldwide, including in Türkiye where the Respondent

appears to be based at. 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 when it registered each of the disputed domain names on August 30, 2017.

Although the disputed domain name <panelinsta.com> was registered on May 23, 2016, *i.e.*, approximately one month before the Complainant's earliest INSTA trademark was registered, both the INSTAGRAM and INSTA trademarks were already very well known by that stage. For example, by February 2016, the Complainant's service had more than 500 million active users each month. By the way, the Complainant submitted its first trademark application for INSTA in Turkey on November 20, 2015. The Panel considers it extremely unlikely that the Respondent was unaware of the Complainant's trademarks when registering the disputed domain name <panelinsta.com>.

The Respondent previously used the disputed domain names to resolve to websites that provided tools that enable Internet users to artificially increase the number of their Instagram followers. The Panel finds that without the Complainant's consent such use amounts to evidence of bad faith. 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 his 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 the Complainant's trademarks on both websites and the use of a device mark on the related websites that looked very similar to the Complainant's device mark. It is apparent that the Respondent's use of the disputed domain names in either case was for his 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. ([WIPO Overview 3.0](#), section 3.3)

Additionally, the fact that two disputed domain names, namely <instafanatik.com> and <instafanatik.net> have been registered through a privacy registration service (see Annex 1 of the Complaint) is a further indication of the Respondent's bad faith and his intent to use these disputed domain names in a way which may be abusive or otherwise detrimental to the Complainant and its rights. ([WIPO Overview 3.0](#), section 3.6)

For these reasons, the Panel finds that the Complainant has established that the disputed domain names were registered and used in bad faith for the purpose of paragraph 4(a)(iii) 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, <instafanatik.com>, <instafanatik.net>, <panelinsta.com>, be transferred to the Complainant.

/Gökhan Gökçe/

Gökhan Gökçe

Sole Panelist

Date: July 8, 2022