

## **ADMINISTRATIVE PANEL DECISION**

Instagram, LLC. v. Melih Can  
Case No. D2022-4658

### **1. The Parties**

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

The Respondent is Melih Can, Türkiye.

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

The disputed domain name <instagramforappeals.com> is registered with Wild West Domains, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 5, 2022. On December 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 9, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on December 13, 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 December 15, 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 December 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 5, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on January 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 operates the Instagram social networking service and mobile application, presently having more than one billion active users and being the second most downloaded app globally and the second most downloaded app in the United States, according to Forbes magazine.

The Complainant is the owner, amongst others, of the trademark INSTAGRAM registered in the United States of America under No. 4,146,057, on May 22, 2012.

The disputed domain name <instagramforappeals.com> was registered on June 29, 2021 and appears to have been used in the past to impersonate the Complainant (Annex 13 to the Amended Complaint). Presently, when attempting to access the disputed domain name, Internet browsers display warnings stating that it has been reported as unsafe due to the presence of harmful content.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant asserts to be one of the world's leading providers of online social networking services and applications, actively promoting and using its INSTAGRAM trademark throughout the world.

According to the Complainant, the disputed domain name first resolved to a website impersonating the Complainant, and then the disputed domain name been reported as unsafe due to the presence of harmful content, and flagged by several security vendors as malicious and for use in connection with phishing (Annexes 15-16 to the Amended Complaint).

The disputed domain name is, according to the Complainant, confusingly similar to the Complainant's trademark, creating a likelihood of confusion given the reproduction of its trademark in its entirety not being the addition of the phrase "for appeals" capable of distinguishing the disputed domain name from the Complainant's trademark.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name given that:

- (a) the Complainant has neither licensed nor authorized the Respondent to use the Complainant's Instagram trademark, nor does the Respondent have any legal relationship with the Complainant that would entitle the Respondent to use the INSTAGRAM trademark;
- (b) the Respondent is not commonly known by the disputed domain name, or a name corresponding to the disputed domain name;
- (c) the Respondent, in having used the disputed domain name in an attempt to impersonate the Complainant has not used 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; and
- (d) the present use of the disputed domain name in connection with potentially harmful content also does not characterize a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy.

As to the registration of the disputed domain name in bad faith, the Complainant asserts that the Respondent knew or should have known of the Complainant's trademark rights at the time of the registration of the disputed domain name considering that it has used the disputed domain name in an attempt to impersonate the Complainant, presently having the disputed domain name been reported as containing harmful content and being flagged as malicious for use in connection with phishing, malware, and other suspicious activity, thus having the Respondent 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 trademarks as to the source, sponsorship, affiliation or endorsement of the website.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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.

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

### **A. Identical or Confusingly Similar**

The Complainant has established its rights in the INSTAGRAM trademark (Annexes 11 and 12 to the Amended Complaint).

The Panel finds that the disputed domain name reproduces the Complainant's trademark in its entirety. The addition of the terms "for" and "appeals" does not avoid a finding of confusing similarity under the Policy which, as recognized by past UDRP panels, involves a "comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name". (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.)

The first element of the Policy has therefore been established.

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

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate the Respondent's rights to or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or

- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In the present case, the Respondent used the disputed domain name in connection with a website that clearly impersonated the Complainant, which clearly cannot be considered a *bona fide* offering of goods or services.

In addition to that, the absence of any indication that the Respondent has been commonly known by the disputed domain name, or that it has acquired any registered trademarks or trade names corresponding to the disputed domain name, as well as the Complainant's statement that no authorization, license or permission has been given for the Respondent to register and use the disputed domain name corroborate with the indication of the Respondent's lack of rights or legitimate interests in the disputed domain name.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

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

The Policy indicates in paragraph 4(b)(iv) of the Policy that bad faith registration and use can be found in respect of the disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, the use of the disputed domain name in connection with a website that impersonated the Complainant characterizes the Respondent's intent of commercial gain by misleadingly diverting the Complainant's consumers.

Another element that corroborates the finding of the Respondent's bad faith conduct in this case is the use of incomplete address in the Whois data and, consequently, the Center not being able to deliver the written notice to the Respondent.

For the reasons above, the Panel finds that the Respondent's amounts to bad faith registration and use of the disputed domain name pursuant to paragraph 4(b)(iv) 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 <instagramforappeals.com> be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: January 19, 2023