

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc., Instagram, LLC v. Darwin Hetherington Sr
Case No. D2023-0005

1. The Parties

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

The Respondent is Darwin Hetherington Sr, United States.

2. The Domain Name and Registrar

The disputed domain name <instagrammeta.xyz> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 2, 2023. On January 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 3, 2023, 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, Privacy Protection, and contact information in the Complaint. The Center sent an email communication to the Complainants on January 4, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint on January 6, 2023.

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 January 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2023. Accordingly, the Center notified the Respondent’s default on January 31, 2023. The Respondent thereafter sent an informal email to the Center on January 31, 2023.

The Center appointed William F. Hamilton as the sole panelist in this matter on February 7, 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 Meta is a renowned United States technology company that operates numerous online platforms including Facebook, Meta Quest, WhatsApp, and Instagram, the second Complainant in this proceeding. Meta owns by assignment the United States Trademark Registration No. 5548121 for the trademark META, dated October 26, 2021. Meta owns and operates the website “www.meta.com”.

The Complainant, Instagram, LLC (“Instagram”), is an internationally renowned online photo and video sharing social-network application. Instagram was acquired Meta in 2012. Instagram has more than 1 billion monthly active accounts worldwide. Instagram’s principal website is “www.instagram.com”. Among other trademark registration for the trademark INSTAGRAM, the Complainant Instagram, LLC owns United States Trademark Registration No. 4,146,057, dated May 22, 2012.

Unless otherwise indicated, Meta and Instagram may be referred to herein collectively as “the Complainants”. Additionally, the marks META and INSTAGRAM may be referred to as “the Marks”.

The disputed domain name was registered on January 7, 2022. The disputed domain name resolves to a parking website generated by the Registrar with pay-per-clicks (“PPC”). On November 21, 2022, the Complainants’ lawyers attempted to reach the Respondent through the Registrar’s contact form. No response was received. On January 31, 2023, the Respondent set an email to the Center stating, “I want to transfer or cancel the disputed domain which is instagrammeta.xyz.”

5. Parties’ Contentions

A. Complainants

The Complainants asserts the disputed domain name is confusingly similar to the Mark because the disputed domain name is entirely composed by combining the Complainants’ Marks. The Complainant asserts that the Complainant never authorized the Respondent to use the disputed domain name, that the Respondent is not generally known by the disputed domain name, never operated a business under the disputed domain name, has not advertised the disputed domain name, and never engaged in any *bona fide* commercial activity in connection with the disputed domain name. The Complainants assert that the Respondent knew or should have known of the Mark with reasonable investigation and registered and used the disputed domain name in bad faith.

B. Respondent

The Respondent did not formally reply to the Complainants’ contentions.

6. Consolidation

The Panel finds that the consolidation of the Complainants’ claims in a single proceeding against the Respondent is appropriate because the Complainants have a specific common grievance against the Respondent, and it would be equitable and procedurally efficient to proceed with a consolidated proceeding. See *Facebook, Inc. and Instagram, LLC v. Domain Administrator, Fundacion Privacy Services, Ltd.*, WIPO Case No. [D2019-2518](#).

7. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainants must satisfy the Panel that:

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

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainants' Marks.

The disputed domain name is confusingly similar to the Marks because the disputed domain name is composed by joining the Marks. The disputed domain name wholly incorporates both Complainants Marks. The disputed domain name is composed of the INSTAGRAM Mark which is immediately followed by the META Mark rendering the entire disputed domain name confusingly similar to either Marks. *Giorgio Armani S.p.A Milan Swiss Branch Mendrisio v. Mage Enterprises Inc.*, WIPO Case No. [D2011-1172](#). A finding of confusing similarity results whether the analysis (i) begins with the INSTAGRAM Mark and concludes that the disputed domain name is confusingly similar to the INSTAGRAM Mark because the INSTAGRAM Mark is wholly adopted in the disputed domain name and followed by the META Mark or (ii) begins with the META Mark and concludes that the disputed domain name is confusingly similar to the META Mark because the INSTAGRAM Mark is added as a prefix to the META Mark in the disputed domain name.

The Top-Level Domain of the disputed domain name, in this case “.xyz”, may be disregarded for the purposes of assessment under the first element, as it is viewed as a standard registration requirement. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[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](#).

The Complainants have met their burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel finds on the evidence presented that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainants have specifically disavowed providing the Respondent with permission to use the disputed domain name or the Mark. There is no evidence that the Respondent has conducted any *bona fide* business under the disputed domain name or is commonly known by the disputed domain name. The Complainants have established a *prima facie* case in its 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 name. The disputed domain name resolves to a parking page with PPC links, and the disputed domain name will likely confuse unsuspecting Internet users into believing the disputed domain name will resolve to a website sponsored or affiliated with the Complainants. The facts and circumstances presented to the Panel demonstrate that the Respondent does not have any rights or legitimate interests in the disputed domain name.

The Complainants have met their burden under paragraph 4(a)(ii) of the Policy.

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 non-exhaustive 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 by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line 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 on the evidence presented that the disputed domain name was registered and is being used in bad faith.

The Marks are famous in the United States where the Respondent resides. It strains credulity to believe that the Respondent innocently and unknowing composed the disputed domain name utilizing both Marks. Moreover, a simple Internet search, normally undertaken before registering a domain name, would have disclosed the Complainants' Marks. On balance, the Panel finds that the Respondent was likely aware of the Complainants' well-known Marks when registering and using the disputed domain name to attract unsuspecting Internet users to the Respondent's website. The Respondent admits as much by offering to have the disputed domain name cancelled or transferred.

According to the evidence submitted by the Complainant, the disputed domain name resolves to a parking page comprising PPC links. The Panel finds that the Respondent specifically targeted the Complainant and its marks and registered the disputed domain name to divert Internet traffic and benefit commercially from unsuspecting Internet users seeking out the Complainant.

The Complainants have met its burden under paragraph 4(a)(iii) of the Policy.

8. 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 <instagrammeta.xyz> be transferred to the Complainant Meta Platforms, Inc., as requested in the amended Complainant Section VII.

/William F. Hamilton/

William F. Hamilton

Sole Panelist

Date: March 16, 2023