

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Mohan Krishna Chagalamarri
Case No. D2023-0787

1. The Parties

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

The Respondent is Mohan Krishna Chagalamarri, United States.

2. The Domain Name and Registrar

The disputed domain name <nftinstagram.com> (the “Domain Name”) is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2023. On February 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 22, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name that differed from the named Respondent (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 1, 2023, 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 March 7, 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 March 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 27, 2023. The Respondent did not submit a response. Accordingly, the Center notified the Respondent’s default on April 3, 2023.

The Center appointed A. Justin Ourso III as the Panelist in this matter on April 11, 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, an American company, operates the well-known Instagram social networking service and mobile application, which has over one billion monthly active users from all over the world.

The Complainant owns a United States registration, issued on May 22, 2012, No. 4,146,057, for its INSTAGRAM mark in Class 9 for downloadable computer software for modifying the appearance and enabling the transmission of photographs; another issued on July 10, 2012, No. 4,170,675, in Class 42 for, among other services, providing a website that gives users the ability to upload photographs, computer technology and support services in connection with the website, and related services; and another issued on June 16, 2015, No. 4,756,754, in Classes 35 and 38 for, among other services, promoting the goods and services of others via computer and communications networks, among other registrations, including an international registration and European Union registrations.

Among others, the Complainant is the registrant for the domain names <instagram.com>, which it registered on June 4, 2004; <instagram.net>, registered on November 6, 2010; <instagram.org>, registered on May 10, 2015; and <instagramhelp.com>, registered on September 26, 2015.

The Respondent registered the Domain Name on March 19, 2021, without any authorization from the Complainant. At the filing of the Complaint, and during the preparation of this Decision, it did not resolve to an active, functioning website.

5. Parties' Contentions

A. Complainant

In addition to facts set forth in the Factual Background in Part 4 above, the Complainant contends the following.

Regarding the element of confusing similarity with a trademark in which it has rights, the Complainant contends that it has exclusive trademark rights in its INSTAGRAM trademark, which is well-known around the world, based on its extensive common law use and its trademark registrations; the Domain Name is confusingly similar to its INSTAGRAM mark; an ordinary Internet user encountering the Domain Name would think that an affiliation exists between the Complainant and the Respondent; the addition of the descriptive term "nft" to the trademark in the Domain Name fails to distinguish the Domain Name from the mark, especially because the descriptive term relates to a feature offered by the Complainant on its website; and, for these reasons, the Domain Name is confusingly similar to the Complainant's INSTAGRAM trademark.

Regarding the element of rights or legitimate interests in the Domain Name, the Complainant contends that a complainant establishes a *prima facie* case by showing that a respondent (1) is not authorized to use the trademark, and (2) is not known by a complainant's mark; the Complainant has not licensed or otherwise authorized the Respondent to use its trademark and it has no relationship with the Respondent that would entitle the Respondent to use the mark; neither the registrant data for the Domain Name nor the Respondent's lack of use of the Domain Name supports that the Respondent is known by the Domain Name; the Registrar identified the Registrant of the Domain Name as "Mohan Krishna Chagalamarri," which does not resemble the Domain Name; entering the Domain Name into a web browser generates an error message that the site cannot be reached; the Respondent is not using but is passively holding the Domain Name with the associated website in an inactive state, which is not a *bona fide* offering of goods or services

nor a legitimate noncommercial or fair use under the Policy; and, accordingly, the Respondent has no rights or legitimate interest in the Domain Name.

Regarding the element of bad faith registration and use of the Domain Name, among other contentions, the Complainant contends that passive holding of a domain name that is confusingly similar to a complainant's mark is use in bad faith; the INSTAGRAM mark is so famous that it is inconceivable that the Respondent might have registered the Domain Name without knowing it; the Respondent registered the Domain Name many years after the Complainant's use and registration of its INSTAGRAM trademark; no circumstances exist under which the Respondent's use of the Domain Name could plausibly be in good faith; and, accordingly, the Respondent registered and is using the Domain Name in bad faith.

The Complainant requested transfer of the Domain Name.

B. Respondent

The Respondent did not submit a response to the Complaint.

6. Discussion and Findings

A. The Effect of the Respondent's Default

If a respondent does not submit a response to a complaint, a panel decides the dispute based upon the complaint. Rules, paragraphs 5(f) and 14(a). Because the Complainant has the burden of proof, Policy, paragraph 4(a), the Complainant must still prove the elements of a claim to obtain the requested relief, notwithstanding the Respondent's default. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

In the absence of exceptional circumstances, a respondent's failure to respond to a complaint requires that a panel draw the inferences from this failure that it considers proper. Rules, paragraph 14(b). The Panel finds that no exceptional circumstances exist for the failure of the Respondent to submit a response. Accordingly, the Panel infers that the Respondent does not deny the facts alleged and the contentions urged by the Complainant based upon these facts and will draw all reasonable inferences that are proper from the evidence and the facts found by the Panel. *Id.*

Although the Panel may draw negative inferences from the Respondent's default, the Complainant may not rely on conclusory allegations and must support its allegations with evidence to prove the three elements. *Id.*

B. Elements of a Claim

A complainant must prove three elements to obtain relief: (i) the domain name is identical or confusingly similar to a trademark in which the complainant has rights; (ii) the respondent has no rights or legitimate interests in the domain name; and (iii) the respondent registered and is using the domain name in bad faith. Policy, paragraph 4(a).

(i). Identical or Confusingly Similar

On the first element, the Complainant must prove that (1) it has rights in a trademark, and (2) the Domain Name is identical or confusingly similar to this trademark. Policy, paragraph 4(a)(i).

The Panel finds that the Domain Name is confusingly similar to the Complainant's INSTAGRAM trademark. The Domain Name incorporates the entire trademark, and the trademark is readily recognizable within the Domain Name, notwithstanding the addition of the acronym "nft" before the trademark. [WIPO Overview 3.0](#), sections 1.7 and 1.8.

Accordingly, the Panel concludes that the Complainant has proven the first element: the Domain Name is confusingly similar to a trademark in which it has rights.

(ii). Rights or Legitimate Interests

The Respondent has not claimed the existence of any circumstance under the Policy, paragraph 4(c), that demonstrates that a respondent has rights to, or legitimate interests in, a domain name. The Complainant, on the other hand, has shown that it has not authorized the Respondent to use the trademark and that the Respondent is not known by the mark. This is a *prima facie* showing that the Respondent lacks any rights or legitimate interests in the Domain Name under the Policy, paragraph 4(a)(ii), shifting the burden of production on this second element to the Respondent to come forward with relevant evidence proving rights or legitimate interests in the domain name. [WIPO Overview 3.0](#), section 2.1. The Respondent has not submitted any evidence to rebut the *prima facie* showing.

Additionally, the Panel finds that the Complainant's trademark rights precede the registration of the Domain Name; the Respondent masked its identity by using a privacy service; the Registrar identified the Registrant as "Mohan Krishna Chagalamarri," a name that does not resemble the Domain Name, and provided an email address for the Respondent that does not resemble the Domain Name, which corroborate that the Respondent is not known by the Domain Name; the Respondent provided a bad address to the Registrar; the Respondent failed to provide any evidence of actual or planned good faith use, or even to respond to the Complaint; and the Respondent is passively holding the Domain Name, which does not resolve to a functioning site, and which is not a *bona fide* commercial use, a noncommercial use, or a fair use of the Domain Name.

Accordingly, the Panel concludes that the Complainant has proven the second element: the Respondent lacks rights or legitimate interests in the Domain Name.

(iii). Registered and Used in Bad Faith

The Domain Name is confusingly similar to the Complainant's globally famous INSTAGRAM trademark. Panels have consistently found that the mere registration of a domain name that is confusingly similar to a well-known trademark, particularly where the Respondent adds a descriptive word to the trademark, can create a presumption of bad faith registration. [WIPO Overview 3.0](#), section 3.1.4. The Respondent has not even attempted to rebut this presumption. The Panel finds that the Respondent must have been aware of the Complainant's trademark and of the Complainant's rights in its mark at the time that the Respondent registered the Domain Name. Rules, paragraph 14(b); [WIPO Overview 3.0](#), section 3.2.2.

In addition to the facts found and recited in Part 6(B)(ii) above, the Panel finds that the Complainant's mark is globally famous and of longstanding registration and use; the descriptive word in the Domain Name in addition to the trademark betrays an intent to misleadingly associate the Domain Name with the Complainant's trademark and features on the Complainant's website; the Respondent has not offered an explanation for selecting the Domain Names, and the Panel cannot conceive of a plausibly legitimate one. All these findings, collectively, compel the Panel to conclude that the Respondent intentionally registered the Domain Name in bad faith to take unfair advantage of the Complainant's trademark and that the Respondent is using the Domain Name in bad faith, in violation of the Policy, paragraph 4(b)(iv). [WIPO Overview 3.0](#), sections 3.1.4, 3.2.1, and 3.2.2.

The Domain Name does not resolve to an active, functioning website. However, panels have consistently found that non-use of a domain name would not prevent a finding of bad faith, under the doctrine of passive holding, when other elements are present that demonstrate bad faith. [WIPO Overview 3.0](#), section 3.3.

It is common knowledge that owners of websites customarily use email addresses containing the domain name of a website in email communications. The use of a domain name that is confusingly similar to a trademark in emails that do not originate with the trademark owner presents a risk to the reputation of a trademark and its owner. Because the Respondent has not explained its intentional incorporation of a

globally famous trademark in the Domain Name, the risk of deceptive conduct, such as deceptive or abusive emails, is real and continuing.

Accordingly, the Panel concludes that the Complainant has proven the third element: the Respondent registered and is using the Domain Name in bad faith.

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 Domain Name, <nftinstagram.com>, be transferred to the Complainant.

/A. Justin Ourso III/

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Sole Panelist

Date: April 25, 2023