

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. dileep yadav

Case No. D2023-3227

1. The Parties

Complainant is Instagram, LLC, United States of America ("United States"), represented by Greenberg Traurig, LLP, United States.

Respondent is dileep yadav, India.

2. The Domain Name and Registrar

The disputed domain name <instagramproapk.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 26, 2023. On July 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 28, 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 (Registration Private Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on August 2, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. On August 9, 2023, Complainant confirmed by email that it did not wish to make any amendments to the Complaint.

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").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on August 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 5, 2023. Respondent did not submit any Response. Accordingly, the Center notified Respondent's default on September 6, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on September 19, 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

Complainant is a company organized under the laws of the United States which operates the online photo- and video-sharing social-networking service and mobile application “Instagram”.

Complainant has provided evidence that it is the registered owner of numerous trademarks worldwide relating to its company name and brand INSTAGRAM, including, but not limited, to the following:

- word mark INSTAGRAM, United States Patent and Trademark Office (“USPTO”), registration number: 4146057, registration date: May 22, 2012, status: active;
- word mark INSTAGRAM, European Union Intellectual Property Office (“EUIPO”), registration number: 14493886, registration date: December 24, 2015, status: active.

Moreover, Complainant has evidenced to own various domain names relating to its INSTAGRAM company name, brands, and trademarks, *inter alia*, since 2004 the domain name <instagram.com>, used to run the “Instagram” social network application.

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of India who registered the disputed domain name on December 8, 2022, which resolves to a website at “www.instagramproapk.com”, offering various modified mobile applications of Complainant’s INSTAGRAM app, thereby making prominent use of Complainant’s stylized INSTAGRAM design trademarks and logos (also in modified versions) without any authorization to do so.

In February 2023, Complainant contacted Respondent directly and through the Registrar requesting that the disputed domain name be suspended. Respondent did not reply to this communication.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that its social network application “Instagram” is worldwide renowned as the world’s fastest growing photo/video-sharing and editing software and online social network, with more than 2 billion monthly active accounts worldwide and constantly ranked amongst the top “apps” for mobile devices.

Complainant submits that the disputed domain name is confusingly similar to its INSTAGRAM trademark, as it is composed of the latter in full, appended by the generic terms “pro” (a common abbreviation for the term “professional”) and “apk” (an abbreviation for the term “Android Package”, meaning an Android file format for applications). Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent is not a licensee of Complainant, is not affiliated with Complainant in any way, and has not been authorized to make any use of Complainant’s INSTAGRAM trademark in a domain name, in a mobile app, in its logos on the website under the disputed domain name,

or otherwise, (2) the website associated with the disputed domain name displays various modified versions of Complainant's INSTAGRAM design logo as well as an exact match of the logo using the same color gradients, and (3) this website offers various modified mobile applications of Complainant's INSTAGRAM app, while making prominent unauthorized use of Complainant's stylized design trademarks and logos, thereby not only breaching Complainant's Terms of Use, but also circumventing e.g. the GooglePlay store policy. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Complainant's INSTAGRAM trademark is inherently distinctive and well-known throughout the world, and it is inconceivable that Respondent was not aware thereof at the time of registration of the disputed domain name, (2) given the composition of the disputed domain name, and noting the nature of Respondent's website, which makes explicit reference to Complainant's distinctive standard character, stylized and design trademarks and promotes modified versions of Complainant's mobile app, Internet users are likely to be misled into believing that Respondent's website, along with the promoted modified Instagram applications, is affiliated with or somehow otherwise endorsed by Complainant, and (3) the modified Instagram applications promoted by the disputed domain may be used to harvest data or to steal INSTAGRAM users' account credentials, for phishing or other unauthorized or illegal activities.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

6.1. Procedural Issue: Respondent Identity

Despite the Center's invitation to amend the Complaint in light of the registrant information disclosed by the Registrar, Complainant did not do so. However, in view of the Policy's definition of "Respondent" in paragraph 1 of the Rules being "the holder of a domain-name registration against which a complaint is initiated", the Panel will treat the Registrar-disclosed registrant, namely, "dileep yadav", as Respondent in view of Respondent's holding of the disputed domain name's registration.

6.2 Substantive Issues

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's INSTAGRAM trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of Complainant's INSTAGRAM trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to this trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, the term "pro" as a common abbreviation for the term "professional" and the term "apk" as an abbreviation for the term "Android Package") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and Complainant's INSTAGRAM trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In particular, panels have held that the use of a domain name for illegal activity (*e.g.*, the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. In this context, this Panel has noticed that Respondent on the website under the disputed domain name not only makes prominent use of Complainant's stylized INSTAGRAM design trademarks and logos (also in modified versions) without any authorization to do so, but also allegedly offers various modified mobile applications of Complainant's INSTAGRAM app.

Based on the available record, the Panel, therefore, finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel finally notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The circumstances to this case leave no doubts that Respondent was fully aware of Complainant's rights in the INSTAGRAM trademark when registering the disputed domain name and that the latter is clearly directed thereto. Moreover, using the disputed domain name to run a website at "www.instagramproapk.com", which

offers various modified mobile applications of Complainant's INSTAGRAM app, thereby making prominent use of Complainant's stylized INSTAGRAM design trademarks and logos (also in modified versions) without any authorization to do so, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's INSTAGRAM trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel, therefore, finds the third element of the Policy has been established, too.

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, <instagramproapk.com>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: October 3, 2023