

ADMINISTRATIVE PANEL DECISION

Instagram, LLC. v. pinoy tvshows
Case No. D2023-3723

1. The Parties

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

The Respondent is pinoy tvshows, Pakistan.

2. The Domain Name and Registrar

The disputed domain name, <instagrampro.app> is registered with Name.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 5, 2023. On September 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 8, 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 (Domain Protection Services, Inc. / Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 11, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On September 15, 2023, the Complainant declined to file an amendment to the Complaint.

The Center verified that the Complaint together with the amendment to 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 the Respondent of the Complaint, and the proceedings commenced on September 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 12, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on October 27, 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 well-known photo- and video-sharing social-networking service that has traded under the mark INSTAGRAM since 2010. The Complainant's mobile application has been consistently ranked amongst the top apps for mobile devices.

The Complainant owns many trade marks for INSTAGRAM including United States Trade mark No. 4146057, registered on May 22, 2012, in class 9.

The disputed domain name was registered on February 2, 2023.

As of February 24, 2023, the disputed domain name resolved to a website branded with the words "Instagram Pro" alongside the Complainant's logo. The site promoted an app called "Instagram Pro" that was allegedly a modified version of the Complainant's app, and which purported to include additional features including the ability to "quickly earn a significant number of followers". The website acknowledged that the Instagram followers may be generated from an undisclosed source, and therefore temporary, and that the app compromised the security of the user's Instagram account, potentially resulting in cancellation of the account by the Complainant.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that, by offering a mobile app that competes directly its own app by adding unauthorised functionality and facilitating the downloading of content from the Instagram platform, the Respondent encourages and facilitates breaches of the Complainant's terms of use and misleads Instagram users, who risk having their accounts shut down and being exposed to cybersecurity and data privacy risks.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

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

the Complainant's trade mark 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 the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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

While the addition of other terms (here, "pro") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark 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 the 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 recognised 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.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the 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.

As to paragraph 4(c)(i) of the Policy, insofar as the Respondent can be considered to offer an adjunct to the Complainant's own service, the consensus view of UDRP panels is that to establish a *bona fide* offering in such circumstances, a respondent must comply with certain conditions (the "Oki Data requirements"). [WIPO Overview 3.0](#), section 2.8. In this case, the Panel considers that the Respondent has failed to comply with the Oki Data requirement to accurately and prominently disclose the Respondent's relationship with the trade mark holder, as explained in section 6.C. below.

Furthermore, the disputed domain name comprises the Complainant's famous and highly distinctive mark plus the term "pro", which denotes an advanced version of the Complainant's own product and tends to suggest sponsorship or endorsement by the trade mark owner. [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel considers that the Respondent's use of the disputed domain name cannot be said to be *bona fide*.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

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

C. Registered and Used in Bad Faith

The Panel 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.

In the present case, the Panel considers that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy.

Not only does the disputed domain name reflect the Complainant's distinctive mark, but the Respondent has used the disputed domain name for a website that, at least initially, creates the impression that it is officially associated with the Complainant including by prominent use of the Complainant's mark and logo.

The Panel also notes that that the Respondent's app encourages and/or facilitates users to breach the Complainant's terms of service and that the Respondent even admits that its service potentially compromises the security of users' Instagram accounts.

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

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, <instagrampro.app>, be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: November 10, 2023