

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Cartoon Hdapk
Case No. D2024-0392

1. The Parties

The Complainant is Instagram, LLC, United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is Cartoon Hdapk, United States.

2. The Domain Name and Registrar

The disputed domain name <gramvio.com> is registered with Instra Corporation Pty Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 29, 2024. On January 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 30, 2024, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 1, 2024, 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 February 6, 2024.

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 February 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 4, 2024. The Respondent, on March 17, 2024, sent a brief email message to the Center, copying the Complainant. The panel has decided to admit this message, which is reproduced in section 5B, below.

The Center appointed Nicolas Ulmer as the sole panelist in this matter on March 14, 2024. 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 owns and operates an online video and photo-sharing social network application first launched in 2010; the Complaint and its Annexes establish that the Complainant's application and network is of world-wide renown, with some two billion active users. The Complainant maintains a website at "www.instagram.com", and has a substantial presence and links to other social media platforms such as Facebook (which is under common ownership with the Complainant) and LinkedIn.

In addition to its online presence, the Complainant owns numerous trademark registrations for GRAM, INSTAGRAM, and INSTA, these include, inter alia:

- European Union Trade Mark No.015868797, GRAM, registered January 12, 2017;
- European Union Trade Mark No. 017642729, GRAM, registered March 23, 2019;
- United States Trademark No. 4,146,057, INSTAGRAM, registered on May 22, 2012; and
- United States Trademark No. 5,061,916, INSTA, registered on October 18, 2016.

The Respondent is identified by the name "Cartoon Hdapk", apparently an individual in Tennessee, United States. The disputed domain name resolves to a website hosted by the Respondent and titled Gramvio, which offers various tools for downloading content from social media platforms, including the Complainant's Instagram platform.

The disputed domain name was registered on May 31, 2020.

5. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that the disputed domain name fully comprises its GRAM trademark and that the addition of the suffix "vio" does not prevent a finding of confusing similarity, and cites a number of UDRP cases making analogous findings concerning the Complainant's GRAM trademark notably, *Instagram, LLC v. Contact Privacy Inc. Customer 1247361676 / GUELCE JEAN-CLAUDY*, WIPO Case No. [D2021-1675](#) (<storiesgrams.com) and *Instagram, LLC v. Sergey Petrov*, WIPO Case No. [D2021-0482](#) (<gramhum.com>).

The Complainant further asserts that the Respondent has been given no permission, and has no rights to use its trademark in the disputed domain name or otherwise. Further the Complainant maintains that the disputed domain name was registered and used in bad faith, notably to make use of the Complainant's extremely well known name and trademark to attract Internet users for some commercial gain.

More specifically, the Complainant submits that the disputed domain name resolves to a site which improperly offers downloading services for the Complainant's content; the services thus offered by the Respondent violate the Complainant's terms of use, putting the security and privacy of its Instagram users at risk.

The Complainant further asserts and documents that it sent a cease-and-desist letter to the Respondent on October 15, 2020, putting the Respondent on notice of the Complainant's rights and requesting, inter alia, the transfer of the disputed domain name. The Respondent subsequently modified its website so as not to include tools that targeted third-party websites, but did not remove all references to the Complainant's products. The Complainant further points out that while the Respondent's website includes a disclaimer stating that it is not related to the Complainant, such disclaimer was inserted after the foregoing cease-and-desist letter.

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

B. Respondent

The Respondent did not reply to the Complainant's contentions within the deadlines fixed by the Center and was notified of its default on March 4, 2024. On March 17, 2024, the Respondent replied to that notification of default with an email message which reads, in its entirety, as follows: "We will remove domain tools related to Instagram".

6. Discussion and Findings

The Complaint must be evaluated to determine it satisfies the three elements set forth in paragraph 4(a) of the Policy.

A. Identical or Confusingly Similar

The disputed domain name begins with and reproduces the entirety of the Complainant's GRAM trademark, which trade mark the Complaint has established to be very-well known, in its own right and as a widely-used diminutive of the INSTAGRAM trademark, especially on the Internet and in social media. The addition of the suffix "vio" does not, on the facts here, prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark. Accordingly, the disputed domain name is confusingly similar to the Complainant's trademark for the purposes of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), sections 1.7 and 1.8.

The Panel therefore finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

The Complainant makes clear that it has no knowledge or good faith belief that the Respondent has any rights or legitimate interests in the disputed domain name; that the Complainant has not licensed or granted permission to the Respondent to use its trademarks, and that it does not believe the Respondent is using the disputed domain name in connection with any bona fide offering of goods or services.

There is furthermore nothing in the file of this case that suggests that the Respondent is commonly known by the name “Gramvio” or the disputed domain name.

The file in this matter furthermore contains no demonstration that there is or has been any legitimate noncommercial or fair use of the disputed domain name, and the Complainant denies that this could be the case.

It is well-established in UDRP case law and jurisprudence that a complainant needs to demonstrate at least a prima facie case that the respondent has no rights or legitimate interests in respect of the disputed domain name, see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). Where such a prima facie case is made, the burden of production shifts to the respondent to demonstrate its rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy, see also, *Meizu Technology Co., Ltd. v. “osama bin laden”*, WIPO Case No. [DCO2014-0002](#); *H & M Hennes & Mauritz AB v. Simon Maufe, Akinsanya Odunayo Emmanuel and Nelson Rivaldo*, WIPO Case No. [D2014-0225](#), [WIPO Overview 3.0](#), section 2.1.

In the instant case, the Respondent has not answered the Complaint, and the Complainant has established at least such a prima facie case; the Complainant has therefore met its burden of proof under paragraph 4(a)(ii) of the Policy.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Complainant has established that its trademarks, including its GRAM trademark, are distinctive and very well known throughout the world in connection with its online photo sharing network. It is highly unlikely, on the facts here, that the Respondent chose the disputed domain name by serendipity, and without knowledge of the Complainant’s trademarks and business.

This bad faith intent is made clearer by reference to the content of website to which the disputed domain name resolves. The Respondent’s intent to target the Complainant’s network is here evident from the contents of the website to which the disputed domain name resolves, which site makes explicit references to the Complainant and offers tools for downloading its content.

Indeed, the similarity between the disputed domain name and the Complainant’s trademarks, and the considerable mention of the Complainant and its services on the Respondent’s website, appear designed to attract Internet users who may mistakenly believe that the Respondent’s website is affiliated with the Complainant. This attraction can occur notwithstanding the presence of a disclaimer-like statement on the Respondent’s website - only added after the Complainant had sent the Respondent a cease-and-desist notice in October 2020. Such a disclaimer does not cure the bad faith on the facts here. See [WIPO Overview 3.0](#), section 3.7. The same can be said, mutatis mutandis, as to the Respondent’s late and laconic communication that it would “remove” domain tools related to Instagram from its website. That communication is not an answer to the Complaint and, even assuming its sincerity, appears an entreaty to head off this decision and therefore does not alter the above findings of the bad faith registration and use of the disputed domain name.

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 <gramvio.com> be transferred to the Complainant.

/Nicolas Ulmer/

Nicolas Ulmer

Sole Panelist

Date: March 27, 2024