

## **ADMINISTRATIVE PANEL DECISION**

Instagram, LLC v. Aina Jannat Aina Jannat  
Case No. D2024-1424

### **1. The Parties**

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

The Respondent is Aina Jannat Aina Jannat, Pakistan.

### **2. The Domain Name and Registrar**

The disputed domain name <instagramproapk.org> is registered with Porkbun LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 3, 2024. On April 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 4, 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 (Whois Privacy, Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 8, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Respondent sent an email communication to the Center on April 16, 2024. The Complainant declined to amend the Complaint and submitted further evidence on April 16, 2024, addressing the Respondent’s communication of the same day.

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 the Respondent of the Complaint, and the proceedings commenced on April 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 7, 2024. The Respondent did not submit a Response. On May 10, 2024, the Center notified the Parties that it will proceed to Panel Appointment.

The Center appointed Assen Alexiev as the sole panelist in this matter on May 15, 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 is an online photo- and video-sharing social networking service and mobile application. Since its launch in 2010, Instagram has rapidly acquired and developed considerable goodwill and renown worldwide. Acquired by Facebook, Inc. (now Meta Platforms, Inc.) in 2012, today Instagram has more than 2 billion monthly active accounts worldwide.

The Complainant is the owner of the following trademark registrations for the sign INSTAGRAM (the “INSTAGRAM trademark”):

- the United States trademark INSTAGRAM with registration No. 4146057, registered on May 22, 2012, for goods in International Class 9; and
- the International trademark INSTAGRAM with registration No. 1129314, registered on March 15, 2012, for goods and services in International Classes 9 and 42.

The Complainant is also the owner of the following figurative trademark registrations (the “Complainant’s figurative trademark”):

- the European Union figurative trademark with registration No. 015442502, registered on September 21, 2016, for goods and services in International Classes 9, 25, 35, 38, 41, 42, and 45; and
- the United States figurative trademark with registration No. 5198386, registered on May 9, 2017, for services in International Class 41.

The Complainant is also the owner of the domain name <instagram.com>, which provides access to the Complainant’s Instagram service.

The disputed domain name was registered on November 7, 2023. Currently, it redirects to the website at the domain name <vidmate.gold>, which offers for download an application for downloading of videos from YouTube, Vimeo, Facebook, and Instagram. At the time of filing of the Complaint, the disputed domain name resolved to a website that featured a modified version of the Complainant’s figurative trademark and offered for download a software product named Instagram Pro.

#### **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.

The Complainant states that the disputed domain name is confusingly similar to the INSTAGRAM trademark, because it is a combination of the same trademark with the terms “pro” (which is a common abbreviation for “professional”) and “apk” (which is an abbreviation for “Android Package” - an Android file format for mobile applications). The Complainant submits that the addition of the terms “pro” and “apk” does not prevent a finding of confusing similarity with the Complainant’s INSTAGRAM trademark, which is clearly recognizable in the disputed domain name.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not a licensee of the Complainant and is not affiliated with the Complainant. The Complainant maintains that it has not authorized the Respondent to use the INSTAGRAM trademark and the

Complainant's figurative trademark on the website at the disputed domain name. The Complainant adds that the Respondent is not commonly known by the disputed domain name and has no trademark rights in "INSTAGRAM PRO APK".

The Complainant maintains that the Respondent is not making a bona fide use of the disputed domain name. It points out that the disputed domain name resolves to a website that offers for download an unauthorized modified version of Complainant's INSTAGRAM application and illegitimately uses the Complainant's figurative trademark as the favicon for the website. According to the Complainant, the Respondent thus markets its own mobile application in direct competition with the Complainant, insinuating that it is officially associated with the Complainant. The Complainant adds that the Respondent's application breaches the Complainant's Terms of Use for its Instagram service and the Developer Policies and Brand Assets Guidelines of Meta Platforms, Inc., the Complainant's parent company, because it offers unauthorized functionalities and facilitates the downloading of content from the Instagram platform. According to the Complainant, such violations mislead the Complainant's users, who risk having their INSTAGRAM accounts shut down as a result of using the Respondent's application, and exposes them to cybersecurity and data privacy risks, since the content downloaded from the Complainant's platform may be stored and later used for unauthorized purposes by the Respondent and by third-party thread actors.

The Complainant concludes that the Respondent's use of the disputed domain name carries a risk of implied affiliation with the Complainant due to the absence of any disclaimer regarding the Respondent's lack of connection to the Complainant, and the Respondent's unauthorized and prominent use of the Complainant's figurative trademark to promote and divert users to a putative modified version of the Complainant's INSTAGRAM application.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It points out that the INSTAGRAM trademark is well-known around the world, and when the Respondent registered the disputed domain name in November 2023, the trademark was ranked as No.16 in the Interbrand Report. According to the Complainant, it is inconceivable that the Respondent was not aware of the INSTAGRAM trademark at the time of registration of the disputed domain name. In the Complainant's view, given the content of the website at the disputed domain name, which is replete with references to the Complainant and promotes its own modified "pro version" of the INSTAGRAM mobile application, it is obvious that the Respondent is deliberately exploiting the INSTAGRAM trademark in order to lure Internet users to the website at the disputed domain name. The Complainant states that Internet users are likely to be misled into believing that the website at the disputed domain name and putative mobile application are somehow affiliated with or otherwise endorsed by the Complainant. According to the Complainant, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website at the disputed domain name by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the website at the disputed domain name and the goods and services marketed therein, in bad faith.

## **B. Respondent**

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

In its only informal communication to the Center dated April 16, 2024, the Respondent made statements from the perspective of a complainant, declining to amend the Complaint or alter the Mutual Jurisdiction.

## **6. Discussion and Findings**

### **6.1. Procedural issue – Identity of the Respondent**

The Complaint identifies the Respondent as Whois Privacy, Private by Design, LLC, United States. In its Verification Response, the Registrar informed the Center that the registrant of the disputed domain name is Aina Jannat Aina Jannat, Pakistan. The Center invited the Complainant to submit an amendment to the

Complaint reflecting the name of the registrant disclosed by the Registrar, and the Complainant declined to do so.

Under paragraph 1 of the Rules, “Respondent” means the holder of a domain-name registration against which a complaint is initiated. Since the Complaint in the present proceeding is initiated against the disputed domain name, and the Registrar has confirmed that Aina Jannat Aina Jannat, Pakistan, is the holder of the registration of the disputed domain name, the Panel accepts that Aina Jannat Aina Jannat, Pakistan, is the proper Respondent in this proceeding.

The above ruling does not affect the Mutual Jurisdiction under paragraph 3(b)(xii) of the Rules, since the Complainant has agreed to submit, with respect to any challenges that may be made by the Respondent to a decision by the Panel to transfer or cancel the disputed domain name, to the jurisdiction of the courts at the location of the principal office of the Registrar.

## **6.2. Substantive issues**

### **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 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.

The Complainant has shown rights in respect of the INSTAGRAM trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the INSTAGRAM trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the INSTAGRAM trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of other terms (here, “pro” and “apk”) 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 the INSTAGRAM trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel therefore 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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.

The disputed domain name is confusingly similar to the Complainant's famous INSTAGRAM trademark, which was first registered 11 years earlier, and to the Complainant's Instagram service, which has billions of active users worldwide. The disputed domain name combines the INSTAGRAM trademark with the terms "pro" and "apk", which suggests a professional version of the Complainant's own product for the Android system and creates an appearance of an affiliation with or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

The evidence in the case shows that the disputed domain name has been used for a website that featured a modified version of the Complainant's figurative trademark, contained numerous references to the Complainant's Instagram service, and offered for download a software product named Instagram Pro, described as "a progressed version of the Instagram app." The website included the header "Instagram Pro APK v10.30 Download 2023 New Version" and contained the copyright notice "© 2023 Instagram Pro APK • Official Website." The Respondent's website did not contain any disclaimer for the lack of relationship with the Complainant.

All the above taken together supports a conclusion that the Respondent has targeted the Complainant's INSTAGRAM trademark with the registration and use of the disputed domain name in an attempt to attract Internet users to its website where to offer them to download a software product of unknown origin, quality and behavior, confusing visitors that this product originates from or is endorsed by the Complainant, thus receiving an improper commercial advantage.

The fact that the disputed domain name is currently configured to redirect to another website that offers visitors to download an application for downloading of content from various platforms, including Instagram, does not change the above conclusions, as it implements a similar scheme for attracting Internet users through the confusingly similar disputed domain name and thus misleading them as to the source, sponsorship, or endorsement of the disputed domain name by the Complainant.

The Panel therefore 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.

The content of the website at the disputed domain name at the time of filing of the Complaint shows that the Respondent was well aware of the famous INSTAGRAM trademark when it registered the disputed domain name. As discussed in the section on rights and legitimate interests, the evidence shows that the Respondent's intent in registering and using the disputed domain name was to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the INSTAGRAM trademark as to the source or endorsement of the software product featured on the Respondent's website.

The above supports a finding of bad faith registration and use of the disputed domain name under paragraph 4(b)(iv) of the Policy. The current use of the disputed domain name to redirect to another competing website that also allegedly offers for download a product targeting the Complainant's services and misleads Internet users as to the website's association with the Complainant supports the same conclusion.

The Panel therefore finds that the Complainant has established the third element of the Policy.

## 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.org> be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: May 28, 2024