

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Van Nam Tran, University
Case No. D2024-1555

1. The Parties

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

The Respondent is Van Nam Tran, University, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <instadp.online> 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 April 11, 2024. On April 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 12, 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 (Contact Privacy Inc. Customer 7151571251, and Domain Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 15, 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 April 19, 2024.¹

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 April 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 14, 2024.

¹The Complainant removed one domain name from the Complaint upon receipt of the Center’s notice of multiple underlying registrants.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on May 22, 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 a world-renowned social networking platform created in 2010. The Complainant owns many trademark registrations for INSTA such as:

- United States registration no. 5061916 registered on October 18, 2016, and
- European Union registration no. 014810535 registered on May 23, 2018.

The disputed domain name was registered on August 22, 2022, and resolves to a website which claims to offer a tool for downloading pictures, videos, reels, and stories from the Instagram platform.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark. The disputed domain name incorporates the Complainant's INSTA trademark and an abbreviation of its trademark INSTAGRAM adding the letters "dp", which does not prevent a finding of confusing similarity. The generic Top-Level Domain ("gTLD") ".online" is not relevant in the assessment of confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant did not authorize the Respondent to use its trademark in the disputed domain name nor is the Respondent affiliated with the Complainant or is it a licensee of the Complainant. The Respondent is not using the disputed domain name in connection with any bona fide offering of goods or services. The requirements of the *Okidata* test (see *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)) are not met in the current case. The Respondent does not provide services for the proper use of the Complainant's product. Instead, it offers an unauthorized downloader tool which facilitates violating the Terms of Use of the Complainant. The tool is also for downloading TikTok content. The website does not accurately nor prominently disclose the lack of relationship between the Respondent and the Complainant. The Respondent's use of the disputed domain name violates the Meta Developer Policies and breaches the Terms of Use of the Complainant. The Respondent is not commonly known by the disputed domain name as there is no evidence to suggest so. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The Respondent is using the disputed domain name to exploit the goodwill and reputation associated with the Complainant's trademarks by creating a false impression of association with the Complainant. By doing so, the Respondent is misleadingly diverting Internet users to its website. Furthermore, the website to which the disputed domain name resolves features commercial advertising banners, which indicates that the Respondent is obtaining commercial gain.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant's trademarks INSTAGRAM and INSTA are well-known as recognized by prior UDRP panels. The Respondent must have been aware of the Complainant's trademark as the website of the Respondent makes explicit reference to the Complainant's trademarks. The Respondent did not display any bona fide intent. The Respondent has been using the disputed domain name to provide a tool for the unauthorized downloading of content from the Instagram platform, which breaches the Terms of Use of the Complainant. Unauthorized access and download of content from social networks amounts to bad faith. The Respondent is targeting the Complainant's trademarks to create an impression of association through the use of the letters "dp" as well as the use of images that are similar to the Complainant's figurative

trademark, logo, and gradient color scheme. There is no clear disclaimer on the absence of relationship between the Respondent and the Complainant. The Respondent must be obtaining click-through revenue from the commercial advertising banners. The Respondent is therefore using the domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of its website and the services it offers. Further evidence of bad faith is the use of proxy service to mask its identity.

B. Respondent

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

6. Discussion and Findings

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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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

Although the addition of other terms here, "dp" 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.

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.

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 directs to a website which seems to offer a tool that allows downloading content from the Complainant's platform. Such use is breach of the Complainant's Terms of Use, and may circumvent the Complainant's technological measure. Panels have held that the use of a domain name for illegal activity here, claimed, unauthorized account access, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 notes that the Respondent must have been aware of the Complainant's trademark as the disputed domain name was registered six years after the registration of the Complainant's trademark and it directs to a page, which seems to offer a tool to download material available on the Complainant's platform.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Respondent in this case is either allowing unauthorized access to the material on the platform of the Complainant or misleading users to believe that they will be allowed such access. Panels have held that the use of a domain name for illegal activity here, claimed, unauthorized account access, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel 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 <instadp.online> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: May 28, 2024