

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Kaiser Ah
Case No. D2024-4358

1. The Parties

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

The Respondent is Kaiser Ah, India.

2. The Domain Name and Registrar

The disputed domain name <instaproapks.app> 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 October 23, 2024. On October 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 23, 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 (Registration Private, Domains By Proxy, LLC, DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 28, 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 amendment to the Complaint on October 29, 2024.

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 November 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 4, 2024. Hereafter, the Respondent sent email communications to the Center respectively on December 4, 2024, and December 11, 2024.

The Center appointed Gonalo M. C. Da Cunha Ferreira as the sole panelist in this matter on December 12, 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, Instagram, LLC, is a company based in the United States that was founded in 2010. It operates a globally recognized online platform for sharing photos and videos, as well as a widely used mobile application. Since its launch, Instagram has rapidly built significant goodwill and gained renown worldwide. Acquired by Facebook, Inc. (now known as Meta Platforms, Inc.) in 2012, Instagram now boasts over two billion monthly active accounts globally. Furthermore, the platform has consistently ranked as one of the top applications for mobile devices, available on both iOS and Android operating systems. Instagram has received numerous accolades, including the “App of the Year” award from Apple Inc. in 2011, and currently holds the distinction of being the second most downloaded app worldwide, according to Forbes.

The Complainant is the owner of numerous trademark registrations for INSTAGRAM and INSTA in many jurisdictions throughout the world, among others:

- The United States Trademark Registration No. 4146057, for the INSTAGRAM mark, registered on May 22, 2012;
- The International Trademark Registration No. 1129314, for the INSTAGRAM mark, registered on March 15, 2012;
- European Union Trademark Registration No. 014810535, for the INSTA mark, registered on May 23, 2018.

The Complainant owns an extensive portfolio of domain names in connection to the marks INSTAGRAM and INSTA.

The disputed domain name was registered on March 10, 2023. It resolved to a website that offered an unauthorized modified version of the Complainant's app and used the Complainant's pictorial logo marks and trade dress, both on the webpage and in the website favicon.

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:

1. the disputed domain name is composed of the Complainant's INSTA trademark in full, which is followed by the generic terms “pro” an abbreviation for professional, and “apks” an abbreviation for Android Package Kits;
2. the Complainant's Instagram app is often referred to as “Insta” for short and the Complainant owns well-established and registered rights in the INSTA trademark;
3. the addition of the generic terms “pro” and “apks” is not sufficient to dispel the ensuing confusing similarity between the Complainant's well-known and distinctive INSTA and INSTAGRAM trademarks and the disputed domain name;
4. the disputed domain name is confusingly similar to the Complainant mark INSTA;
5. the Respondent has no rights nor legitimate interests in the disputed domain name;

6. there is no evidence to suggest that the Respondent is commonly known by the disputed domain name;
7. the Respondent has not acquired, nor applied for a trademark registration for “INSTA PRO APKs”, nor any variation thereof as reflected in the disputed domain name;
8. the Respondent’s use of the disputed domain name does not suggest in any reasonable way that the Respondent is commonly known by the disputed domain name;
9. the Respondent has configured the disputed domain name to redirect to website content that specifically targets the Complainant by offering an unauthorized modified version of the Complainant’s app, whilst making prominent use of the Complainant’s trademarks;
10. the disputed domain name and the Respondent website are so obviously connected with the Complainant and its INSTAGRAM and INSTA trademarks and services that such very use by the Respondent, who has no connection to the Complainant, suggests opportunistic bad faith;
11. the Respondent expressly encourages and actively induces third-party users of the Complainant’s services to violate the Complainant’s Terms of Use via the scraping and downloading of user content from the Complainant’s Instagram platform, as well as accessing such content outside of the Instagram platform;
12. it has established a prima facie showing that the Respondent lacks rights or legitimate interests in the disputed domain name;
13. the Respondent’s modified Instagram applications promoted via the disputed domain name may be used to harvest data or to steal the Complainant’s users’ account credentials, for phishing or for other unauthorized or illegal activities;
14. the disputed domain name has been registered and is being used in bad faith.

B. Respondent

The Respondent did not reply to the Complainant’s contentions. However, the Respondent sent email communications to the Center respectively on December 4, 2024, and December 11, 2024, saying “I have removed that domain from godaddy it will get expire automatically So dont worry” and “Hello what is this problem i have deleted that domain from my godaddy account”.

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.

The disputed domain name is composed of the Complainant’s INSTA trademark in full, which is followed by the terms “pro” an abbreviation for professional, and “apks” an abbreviation for Android Package Kits.

The addition of other terms here, “pro” and “apks” 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 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 combines the INSTA trademark with the terms “pro” and “apks”, which suggests a professional version of the Complainant’s own product for the Android system and creates an appearance of an affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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 uses intentionally the Complainant’s trademark INSTA in the disputed domain name to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant’s mark.

The Panel cannot disregard the fact that the Respondent, upon being notified by the Center about the Complaint, did not provide any response and later communicated that they requested the Registrar to cancel the disputed domain name, in a clear demonstration of recognition of their lack of rights or legitimate interests in the disputed domain name.

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 INSTA trademark when it registered the disputed domain name. The evidence shows that the disputed domain name has been used for a website that featured the Complainant’s figurative trademark, contained multiple references to the Complainant’s Instagram service. The circumstances of the case support a finding of bad faith registration and use of the disputed domain name under paragraph 4(b)(iv) of the Policy.

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 <instaproapks.app> be transferred to the Complainant.

/Gonçalo M. C. Da Cunha Ferreira/

Gonçalo M. C. Da Cunha Ferreira

Sole Panelist

Date: December 19, 2024