

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Sander Jacobsen
Case No. D2024-4718

1. The Parties

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

The Respondent is Sander Jacobsen, Norway.

2. The Domain Names and Registrar

The disputed domain names <insta-viewer.com> (the “First disputed domain name”) and <instaviewz.com> (the “Second disputed domain name”) are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 14, 2024. On November 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 15, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 19, 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 November 20, 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 November 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 13, 2024.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on December 23, 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

Launched in 2010, Instagram, commonly abbreviated as “Insta”, is an online photo and video sharing social networking application, presently counting with more than 2 billion monthly active accounts worldwide.

The Complainant is the owner, amongst others, of the following trademark registrations:

- United States trademark registration No. 4146057 for INSTAGRAM, registered on May 22, 2012, claiming first use in commerce on October 6, 2010;
- United States trademark registration No. 5061916 for INSTA, registered on October 18, 2016;
- International trademark registration No. 1129314 for INSTAGRAM, registered on March 15, 2012;
- Indian trademark registration No. 3101498 for INSTA, registered on November 19, 2015; and
- European Union trademark registration No. 014810535 for INSTA, registered on May 23, 2018.

The First disputed domain name was registered on December 7, 2015, and presently does not resolve to an active webpage. The First disputed domain name previously resolved to a website purporting to offer a tool to view private Instagram profiles, prompting Internet users to click through multiple pages, where commercial advertisements were displayed and where questions prompted Internet users to disclose personal identifying information including the user’s gender, date of birth or occupation (Annex 11 to the Amended Complaint).

The Second disputed domain name was registered on March 4, 2017, and presently does not resolve to an active webpage. The Second disputed domain name has been used to redirect Internet users to the website that used to be available at the First disputed domain name (Annex 12 to the Amended Complaint).

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 names.

Notably, the Complainant asserts to be one of the world’s leading providers of online social networking services and applications, actively promoting and using its INSTA and INSTAGRAM trademarks throughout the world.

The disputed domain names are, according to the Complainant, confusingly similar to the Complainant’s trademarks, given the presence of its INSTA trademarks in the disputed domain names, which is sufficient to establish confusing similarity between the disputed domain names and the Complainant’s INSTA trademarks, despite the addition of a hyphen and of the descriptive terms “viewz” and “viewer” which are insufficient to prevent a finding of confusing similarity.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain names given that:

- (a) the Respondent is not a licensee of the Complainant, nor are they affiliated with the Complainant in any way; the Complainant has not granted any authorization for the Respondent to make use of its INSTA or INSTAGRAM trademarks, in a domain name or otherwise;
- (b) the Respondent has not used the disputed domain names in connection with a bona fide offering of goods or services in accordance with paragraph 4(c)(i) of the Policy nor have the disputed domain names been used for legitimate noncommercial or fair use purpose in accordance with paragraph 4(c)(iii) of the Policy given that the use of the disputed domain names in connection with a website that purportedly offered to provide a tool for viewing Instagram content which breaches the Instagram Terms of Use, as well as accesses or collects information from the Instagram platform in unauthorized ways;
- (c) the Respondent is not commonly known by the disputed domain names; and
- (d) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names.

As to the registration of the disputed domain names in bad faith, the Complainant asserts that the Respondent knew or should have known of the Complainant's trademark rights at the time of the registration of the disputed domain names considering that it has acquired considerable goodwill and renown worldwide. Further, the Respondent's intent to target the Complainant can easily be inferred from the use made of the disputed domain names which created a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. Moreover, the Respondent's use of a proxy service to conceal their identity further supports an inference of bad faith on the part of the Respondent. Lastly, prior panels have held that the unauthorized downloading of content from the platform of the Complainant and its related companies may place the privacy and security of users of such platforms at risk and amounts to bad faith (*Meta Platforms, Inc. v. Muhammad Shahbaz*, WIPO Case No. [D2024-0288](#)).

Lastly, the Respondents' failure to respond to the Complainant's cease and desist letter is a further indicator of the Respondents' bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth three requirements, which have to be met for this Panel to order the transfer of the disputed domain names to the Complainant:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names;
- (iii) and the disputed domain names have been registered and are being used in bad faith.

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain names.

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 Panel finds the mark is recognizable within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 names. 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 names such as those enumerated in the Policy or otherwise.

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 use made of the disputed domain names characterizes the Respondent's intent of commercial gain by misleadingly diverting the Internet users or merely profiting from revenues and/or data that solely will be accessible for them in view of the association with the Complainant's notorious trademarks.

Such use, in this Panel's view, constitutes an attempt to profit from the fame and goodwill associated with the Complainant's famous trademarks, thus unfairly capitalizing on the INSTA trademark by creating a likelihood of confusion in Internet users who are likely to believe that the disputed domain names are either connected, endorsed, or authorized by the Complainant, which is not true.

Three other relevant factors corroborate the finding of the Respondent's bad faith conduct in this case: the retention of a privacy protection service; the lack of reply to the cease-and-desist letter sent prior to this proceeding; and the present passive holding of the disputed domain names which, in the circumstances of this case, does not prevent a finding of bad faith under 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 names <insta-viewer.com> and <instaviewz.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: January 6, 2025