

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Caterina Gunnella
Case No. D2024-4837

1. The Parties

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

The Respondent is Caterina Gunnella, Montenegro.

2. The Domain Name and Registrar

The disputed domain name <instastalker.net> is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 22, 2024. On November 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 25, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on November 27, 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 29, 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 December 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 24, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on January 7, 2025. 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 operates the well-known photo- and video-sharing social-networking service that has traded under the mark INSTAGRAM since 2010, and is commonly abbreviated to “Insta”. The Complainant’s mobile application has been consistently ranked amongst the top apps for mobile devices.

The Complainant owns many trade marks for INSTAGRAM and INSTA including United States trade mark No. 4146057 for INSTAGRAM, registered on May 22, 2012, and United States trade mark No. 5061916, for INSTA, registered on October 18, 2016, both in class 9.

The disputed domain name was registered on April 14, 2022.

As of November 22, 2024, the disputed domain name resolved to a website entitled “Instagram Story Viewer - InstaStalker” which purported to offer an anonymous Instagram viewer and downloader web app. The website stated:

“100% Anonymous

Nobody knows about your activity. The account owner does not see your data in their views statistics. You remain anonymous...

No account needed

All you need is an Instagram username or link to get started! You don't need to install any additional software...

What is an Instagram Story Viewer?

Is a tool that allows you to view and download Instagram stories from public accounts...”

The footer of the website stated: “All logos and trademarks displayed on this application are property of their respective owners”.

The Respondent did not reply to the Complainant’s cease and desist letter sent on August 29, 2024.

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, by purporting to offer a tool to anonymously view and download content from the Complainant’s Instagram platform, the Respondent circumvents the requirement to create an account to access the Instagram platform in breach of the Complainant’s terms of use, and that unauthorised viewing and downloading of content from the platform may endanger the privacy and security of Instagram users.

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

The entirety of the mark INSTA 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, "stalker") 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 recognised 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.

As to paragraph 4(c)(i), the disputed domain name is dominated by the Complainant's INSTA trade mark, and the website to which it resolves makes extensive references to the Complainant's INSTAGRAM trade mark in the context of a purported tool to access the Complainant's platform, all the while failing to clearly disclose the website's lack of relationship to the Complainant. The Panel does not consider that the disclaimer in the footer of the website (see section 4), is either effective or prominent. Furthermore, the Respondent has not appeared in this proceeding to dispute the Complainant's contention that the Respondent's tool facilitates breach of the Complainant's terms and conditions.

Accordingly, the Panel considers that the Respondent's use of the disputed domain name cannot be said to be bona fide.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

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

C. Registered and Used in Bad Faith

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.

Panels have held that the use of a domain name for illegitimate activity constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Here, as discussed under the second element above, the Respondent has registered and used the disputed domain name in a way that is likely to mislead Internet users as to the disputed domain name's association with the Complainant and has not appeared in this proceeding to dispute the Complainant's assertion that its tool facilitates breach of the Complainant's terms and conditions and potentially endangers the security of Instagram users

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 <instastalker.net> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: January 21, 2025