

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. vu dinh dat, Tran Dinh Luong
Case No. D2025-0119

1. The Parties

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

The Respondents are vu dinh dat and Tran Dinh Luong, Viet Nam.

2. The Domain Names and Registrars

The disputed domain name <snapinsta.app> is registered with Name.com, Inc. (the "Registrar").

The disputed domain name <snapinst.app> is registered with CloudFlare, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 13, 2025. On January 14, 2025, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On January 14, 2025, the Registrars 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 (REDACTED FOR PRIVACY, Domain Protection Services, Inc. and Redacted for Privacy Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 15, 2025, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed the first amended Complaint on January 22, 2025.

On January 22, 2025, the Complainant requested that the disputed domain name <snapinst.app> be added to the proceeding and that the domain name <savefromig.com> be withdrawn. On January 24, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name <snapinst.app>. On January 25, 2025, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 27, 2025, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed the second amended Complaint on January 31, 2025.

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 February 5, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 25, 2025. The Respondents each filed a Response with the Center on February 22, 2025.

The Center appointed Adam Taylor as the sole panelist in this matter on March 3, 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.

The Complainant submitted a Supplemental Filing on March 3, 2025. The Respondents each submitted a Supplemental Filing on March 11, 2025.

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 <snapinsta.app> was registered on March 10, 2021. The disputed domain name <snapinst.app> was registered on February 13, 2023.

For reasons explained in section 6 below, the Panel considers that the disputed domain names are under common control. Accordingly, the Respondents are collectively referred to hereafter as “the Respondent”, unless it is necessary to refer to them separately.

The Respondent did not reply to the Complainant’s cease and desist letter sent on November 5, 2024.

As of November 24, 2024, the disputed domain name <snapinst.app> did not resolve to an active website.

As of January 13, 2025, the date when the Complaint was filed, the disputed domain name <snapinsta.app> resolved to a website branded with a “Snapinsta” logo above a large banner, both featuring a blue/purple/violet gradient colour scheme. The banner was entitled “Instagram Video Download” followed by the text “Download Video Instagram, Photo, Reels, Stories IGTV online” and a “Paste URL Instagram” box. The website also stated:

“Snapinsta allows you to Download Instagram Video from your own content. Snapinsta supports downloading videos for many video types from Insta. [...]”

SNAPINSTA - BEST TOOL INSTAGRAM DOWNLOADER

Snapinsta is an efficient Instagram downloader made to get high quality content off Instagram in seconds. The best way to download Instagram content is through third party websites like the Snapinsta downloader.”

The website also includes links to download an app called “SnapTik”, which the Respondent described as “an app for Instagram video Download”, as well as advertising banners.

The footer stated: “We are not affiliated with Instagram or Meta.”

The website's favicon (i.e., the icon displayed in browser bookmarks/tabs) featured a square with a small, white-filled circle in the middle surrounded by a gradient background using colours similar to those outlined above.

As of January 20, 2025, the disputed domain name <snapinst.app> resolved to what appears to have been essentially the same website as above except that the final “a” in the “Snapinsta” title in the header had been struck through.

As of January 22, 2025, the disputed domain name <snapinsta.app> redirected to the website at “www.snapinst.app”.

As of March 3, 2024, the disputed domain names <snapinsta.app> and <snapinst.app> each resolved to their own websites offering Instagram download tools branded “Snapinsta” and “Snapinst” respectively.

The website at “www.snapinsta.app” had changed from the previous version in that: the banner with gradient colour scheme had been completely removed; the “Snapinsta” logo had been changed to black font; and the following text had been added near the top of the page: “SNAPINSTA is a product designed by the SNAPINSTA team. We are not affiliated with Instagram or META”.

On “www.snapinst.app”, the banner remained but its colour, and that of the “Snapinst” logo, had changed from gradient colours to a uniform violet. Also, the following notice had been inserted near the top of the homepage:

“Our tool was designed to help you download videos and images uploaded by your own account. We reserve the right to refuse to provide our service if you use our tools to infringe upon others’ privacy and material.

Please read these terms of service [...] Key highlights are set out below for your quick information:

1. Snapinst is a self-developed and independent application/website of Snapinst team. **WE ARE NOT AFFILIATED WITH INSTAGRAM OR META.**
2. Snapinst respects trademark rights and complies with trademark laws and regulations. Our trademark Snapinst™ is created by Snapinst and should be used only for and in relation to our Services, Snapinst App and Web. It should be read as a seamless word without reference to any individual or entity other than Snapinst.
3. We accept advertisements (Ads) on our website and application to maintain and support our own research and development for non-commercial purposes [...]

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the disputed domain names.

Notably, the Complainant contends that:

- the inclusion of the first four letters of the Complainant’s INSTA trade mark supports confusing similarity between the trade mark and the disputed domain name <snapinst.app>;
- the Respondent is not a bona fide service provider for the purposes of the factors set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (the “Oki Data Criteria”) as the Respondent is making use of the Complainant’s mark to market its own ancillary service;

- in any case, the Respondent fails to comply with the Oki Data Criteria in that it is not providing services for the proper use of the Complainant's product and its disclaimer fails to accurately disclose the lack of relationship between the parties – on the contrary, the Respondent's website implies that it is affiliated with the Complainant;
- the Respondent's use of the disputed domain names facilitates breach of the Complainant's terms of use and may also place the security and privacy of Instagram users at risk, because content scraped from the platform may be subject to unauthorised third-party use;
- although it may evoke "instant", the term "insta" is a coined word with no stand-alone meaning in English and dictionaries refer to the term as a clipping of "Instagram";
- in any case the Respondent has not used the disputed domain names in connection with any descriptive meaning but for services targeting the Complainant's mark;
- the Respondent is using the disputed domain names to create a likelihood of confusion with the Complainant's marks as shown by the nature of the disputed domain names and the Respondent's use thereof, including its repeated deployment of the Complainant's INSTAGRAM trade mark as well as the use of a similar gradient colour scheme and of a favicon similar to the Complainant's figurative trade mark and logo; and
- prior UDRP panels have held that the unauthorised automated accessing and downloading of content from social networks amounts to bad faith.

B. Respondent

The Respondent contends that the Complainant has not satisfied any of the three elements required under the Policy for transfer of the disputed domain names.

Notably, the Respondent contends that:

- the disputed domain names are under different ownership and should be treated separately;
- INSTA is simply an abbreviation of INSTAGRAM rather than a standalone brand;
- the Complainant has provided no evidence of public recognition of the INSTA mark, which is not being actively used;
- the Complainant's use of INSTA is apparently being phased out, having been demoted from the Complainant's main logo in 2011 to merely appearing within the Complainant's app description in 2022, indicating that the Complainant's INSTA mark possesses minimal goodwill;
- the Complainant's registrations for INSTA are limited to the United States and the European Union, and are defensive, designed to improperly prevent other entities from legitimately using the term;
- the Complainant's application for INSTA in Vietnam, where the Respondent is located, is still pending;
- as regards the disputed domain name <snapinst.app>: (1) the Complainant does not possess a registered trade mark for INST, (2) the four letters "i", "n", "s" and "t" are only the first four letters of the INSTA mark and play a minor role as a suffix, which is unlikely to be confused with the Complainant's marks due to the "snap" prefix; and (3) the possible pronunciations of the disputed domain name <snapinst.app> are completely different from those of the Complainant's marks;
- the term "inst" in the disputed domain name <snapinst.app> is not liable to create confusion with the Complainant's INSTA mark because "inst" is a dictionary term as an abbreviation for "instant" and other terms;
- there are many third-party United States and other trade marks for INSTA including for software;
- as regards the disputed domain name <snapinsta.app>, the element "insta" does not stand out more than the others and the disputed domain name is totally different from the Complainant's mark in terms of structure, pronunciation/sound, connotation/meaning, and commercial impression, applying the Guidelines for Trademark Examination of the International Trademark Association ("INTA Guidelines");
- the Panel should apply the widely accepted "anti-dissection" rule in trade mark law, meaning that marks should be compared in their entirety;
- various UDRP decisions cited by Complainant in relation to confusing similarity were undefended and can be distinguished from the present case;

- the Respondent does not need a licence from the Complainant to operate its service, which allows Instagram users to obtain their own high quality photos and videos without affecting Instagram, using functionality not provided by the Complainant and therefore entirely different to the Complainant's service;
- the Respondent used the disputed domain names for a legitimate offering of goods or services before receiving notice of the Complaint;
- for the purposes of the Oki Data Criteria, the Respondent's disclaimer accurately and prominently discloses the lack of relationship because: it is common practice to place such disclaimers at the bottom of webpages; the Complainant itself locates similar information in the footer of its own site; the Respondent bolded the disclaimer to reinforce it; the disclaimer appears immediately after the "FAQ" section where users are likely to see it; and this approach is also reasonable to maintain aesthetic appeal;
- it is fair and necessary for the Respondent to mention "Instagram" on its website, which it does in a moderate way in order to inform consumers about its services;
- the Respondent otherwise complies with the Oki Data Criteria, including in that it is actively offering its services, uses its site to sell only those services, is not trying to monopolise domain names reflecting the Complainant's mark and is using SNAPINST as a trade mark with the TM symbol;
- the Respondent's service, which simply involves users inputting a link to facilitate downloads, does not interfere with the Complainant's service, or involve or require the creation of, or access to, Instagram or other accounts, or the provision/collection of personal information or expose users to risks related to content sourced from Instagram, or store or retain any uploaded content or user information;
- the Complainant, which acknowledges that its users retain ownership of, and the right to share, their content, is not entitled to interfere with the exercise of those rights, which the Respondent's service facilitates;
- the Respondent's service is not unauthorised, as the Respondent requires consent only from users, not from the Complainant;
- fair competition allows businesses to develop services compatible with existing platforms provided that, as here, they do not create consumer confusion or falsely claim endorsement;
- the Respondent's terms of service require users to comply with applicable laws, and the Respondent will take action to prevent any illegal or unauthorised use of its service;
- there is no evidence of a redirect from the disputed domain name <snapinsta.app> to the disputed domain name <snapinst.app>;
- the Respondent coined the term "snapinst" and "snapinsta" comprising dictionary terms "snap" plus "inst"/"insta" (abbreviation for "instant" and other terms) used descriptively to convey the idea of providing high-quality images and videos in a remarkably short time and not by reference to the Complainant's mark;
- nothing on the website implies a relationship or connection between the Complainant and the Respondent and there is no likelihood of confusion on the part of Internet users;
- the Respondent does not use any Complainant marks on a standalone basis and a search for "Snapinsta" does not generate results for official Instagram pages;
- the disputed domain names do not prevent the Complainant from registering its own domain names and, in any case, the Complainant only registers domains that include the entire term "Instagram";
- the Respondent's colour scheme, which was chosen simply because it was aesthetically pleasing and is common in the technology industry, is entirely different to the Complainant's scheme, which features a wide range of colours ranging from blue, purple, pink, red, orange to yellow;
- similarity of the parties' favicons is not sufficient to establish confusion as many icons used digital applications share common design elements;
- the Respondent's service is noncommercial and fair as the Respondent's terms prohibits users from using either its service or downloaded material for commercial purposes;
- the Respondent does not charge users;
- the Respondent's advertising is designed to cover operational expenses of the tool and does not serve a purely commercial purpose and, in any case, users can dismiss advertisements if they do not wish to see them;
- the Respondent did not receive the Complainant's cease and desist letter and would have responded if it had; and

- to address the Complainant's concerns, the Respondent has added a more prominent disclaimer to its website and changed its website colour scheme.

6. Discussion and Findings

Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants objected to the request on the grounds that they are allegedly unconnected.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

As regards common control, the Panel notes the following:

1. Both registrants are located in Vietnam and use similar postcodes "Ha Noi 10000" and "Ha Noi 100000".
2. The disputed domain names are in a similar format, consisting of the word "snap" plus "inst" and "insta" respectively.
3. The disputed domain names have at times been used for virtually identical websites, offering the same service.
4. As mentioned above, as of January 22, 2025, the disputed domain name <snapinsta.app> redirected to the website at "www.snapinst.app".¹
5. Two very detailed and closely-argued Responses, written in good English and in a similar style, likely by a lawyer or IP practitioner, were filed within some four hours of each other, purportedly on behalf of each registrant, raising the same or similar arguments albeit not in the same order. Each document included references to the INTA Guidelines, and they contained at least two identical sentences, complete with typographical errors. The Panel is unconvinced by (a) the Respondent's attempt to explain the above on the basis that one registrant had the opportunity review the Response filed by the other before filing its own Response and (b) the Respondent's claim that the citation of INTA Guidelines in both Responses is explicable because they are "widely recognized, recommended and followed by IP practitioners [...]".

For the above reasons, the Panel considers that the Complainant has established that the disputed domain names are under common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants in this single proceeding.

¹ The Respondent insists that the Complainant has not provided proof of the redirect and claims that the relevant screenshot refers to a different domain name that was removed from the Complaint. However, Annex 3 to the Second Amended Complaint plainly shows the redirection between the two disputed domain names.

Supplemental Filings

As mentioned in section 3 above, both parties have made unsolicited supplemental filings.

Paragraph 10(d) of the Rules gives the panel authority to determine the admissibility, relevance, materiality and weight of the evidence. Paragraph 10(a) requires the Panel to conduct the proceedings with due expedition.

UDRP panels have repeatedly affirmed that the party submitting an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response, e.g., owing to some “exceptional” circumstance. [WIPO Overview 3.0](#), section 4.6.

In this case, the Panel has decided to reject the bulk of the filings on the grounds that the material therein is repetitive, or standard rebuttal, or could have been included in the party’s primary submission, or the Panel considers it immaterial to its decision. However, the Panel has decided to admit the filings insofar as they (a) relate to use of the disputed domain names after the Complaint was filed or the Panel considers that the information is helpful to clarify previous use of the disputed domain names; and (b) concern the Complainant’s contentions that the nature of the two Responses supports its consolidation request. These matters are referred to herein insofar as the Panel considers them relevant.

The Panel would add that even if the disallowed material in the supplemental filings had been admitted, it would have made no difference to the outcome of this case.

A. Identical or Confusingly Similar

The Respondent has raised very elaborate arguments, including citation of INTA Guidelines and the “anti-dissection” rule in trade mark law, in support of its contention that the disputed domain names are dissimilar from the Complainant’s mark in terms of structure, pronunciation/sound, connotation/meaning, and commercial impression, amongst other things.

However, this is not a trade mark infringement case, where such a detailed evaluation might be relevant. The Respondent’s submissions misunderstand the approach taken under the UDRP, whereby 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 3.0](#), section 1.7.

Here, the Complainant has shown rights in respect of a trade mark or service mark for INSTA for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

As regards the disputed domain name <snapinsta.app>, the entirety of the INSTA mark is reproduced within the disputed domain name. Accordingly, this disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

As regards the disputed domain name <snapinst.app>, the Panel finds the mark is recognisable within the disputed domain name in that the latter features the first four letters of the Complainant’s mark “inst”.

Furthermore, the overall facts and circumstances of a case, including relevant website content, may support a finding of confusing similarity in certain situations, particularly where it appears that the respondent registered the domain name precisely because it believed that the domain name was confusingly similar to a mark held by the complainant. [WIPO Overview 3.0](#), section 1.7. For reasons discussed in more detail in section 6C below, the Panel considers that the Respondent selected the terms “inst”, and indeed “insta”, precisely because of their correlation with the Complainant’s mark.

Accordingly, the Panel considers that the disputed domain name <snapinst.app>, is also confusingly similar to the Complainant’s mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, “snap”) 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 names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. For the purpose of this first element, it is irrelevant that, as the Respondent observes, the additional term “snap” features at the start, and therefore the allegedly dominant part, of each of the disputed domain names, whether or not that renders the disputed domain names unlikely to be confused with the Complainant’s mark in practice, as the Respondent alleges.

Finally, the Panel will deal with the following additional contentions by the Respondent relating to the first element.

That INSTA is simply an abbreviation of INSTAGRAM. This is irrelevant as INSTA is itself a registered trade mark of the Complainant.

That the Complainant’s registrations for INSTA are limited to the United States and the European Union and it has not established any rights for INSTA in Vietnam, where the Respondent is located. Given the global nature of the Internet and the domain name system, the jurisdiction where the trade mark is valid is not considered relevant to panel assessment under this first element. [WIPO Overview 3.0](#), section 1.1.2.

That the Complainant has provided no evidence of public recognition of the INSTA mark, which is being phased out by Complainant. Even if so (as to which the Panel makes no finding), this is immaterial under the first element because the Complainant has acquired registered rights in that term and does not need to establish common law rights. Issues such as the strength of the complainant’s mark or the respondent’s intent to provide its own legitimate offering of goods or services without trading off the complainant’s reputation, are decided under the second and third elements. Panels view the first element as simply a threshold test concerning a trade mark owner’s standing to file a UDRP complaint, i.e., to ascertain whether there is a sufficient nexus to assess the principles captured in the second and third elements. [WIPO Overview 3.0](#), section 1.7.

That the Complainant has no registered mark for INST. As discussed above, the Panel considers that the disputed domain name <snapinst.app> is confusingly similar to the Complainant’s INSTA mark, and that suffices for the purposes of the first element.

That “inst” and “insta” are both dictionary terms, and that there are third party United States and other trade marks for INSTA, including for software. While such potential other meanings/uses of those terms may fall for consideration under the second and/or third elements, they are irrelevant under the first element which, as discussed above, is simply concerned with a relatively straightforward side-by-side comparison between the Complainant’s trade mark and the disputed domain names.

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 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.

As regards paragraph 4(c)(i) of the Policy, the Respondent claims that it complies with the Oki Data Criteria, which are potentially applicable where a respondent supplies a service that is ancillary to that of the complainant. [WIPO Overview 3.0](#), section 2.8. However, the Panel considers that the Respondent has not met the requirement to accurately and prominently disclose the Respondent's relationship with the trade mark holder, as explained in section 6C below.

Even if the nature of the Respondent's service is not such as to trigger the Oki Data Criteria, the Panel nonetheless considers that the Respondent has in any case used the disputed domain names to create an intentional likelihood of confusion with the Complainant's mark for the purposes of the third element (see below). Such use of the disputed domain names could not be said to be bona fide.

The Panel would add that, as discussed in section 6C below, the Panel has not considered it necessary to make any finding as regards the legitimacy of the Respondent's service in the context of compliance with the Complainant's terms and conditions. Even if the terms and conditions were applicable to the Respondent and the service was compliant, that would not justify the Respondent providing it in a manner that created an intentional likelihood of confusion with the Complainant's mark.

As regards 4(c)(ii) of the Policy, there is no evidence that the Respondent has been commonly known by the disputed domain names.

As regards 4(c)(iii) of the Policy, the Respondent claims that it is making legitimate noncommercial and fair use of the disputed domain names. However, the Panel is not convinced by the Respondent's assertion that its service is noncommercial.

First, contrary to the Respondent's contentions, the fact that the Respondent's terms prohibit its users using its service or downloaded material for commercial purposes does not indicate that the Respondent is itself operating its service in a noncommercial manner.

Second, the Panel is sceptical of the Respondent's claim that the advertising on its websites is only designed to cover operational expenses and does not serve a purely commercial purpose, given (a) the absence of any evidence as to the level of advertising revenue earned, or operational expenses incurred by, the Respondent and (b) the lack of any evidence, or even an explanation, from the Respondent as to why it would run a scheme such as this on a noncommercial basis.

Third, as to the Respondent's point that Internet users can dismiss advertisements that they do not wish to see, this is irrelevant to the issue of whether or not the Respondent is profiting from such advertisements.

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 considers that, for the reasons set out below, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy. (The Panel would add that it has not considered it necessary to make any finding as to the legitimacy of the

Respondent's service in the context of the applicability of, or compliance with, the Complainant's terms and conditions. While such matters have been strongly contested between the Parties, the Panel's decision is based purely on the likelihood of confusion with the Complainant's mark.)

First, in the Panel's view, the Respondent adopted the terms "insta" and "inst" by reference to the Complainant's service, and their combination with the neutral word "snap" is liable to create the impression of an official Instagram-related offering.

The Respondent argues strenuously that it selected the terms "insta" and "inst" purely because they are both dictionary abbreviations for "instant" and in order to convey the idea of providing images and videos "in a remarkably short time". However, the Panel considers it more likely than not that the Respondent included "insta" and "inst" in the disputed domain names because they denoted the very service to which the Respondent's own offering was an adjunct. To the Panel, the Respondent's endeavour to link selection of "insta" and "inst" to their dictionary meanings bears all the hallmarks of a retrospective and artificial attempt to justify the use of those terms rather than a credible explanation of the Respondent's original motive.

Similarly, the Panel considers that the existence of third-party trade marks for INSTA is irrelevant, given that the Respondent's focus was plainly on the Complainant.

Second, in the Panel's view, the Respondent most likely selected the gradient colours used for its website logo/banner in order to evoke the Complainant's own gradient colour scheme. While the Complainant's pallet may technically involve a wider range of colours, as the Respondent asserts, nonetheless the Panel considers that, overall, the respective schemes convey a very similar impression:

Accordingly, the Panel considers as implausible the Respondent's claim that it chose its gradient colours simply because they were "aesthetically pleasing". Furthermore, the Respondent has not provided any evidence supporting its assertion that this particular colour scheme is common in the industry.

The Panel considers that the Respondent's favicon, comprising a background with a similar gradient colour scheme to that used for its website banner/logo, with a small white circle in the middle, was also designed to mimic the Complainant's favicon/logo, which features its similar colours and a small white circle. Again, the Respondent has not provided any evidence demonstrating that such design elements are common to many digital applications, as it claims.

Third, the Panel considers that the Respondent has not undertaken sufficient steps to avoid causing confusion with the Complainant's mark. The Respondent's original disclaimer in the footer of its site was far from prominent and unlikely to be seen by most users of the site.

The Respondent claims that the Complainant places similar content in the footer of its own site – but the Respondent is apparently referring to standard legal items such as copyright notices and links to terms and conditions, whereas disclaimers are materially different and are likely to be ineffective if they are relegated to an inconspicuous location. The Respondent has not supported its assertion that it is common practice to place disclaimers at the bottom of webpages but, even if true, that would not necessarily mean that such disclaimers are effective.

The Panel is not convinced by the Respondent's claim that users were likely to see the disclaimer because it came immediately after the (long) list of "FAQs" on the Respondent's website. Nor does the Panel consider that the fact that the disclaimer was in bold made it any more likely that the disclaimer would come to the attention of a significant number of users of the Respondent's website.

It may be that placing the disclaimer in the footer was a reasonable step to maintain aesthetic appeal, as the Respondent contends but, in the Panel's view, it was not a reasonable step to take if the Respondent was serious about drawing the disclaimer to the attention of its users.

The disclaimer was in any case inadequate as it gave no information about the operator of the website.

While, in certain circumstances, panels have taken a holistic approach and considered dispensing with the requirement for a disclaimer where there are other factors that sufficiently deny affiliation with the complainant, the Panel does not consider that such an approach would be appropriate here given the matters mentioned above, in particular the Respondent's prominent use of the Complainant's colour scheme.

Fourth, the Panel does not consider that the Respondent's alterations to its website after the Complaint was filed, including belatedly adding prominent disclaimers and changing the gradient colour scheme, are of assistance to the Respondent; otherwise, it would be all too easy for respondents to evade the UDRP by removing problematic elements once confronted. On the contrary, the Panel treats the Respondent's actions as an admission that its previous disclaimer was inadequate and that its colour scheme was incriminating.

The Panel considers that such steps, and indeed the Respondent's post-Complaint defensive manoeuvring as a whole (see section 4 above), undermine the Respondent's credibility, as does the Respondent's implausible attempt to portray the disputed domain names as being under separate control (see above under "Consolidation").

Finally, the Panel does not consider that any of the following additional submissions by the Respondent (whether or not correct) are of any relevance or assistance to the Respondent on the question of bad faith:

- that the Respondent does not use any Complainant marks on a standalone basis;
- that a search for "Snapinsta" does not generate results for official Instagram pages;
- that the disputed domain names do not prevent the Complainant from registering its own domain names; or
- that the Complainant only registers domain names that include the entire term "Instagram".

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 names <snapinsta.app> and <snapinst.app> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: March 24, 2025