

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Abu Arab, OS
Case No. D2023-0160

1. The Parties

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

The Respondent is Abu Arab, OS, United States of America.

2. The Domain Name and Registrar

The disputed domain name <save-insta.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 12, 2023. On January 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 13, 2023, 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 17, 2023 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 January 19, 2023.

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 January 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 10, 2023.

The Center appointed Dennis A. Foster as the sole panelist in this matter on February 17, 2023. 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 United States company that was started in 2010 and that now provides online photo and video sharing social-networking services to more than 2 billion Internet users worldwide. The Complainant sells its products and services in connection with both its INSTAGRAM and INSTA trademarks, which are registered with authorities throughout the world, including with the United States Patent and Trademark Office (“USPTO”) (e.g., Registration No. 4,146,057, registered May 22, 2012; and Registration No. 5,061,916, registered on October 18, 2016) and the European Union Intellectual Property Office (“EUIPO”) (e.g., Registration No. 14493886, registered on December 24, 2015; and Registration No. 014810535, registered on May 23, 2018).

The Respondent is the owner of the disputed domain name which was registered on May 3, 2017. The disputed domain name is attached to a website that contains coloration and a logo resembling those used by the Complainant for its offerings. Despite containing a fine-print disclaimer of association with the Complainant, that website offers access to the Complainant’s products and services without requiring that users possess an account with the Complainant.

5. Parties’ Contentions

A. Complainant

- The Complainant began business in 2010 in the United States as an online photo and video sharing social-networking application. Currently, it hosts more than 2 billion monthly accounts worldwide. The Complainant conducts its business under both the INSTAGRAM and INSTA trademarks, which are registered in numerous jurisdictions worldwide, including with the USPTO and EUIPO. The Complainant has also registered the domain name <instagram.com> to further its operations.

- The disputed domain name is confusingly similar to both of the Complainant’s trademarks, INSTA and INSTAGRAM. The former mark is contained completely within the disputed domain name, and the additions of “save” and a hyphen do not offer meaningful distinction. Since “insta” is a distinctive abbreviation of the Complainant’s INSTAGRAM trademark, the disputed domain name is confusingly similar to that mark also, even with the generic additions. Meanwhile the inclusion of the “.com” generic Top-Level Domain (“gTLD”) can be disregarded as offering any pertinent distinction.

- The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant, who has also not licensed or authorized the use of the Complainant’s trademarks by the Respondent. The disputed domain name resolves to a website that permits Internet users to use the Complainant’s products and services without possessing an account with the Complainant, thereby allowing for the possible risk of the Complainant’s account-holder’s information/content to be accessed for unauthorized purposes by third parties. That illegitimate usage does not constitute a *bona fide* offering of goods and services under the Policy.

- Bearing no resemblance whatsoever to the disputed domain name, the Respondent is not commonly known as such. Moreover, the disputed domain name’s website displays commercial banners, suggesting fee solicitation which, together with the violation of the Complainant’s account restrictions, means that the disputed domain name is also not used for legitimate noncommercial or fair use.

- The disputed domain name was registered and is being used in bad faith. Since its launch in 2010, the Complainant’s INSTAGRAM trademark has gained a worldwide reputation and fame, and thus the Respondent was well aware of that mark when the disputed domain name was registered. Moreover, the

website connected to the disputed domain name refers explicitly to the services offered by the Complainant under its trademark.

- It is clear that the Respondent is using the disputed domain name to confuse Internet users intentionally to gain commercial benefits through deception involving Respondent website's relationship to the Complainant and its mark. That website's coloration and markings, which are similar to those used by the Complainant, enhance this deception despite the fine-print disclaimer of endorsement by the Complainant found at the bottom of the website. As a final example of bad faith, the Respondent failed to respond to the Complainant's cease and desist letter.

B. Respondent

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

6. Discussion and Findings

Pursuant to Policy paragraphs 4(a)(i) - (iii), the Panel may render a decision for the Complainant and grant a transfer of the disputed domain name if the Complainant proves that:

- The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- The disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant having submitted clear evidence of registrations for the INSTAGRAM and INSTA trademarks with the USPTO and EUIPO, the Panel determines that the Complainant has rights in those marks to satisfy Policy paragraph 4(a)(i). See, *Adventia Pharma, S.L. v. Super Privacy Service LTD c/o Dynadot LLC / bilal bal*, WIPO Case No. [D2020-1592](#) ("The Complainant has demonstrated rights [...] through its registration in the EUIPO"); and *LO 337 IP Holding, LLC v. John Williams, J Entertainment ATL / John Williams, J*, WIPO Case No. [D2019-2339](#) ("The Panel concludes that Complainant has rights in the mark [...] through registration with the USPTO").

The Panel observes that the disputed domain name is not identical to the Complainant's INSTAGRAM trademark. However, the Panel notes that the disputed domain name captures the Complainant's INSTA trademark in its entirety, adding only the term "save" and a hyphen, along with the non-distinguishing ".com" gTLD. In evaluating the similarity of the disputed domain name to the latter trademark, the Panel finds that they do not obviate a finding of confusing similarity. Therefore, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's INSTA mark for the purposes of Policy paragraph 4(a)(i). See, for example, *Canon Information Systems Research Australia Pty Limited v. Michael Marriner*, WIPO Case No. [D2011-0622](#) (finding <savecisra.com> to be confusingly similar to the CISRA trademark); *Vibram S.p.A. v. Chen Kang*, WIPO Case No. [D2010-1289](#) ("...the Panel holds that the hyphen is irrelevant in the comparison..."); and *HUK-COBURG haftpflicht-Unterstützungs-Kasse kraftfahrender Beamter Deutschlands A.G. v. DOMIBOT (HUK-COBURG-COM-DOM)*, WIPO Case No. [D2006-0439](#) ("The Panel accepts that the inclusion of a gTLD such as '.com' is immaterial when determining identity or similarity between domain names and trademarks.").

As a result, the Panel finds that the Complainant has demonstrated that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and asserts clearly that it has not authorized the Respondent to use that mark for any purpose. Given this *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, it is up to the Respondent to come forward with evidence to rebut this *prima facie* case. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([WIPO Overview 3.0](#)), section 2.1 (“...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.”).

Given that the Respondent has not filed a Response, the Panel will rely on the reasonable assertions contained in the Complaint to determine if there is a feasible rebuttal to the Complainant's *prima facie* case. See, *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. [D2015-1149](#) (“The Respondent has not submitted a response to the Complaint, in the absence of which the Panel may accept all reasonable inferences and allegations in the Complaint as true.”).

Within the Complaint (Annex 11), the Panel has found credible evidence that the disputed domain name is being used to host a website that entices Internet users to view and download content taken from the Complainant's user platform – without authorization or appropriate credentials (potentially creating a privacy and security risk). The Panel finds that this misuse of the Complainant's mark fails to coincide with “a *bona fide* offering of goods and services” that would satisfy the requirements of Policy paragraph 4(c)(i). See, e.g., *Instagram, LLC v. Aleksey E Sumin*, WIPO Case No. [D2021-1904](#) (“The website at the disputed domain name provides a tool for viewing and downloading content from Instagram, without the need for an Instagram account. Therefore, the Panel concludes that such use of the disputed domain name does not amount to a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy”); and *Instagram, LLC v. WhoisGuard, Inc. / Name Redacted, Senol Sahin, thepicdeer.com, Ekrem Gueltekin and Ekrem Gultekin*, WIPO Case No. [D2020-2826](#).

Furthermore, the Panel detects in the Complaint no reasonable evidence to believe that the Respondent is commonly known by the disputed domain name as contemplated by paragraph 4(c)(ii) of the Policy. Moreover, the suggested organization, “OS,” which may exist and be owned by or affiliated with the Respondent, also does not appear likely to be commonly known by the disputed domain name, whether or not those two letters form an acronym for said organization.

As noted above, the disputed domain name's resolving website may create a possible privacy and/or security risk. This would not support a claim to “a legitimate noncommercial or fair use” within the parameters of Policy paragraph 4(c)(iii). See *Instagram, LLC v. Aleksey E Sumin, supra* (“The Panel is of the view that the provision of a tool that allows Internet users to view, without using an Instagram account, and download content from Instagram does not amount to legitimate noncommercial or fair use in the form of a fan site or otherwise.”); and *Instagram, LLC v. Private Whois, Global Domain Privacy Services Inc / Aleksandr Lyahevich, Private Person*, WIPO Case No. [D2021-0463](#).

Since there is no effective rebuttal to the Complainant's *prima facie* case with respect to Policy paragraph 4(c), that *prima facie* case prevails.

As a result, the Panel finds that the Complainant has satisfied the second element.

C. Registered and Used in Bad Faith

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy. The Complainant bases its contention on the confusing similarity between its famous mark and the disputed domain name and on the commercial banners found on that disputed domain name's resolving website. The Panel, in agreement with the Complainant, finds that

the confusing similarity of the disputed domain name to the Complainant's mark and the placement of commercial banners on the disputed domain name's resolving website are an intentional attempt by the Respondent to gain commercially through likely confusion between the disputed domain name and the Complainant's mark as to the source, sponsorship, affiliation or endorsement of that website in bad faith pursuant to Policy paragraph 4(b)(iv). See, *Instagram, LLC v. Domain Administrator*, See *PrivacyGuardian.org / Anhar Alam, Finishers Ltd*, WIPO Case No. [D2021-1979](#); and *FC2, Inc. v. Host Master, 1337 Services LLC*, WIPO Case No. [D2019-2669](#) ("The Respondent's use of the Complainant's trademarks on the associated website could cause confusion to Internet users. Moreover, there is a commercial banner related to a third party on the associated website. [...] Thus, the bad faith evident in the registration and use of the disputed domain name can be established under paragraph 4(b)(iv) of the Policy.").

The Panel notes from the Complaint (Annex 11) that the Respondent has added a fine-print disclaimer of association with the Complainant at the bottom of the website to which the disputed domain name is connected. However, the Panel believes that this relatively miniscule disclaimer completely fails to negate the Respondent's bad faith registration and use of the disputed domain name. See, *Instagram, LLC v. Whois Privacy Corp / Name Redacted1, Wiseway SIA*, WIPO Case No. [D2021-1877](#) ("...the presence of a disclaimer at the bottom of the Respondent's website is unlikely to correct an Internet user's perception and Internet users are likely to be confused before they ever read as far as the disclaimer"); and *Instagram, LLC v. Bar Technologies*, WIPO Case No. [DME2021-0005](#).

As a result, the Panel finds that the Complainant has demonstrated that the disputed domain name was registered and is being used in bad faith.

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, <save-insta.com>, be transferred to the Complainant.

/Dennis A. Foster/

Dennis A. Foster

Sole Panelist

Date: March 3, 2023