

ADMINISTRATIVE PANEL DECISION

Instagram, LLC. v. Harold Jean-Louis, Harold Jean-Louis, Inc.
Case No. D2023-0334

1. The Parties

The Complainant is Instagram, LLC, United States of America, represented by Tucker Ellis, LLP, United States of America.

The Respondent is Harold Jean-Louis, Harold Jean-Louis, Inc., United States of America.

2. The Domain Name and Registrar

The disputed domain name <instagramsecurehelp.com> is registered with FastDomain, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 25, 2023. On January 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 25, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 February 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2023. Although no formal Response was filed with the Center, several emails were received from the Respondent as follows.

In response to the Respondent's email of February 6, 2023, in which it requested instructions for transfer of the disputed domain name, the same day, the Center issued instructions to the Parties on a suspension and settlement process. The Parties were advised that in the event they wished to explore settlement options, the Complainant should submit a request for suspension by February 11, 2023. As no request for suspension was received, the proceeding continued. A further email was received from the Respondent on

February 14, 2023. On February 15, 2023, the Center acknowledged receipt of the Respondent's communication, reiterating that a suspension request should be submitted by the Complainant in order for the proceeding to be suspended, and that if no request for suspension was received, the proceeding would continue. The Complainant did not request for a suspension of the proceeding. On February 28, 2023, the Respondent reached out to the Center again, and informed the Center that the Respondent had contacted the Complainant regarding settlement. However, no settlement was reached between the Parties.

The Center appointed Ezgi Baklacı Gülkökar, as the sole panelist in this matter on March 7, 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, Instagram, LLC, (Instagram) is a United States based company operating social networking services and mobile application. Complainant is the owner of the trademark INSTAGRAM which is used as the name of a mobile application enabling the users to create profile, post photos and videos, and connect. Instagram has more than one billion monthly active users from all over the World.

The Complainant holds many trademark registrations in the United States and worldwide for its INSTAGRAM marks, including for example, United States Trademark Registration Reg. No. 4,146,057 registered May 22, 2012, in International Class 9, with a first use in commerce of October 6, 2010.

The Complainant is also the owner of various domain names including its INSTAGRAM trademark going back to November 6, 2010, including <instagramhelp.com> which was registered on September 26, 2015.

The disputed domain name was registered on July 6, 2021. As of the date of this Decision, the disputed domain name is resolving to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy is satisfied in the present case, as follows:

Identical or confusingly similar

The Complainant argues that the disputed domain name is confusingly similar to the Complainant's registered INSTAGRAM mark because it consists of its trademark in its entirety together with the descriptive terms "secure" and "help" as well as the Top-Level Domain ("gTLD") ".com".

Rights or legitimate interests

The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name. Further, the Complainant submits that the Respondent is not licensed or authorized to use the Complainant's trademark. Therefore, the Respondent has no rights to any trademark consisting of or incorporating the Complainant's mark, or to the disputed domain name.

Also, the Complainant contends that the Respondent has not been known by the disputed domain name.

Further, the Complainant argues the disputed domain name does not resolve to an active website; however according to the Annex 13 to the Complaint, the disputed domain name has been flagged by security

vendors as being used for malicious purposes. The Complainant has submitted extracts from “VirusTotal.com”, detecting the malware and other breaches.

The disputed domain name was registered and used in bad faith

The Complainant claims that the fact that the disputed domain name was flagged by several security vendors as malicious and for phishing suggests bad faith. Further, the Complainant argues that the registration of a confusingly similar domain name which is connected with a particular trademark owner, by someone with no connection with the trademark owner also supports a finding of bad faith.

In summary, the Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the disputed domain name.

B. Respondent

No formal Response was filed with the Center. On February 6, 2023, February 14, 2023 and February 28, 2023, informal emails were submitted to the Center in which, the Respondent asked how the disputed domain name could be transferred to the Complainant.

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to the trademarks or service marks in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name <instagramsecurehelp.com> consists of the registered trademark INSTAGRAM and the terms “secure” and “help”. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will be considered confusingly similar (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”, section 1.7).

The elements “secure” and “help” in the disputed domain name do not prevent the finding of confusing similarity as the Complainant’s trademark INSTAGRAM remains clearly recognizable ([WIPO Overview 3.0](#), section 1.8).

Moreover, the TLD “.com” is disregarded in the confusing similarity test, as it does not form part of the comparison as it is a standard registration requirement for technical reasons ([WIPO Overview 3.0](#), section 1.11.1).

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks and that the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. While the overall burden of

proof in UDRP proceedings is on the complainant, previous UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of proving a negative, *i.e.*, 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. 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).

The Respondent has offered no explanation for its registration and use of the disputed domain name. The Panel finds that the Respondent's informal emails to the Center failed explaining such use. As of the date of this decision the disputed domain name <instagramsecurehelp.com> does not resolve to an active website. The evidence submitted by the Complainant indicates that, the disputed domain name was flagged as malicious by the security vendors of the Complainant. The Panel finds that such use cannot amount to a *bona fide* offering of goods and services or a legitimate noncommercial or fair use.

The Panel notes that there is no evidence showing that the Respondent holds any rights in the term "instagram". The Panel also notes that there is no evidence showing that the Respondent is authorized or licensed to use the Complainant's trademark INSTAGRAM.

Therefore, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name within the meaning of Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that a complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith. Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's trademark ([WIPO Overview 3.0](#), section 3.1).

The Panel finds that at the time the disputed domain name was registered the Respondent more likely than not was aware of the trademark INSTAGRAM as the Complainant's trademark registrations predate the registration date of the disputed domain name. Panel notes from the Complaint and annexes the extensive use and worldwide registrations of the INSTAGRAM trademark. According to the evidence submitted by the Complainant, the Panel finds that the Respondent knew or should have known about the Complainant's rights (and such information could readily have been reached by a quick online search; see *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)).

In addition, previous UDRP panels have held that the mere registration of a domain name that is confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#), section 3.1.4). "The disputed domain name is so obviously connected with the Complainant and its products that already its very use by the Respondent, which has no connection with the Complainant, clearly suggests the disputed domain name has been selected with a deliberate intent to create an impression of an association with the Complainant" (see *General Motors LLC v. desgate*, WIPO Case No. [D2012-0451](#)).

Further the disputed domain name does not resolve to an active website. The Panel finds that the current inactive status of the disputed domain name does not prevent the finding of bad faith ([WIPO Overview 3.0](#), section 3.3).

In the circumstances, the Panel finds that the Respondent registered and has been using the disputed domain name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

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 <instagramsecurehelp.com> be transferred to the Complainant.

/Ezgi Baklacı Gülkökar/

Ezgi Baklacı Gülkökar

Sole Panelist

Date: March 21, 2023