

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Malika BZDRR

Case No. D2024-3568

1. The Parties

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

The Respondent is Malika BZDRR, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <saveinstaa.com> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 3, 2024. On September 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 4, 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 (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 6, 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 September 11, 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 September 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 4, 2024.

The Center appointed Francine Tan as the sole panelist in this matter on October 8, 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

The Complainant states that it operates the world-renowned online photo and video sharing social-networking application. Since the launch of the Instagram application in 2010, it has rapidly acquired and developed considerable worldwide goodwill and fame. In 2012, the Complainant was acquired by Facebook, Inc. (now known as Meta Platforms, Inc.). Today, the Instagram application is one of the world's fastest growing photo and video sharing and editing software and online social network, with more than 2.4 billion monthly active accounts worldwide. Instagram has consistently ranked amongst the top "apps" for mobile devices and been the recipient of numerous awards.

The term "Insta" is commonly used to refer to Instagram.

The Complainant has made substantial investments to develop a strong online presence through various social media platforms, including Facebook, X (formerly known as Twitter), and LinkedIn. The Complainant's Facebook page has over 61 million "likes", and it has over 33 million followers on X.

The Complainant is the owner of numerous trademark registrations incorporating its INSTAGRAM and INSTA trade marks, including the following for the latter:

- U.S. trademark registration No. 5061916 for INSTA, registered on October 18, 2016; and
- European trademark No. 014810535 for INSTA, registered on May 23, 2018.

The disputed domain name was registered on February 18, 2024, and until or around August 19, 2024, resolved to a website titled "SAVEINSTA/ Instagram Downloader" that purported to offer a tool for downloading content from the Complainant's Instagram platform, including videos, reels, photos and stories. The Respondent's website featured a step-by-step guide to download Instagram content as well as the following text:

"Nowadays there are many tools for downloading from Instagram. But Saveinsta became more popular as compared to others. Savelnsta has more features than other tools. Savelnsta provides the best solution for downloading images, and reels from Instagram".

The Respondent's website featured a pink/purple gradient colour scheme that is very similar to the Complainant's gradient colour scheme. It featured commercial advertising banners and referred to a paid "premium" subscription plan that "offers faster downloads, priority support, and additional features for an enhanced user experience". Additionally, it purported to offer a tool that enabled Internet users to download content from "FB", a commonly-abbreviation of Facebook, and a tool that enabled Internet users to download content from the third-party social media platform TikTok.

On July 23, 2024, the Complainant's lawyers submitted a notice to the Respondent via the Registrar's registrant contact form. No response was received.

As at the date of filing the Complaint, the disputed domain name resolved to an inactive webpage.

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:

- The disputed domain name is confusingly similar to the INSTA trade mark in which the Complainant has rights. The disputed domain name contains the Complainant's INSTA trade mark preceded by the term "save", and followed by the additional letter "a". The mere addition of this term and letter does not prevent a finding of confusing similarity between the trade mark and the disputed domain name. The generic Top-level Domain ".com" may be disregarded for the purpose of assessing confusing similarity.
- The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not a licensee of the Complainant and is not affiliated with the Complainant in any way. The Complainant has not granted any authorization to the Respondent to make use of its INSTA trade mark in any way, in a domain name or otherwise.
- The Respondent is not commonly known by the disputed domain name.
- The Respondent is not using the disputed domain name in connection with any bona fide offering of goods or services or making a legitimate noncommercial or fair use of the disputed domain name. While the Policy provides that service providers using a third-party trade mark in their domain name may be making a bona fide offering of goods or services and thus have a legitimate interest, in this case, the "Oki Data" criteria (per the case of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)) are not met. The Respondent is not providing sales or repairs in relation to a product provided by the Complainant, but is, instead, making unauthorized use of the Complainant's INSTA trade mark to market its own ancillary services. The Respondent's website purported to provide an unauthorized Instagram downloader tool, which is against the Meta Developer Policies, and which facilitated a breach of the Instagram Terms of Use.
- By purporting to provide tools for the downloading of Facebook and TikTok content, the Respondent cannot be said to have used the disputed domain name solely in connection with goods or services offered under the trade mark contained in the disputed domain name. The Respondent's website also did not contain any wording that disclosed the Respondent's lack of relationship with the Complainant.
- The Respondent has used the disputed domain name to exploit the goodwill and reputation associated with the Complainant's trade mark by creating a false impression of association with the Complainant. The colour scheme of the Respondent's website is very similar to that of the Complainant's Instagram platform and features commercial advertising banners. The Respondent's use of the disputed domain name was therefore intended to be commercial in nature and was misleading, to divert Internet users to its own website. The Respondent's use of the disputed domain name therefore cannot be said to be a legitimate noncommercial fair use.
- The disputed domain name was registered and is being used in bad faith. The Complainant and its inherently distinctive INSTAGRAM and INSTA trade marks are well known around the world. The Respondent cannot credibly argue that it did not have knowledge of the Complainant's trade marks when registering the disputed domain name. The Respondent's intent to target the Complainant may be inferred from the content of the Respondent's website. The Respondent was also named as the respondent in another case in which the panel ordered the transfer of 16 WHATSAPP-formative domain names to the Complainant. This shows a pattern of trademark-abusive registration targeting the Complainant and its related company, WhatsApp LLC.

- The Respondent's use of a proxy service to mask its identity and what appears to be false or incomplete registrant information are also further evidence of bad faith.
- The purported provision of a tool to download content from the Instagram platform goes against the technical limits placed on it by the Complainant and violates the Instagram terms of use. The Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of its website and the services offered, in bad faith. The fact that the disputed domain name now resolves to an inactive website cannot cure the Respondent's bad faith registration and use.

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 is reproduced and recognizable 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.

The Panel finds the addition of the term "save" and the letter "a" 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 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 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.

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.

The disputed domain name was registered long after the Complainant's INSTA trade mark was registered and used. The disputed domain name incorporates the entirety of the Complainant's distinctive trade mark with the addition of the term "save" and letter "a". It is clear that the Respondent knew of and targeted the Complainant and its INSTA trade mark at the time it registered the disputed domain name. Moreover, the Respondent's lack of rights or legitimate interests in the disputed domain name and failure to explain its choice of the disputed domain name further support a finding of bad faith registration in this case.

The Panel is persuaded that the ultimate aim of the Respondent's registration of the disputed domain name to be for the purpose of "[attempting] to attract, for commercial gain, Internet users to [his/her] web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of [his/her] web site or location or of a product or service on [his/her] web site or location..."(paragraph 4(b)(iv) of the Policy). The use of the same colour scheme was also another means by which to create confusion to Internet users by making it seem that the Respondent's website is associated with or endorsed by the Complainant.

The fact that the disputed domain name now resolves to an inactive webpage does not alter the Panel's view that the disputed domain name is being used in bad faith for the purposes of the Policy. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's INSTA trade mark, the composition of the disputed domain name and implausibility of any good faith use to which the disputed domain name may be put, finds that in the circumstances of this case, the current passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy. Accordingly, the Panel concludes that the disputed domain name was registered and used in bad faith.

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 <saveinstaa.com> be transferred to the Complainant.

/Francine Tan/

Francine Tan

Sole Panelist

Date: October 11, 2024