

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Registration Private, Domains By Proxy LLC/ sezer suat
Case No. D2022-0157

1. The Parties

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

The Respondent is Registration Private, Domains By Proxy LLC, United States / sezer suat, Turkey.

2. The Domain Name and Registrar

The disputed domain name <Instagramloginverification.com> is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 18, 2022. On January 18, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 18, 2022, 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 January 9, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amended Complaint. The Complainant filed an amended Complaint on January 21, 2022.

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 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 14, 2022.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on February 17, 2022. 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 Instagram social networking service and mobile application. Instagram enables its users to create their own personal profiles, post photos and videos, and connect with each other on their mobile devices. The Complainant also offers security tips and features related to login information on Instagram, including two-factor authentication, which when enabled allows the users to see login requests, remove trusted devices, and access backup codes for their account. Furthermore, the Complainant provides account verification services, a feature that allows users to find more easily the real accounts of public figures, celebrities and brands on Instagram, thus avoiding fake profiles.

The Instagram website is currently the 18th most visited website in the world, and the Instagram app is the second most downloaded app in the United States. Instagram has more than 500 million daily active accounts and more than one billion monthly active users from all over the world.

The Complainant started using the INSTAGRAM mark in 2010. The Complainant is the owner of numerous worldwide registrations for the INSTAGRAM mark, among which are the following:

MARK	Jurisdiction	Filing Date	Reg. Date	Reg. No.
INSTAGRAM	US	September 19, 2011	May 22, 2012	4,146,057
INSTAGRAM	US	September 19, 2011	July 10, 2012	4,170,675
INSTAGRAM	US	October 24, 2013	June 16, 2015	4,756,754
INSTAGRAM	US	March 4, 2013	August 18, 2015	4,795,634
INSTAGRAM	US	June 20, 2013	September 29, 2015	4,822,600
INSTAGRAM	US	June 20, 2013	October 6, 2015	4,827,509
INSTAGRAM	US	June 20, 2013	November 17, 2015	4,856,047
INSTAGRAM	US	June 20, 2013	December 1, 2015	4,863,594
INSTAGRAM	US	June 20, 2013	December 1, 2015	4,863,595
INSTAGRAM	US	June 20, 2013	September 18, 2018	5,566,030
INSTAGRAM	US	August 14, 2015	August 9, 2016	5,019,151
INSTAGRAM	US	August 14, 2015	November 22, 2016	5,088,532
INSTAGRAM	US	September 9, 2016	April 11, 2017	5,181,545
INSTAGRAM	US	January 12, 2017	August 8, 2017	5,260,677
INSTAGRAM	US	September 27, 2018	September 24, 2019	5,869,731
INSTAGRAM	AU, CH, EM, IL, JP, KR, NO, SG, TR	September 19, 2011	March 15, 2012	1129314
INSTAGRAM (stylized)	EU	September 3, 2013	March 6, 2014	012111746
INSTAGRAM	EU	August 20, 2015	December 24, 2015	014493886
INSTAGRAM (stylized)	EU	August 25, 2015	January 11, 2016	014502256
INSTAGRAM	EU	March 9, 2017	June 21, 2017	016449415
INSTAGRAM	EU	January 25, 2018	January 24, 2019	017739392
INSTAGRAM	EU	October 26, 2018	April 19, 2019	017972897
INSTAGRAM (stylized)	EU	November 15, 2019	May 22, 2020	018153502

The disputed domain name was registered on March 7, 2021, and resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant maintains that the disputed domain name is confusingly similar to the INSTAGRAM mark as it reproduces the letters "nstagram" preceded by the lowercase letter "l", which is closely similar to the capital letter "I". The additional terms "login" and "verification" are descriptive words that do not remove the otherwise confusing similarity between the disputed domain name and the mark.

The Complainant also contends that the Respondent lacks rights and legitimate interests in the disputed domain name. The Complainant neither licensed nor authorized the Respondent to use the Complainant's trademark. The Complainant does not have any legal relationship with the Respondent that would entitle the Respondent to use the Complainant's trademark. Furthermore, the Respondent is not commonly known by the disputed domain name and is not making a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of it. Instead, the Respondent is passively holding the disputed domain name.

Lastly, the Complainant suggests that the disputed domain name has been registered and is being used in bad faith. The INSTAGRAM trademark is renowned and uniquely associated to the Complainant. It is not conceivable that the Respondent registered the disputed domain name without being aware of the Complainant's trademark. The registration of a confusingly similar domain name that is obviously connected with a particular trademark owner by someone with no connection with the trademark suggests bad faith. Furthermore, the passive holding of a domain name that is confusingly similar to a complainant's mark constitutes use in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark INSTAGRAM. The disputed domain name consists of the word "Instagram", where the first letter is a lowercase letter "l", which is practically identical to a capital letter "I". A domain name, which consists of misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element, see section 1.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The addition of the words "login" and "verification" does not prevent a finding of confusing similarity, see section 1.8 of [WIPO Overview 3.0](#).

In light of the foregoing, the Panel is satisfied that the first condition under the Policy is met.

B. Rights or Legitimate Interests

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel finds that the Respondent is not authorized to reflect the Complainant's trademark in the disputed domain name, and that the Respondent does not appear to have been commonly known by the name "Instagramloginverification".

The disputed domain name does not resolve to an active webpage. Non-use of a domain name does not amount to a use in connection with a *bona fide* offering of goods or services or to a legitimate noncommercial or fair use of the domain name, especially when the domain name is confusingly similar to a well-known third party's trademark and has been registered without authorization of the trademark owner.

In view of all the circumstances mentioned above, the Panel finds that the Complainant has made an unrebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Therefore, the Panel opines that also the second condition under the Policy is met.

C. Registered and Used in Bad Faith

The Panel agrees with the Complainant that the disputed domain name was registered and has been used in bad faith.

As far as registration is concerned, the Panel finds that the Complainant's trademark is highly distinctive and enjoys wide reputation. The INSTAGRAM mark is uniquely associated to the Complainant and the disputed domain name is a typosquatted version of the Complainant's trademark as it contains an almost identical term where only the first letter "i" has been replaced by a capital letter "I". As a result, it is impossible for the Internet users to distinguish the word "Instagram" in the disputed domain name from the Complainant's trademark INSTAGRAM. The registration of a domain name so closely similar to the Complainant's renowned trademark without authorization and rights or legitimate interests is clear evidence of registration in bad faith.

As far as use is concerned, the Panel notes that the Respondent is passively holding the disputed domain name. Previous UDRP panels have determined that the use of a domain name for purposes other than to host a website may constitute bad faith. According to section 3.3 of [WIPO Overview 3.0](#), "factors that have been considered relevant in applying the passive holding doctrine include: "(i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put".

In the case at issue, the Complainant's mark is highly distinctive and enjoys wide reputation. Furthermore, the Respondent did not submit a response and did not provide evidence of actual or contemplated *bona fide* use.

Finally yet importantly, the disputed domain name itself, contains words ("login" and "verification") clearly referring to services provided by the Complainant to the users of the INSTAGRAM platform. This is evidence of a clear intent of the Respondent to falsely impersonate the Complainant in order to mislead Internet users searching for the Complainant, and redirect them to its website for some kind of bad faith use.

In light of all the circumstances set forth above, the Panel believes that no conceivable good faith use of the disputed domain name is possible and is therefore satisfied that also the third and last condition under the Policy is met.

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 <Instagramloginverification.com> be transferred to the Complainant.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: March 1, 2022