

## **ADMINISTRATIVE PANEL DECISION**

Instagram, LLC v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / İlyas Balci  
Case No. D2022-1619

### **1. The Parties**

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

The Respondent is Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / İlyas Balci, Türkiye.

### **2. The Domain Name and Registrar**

The disputed domain name <gramtakipci.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 4, 2022. On May 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 6, 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 May 6, 2022, 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 May 10, 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 May 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 31, 2022. The Respondent did not submit any formal response, but submitted informal communication emails on May 6, May 9, May 11, May 25, May 27 and June 1, 2022 offering the content of the website linked to the disputed domain name. The Complainant submitted their refusal for a settlement by email on May 12, 2022. Accordingly, the Center notified the of Panel Appointment

Process on June 1, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on June 8, 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 is a United States based company, which provides online photo and video sharing services. Since 2010, these services are provided through its internationally known and popular online platform, which primarily consists of a mobile application and a website.

The Complainant is the owner of various INSTAGRAM and GRAM trademarks (Annex 9 to the Complaint). For instance, the Complainant is owner of the International Trademark Registration No. 1129314 for INSTAGRAM, registered on March 15, 2012, designating among others Türkiye, where the Respondent is reportedly located, and where the trademark has been registered under the Turkish Trademark Registration No. 2012 85440 on April 28, 2015. Furthermore, the Complainant is the owner the European Trademark Registration No. 015868797 for GRAM, registered on January 12, 2017. These trademark registrations cover protection for various goods and services primarily related to online social networking services.

The Complainant further holds and operates its main website at “www.instagram.com”, which is ranked as one of the most visited websites worldwide (Annex 4 to the Complaint).

The disputed domain name was registered on June 8, 2018.

The Respondent is reportedly an individual from Türkiye.

According to the provided documents by the Complainant, the disputed domain name resolves to a website in Turkish language, which offers services for increasing INSTAGRAM likes, followers and views (Annex 10 to the Complaint). To benefit from these services, users are requested to log in to the website with their INSTAGRAM username and password.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its INSTAGRAM and GRAM trademarks.

Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Finally, it is argued that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant believes that the Respondent was fully aware of the Complainant's trademarks, when registering the disputed domain name. The Complainant is further of the opinion that the Respondent apparently tries to attract Internet users and to gain illegitimate benefits by freeriding on the goodwill of the well-known INSTAGRAM and GRAM trademarks.

##### **B. Respondent**

The Respondent did not file any formal response to the Complainant's contentions. In his various email communications to the Center, the Respondent merely raised questions whether changing the content and design of the website linked to the disputed domain name would be accepted as sufficient.

## 6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

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 a trademark or service mark 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. See *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

### A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having various trademark rights in INSTAGRAM and GRAM (Annex 9 to the Complaint).

In light of this pre-assessment, the Panel finds that the disputed domain name is confusingly similar to the Complainant's INSTAGRAM and GRAM trademarks. The disputed domain name fully comprises the GRAM trademark and a significant part of the INSTAGRAM trademark. As stated at section 1.8 of the [WIPO Overview 3.0](#), where a trademark is recognizable within the disputed domain name, the addition of other terms does generally not prevent a finding of confusing similarity. In the present case, the mere addition of the term "takipci" (which is Turkish and means "follower" in the English language) does, in view of the Panel, not serve to prevent a finding of confusing similarity between the disputed domain name and the Complainant's INSTAGRAM and GRAM trademarks.

In view of the above, the Panel is satisfied that the Complainant has met the requirements under paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license or alike to use the Complainant's INSTAGRAM and GRAM trademarks in a confusingly similar way within the disputed domain name.

There is also no indication in the current record that the Respondent is commonly known by the disputed domain name. In the absence of a formal response, the Respondent has additionally failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain name. In this regard, the Panel particularly notes that the nature of the disputed domain name carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#).

Bearing all this in mind, the Panel does not see basis for assessing a *bona fide* offering of goods or services by the Respondent.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel believes that the Respondent deliberately attempted to create a likelihood of confusion among Internet users and/or to freeride on the goodwill of the Complainant's trademarks, apparently for illegitimate commercial gain.

At the date of registration of the disputed domain name, the Respondent was obviously well aware of the Complainant's INSTAGRAM and GRAM trademarks. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

Furthermore, the way of using the Complainant's trademarks in a confusingly similar way on the associated website (Annex 10 to the Complaint), indicates that the Respondent has deliberately chosen the Complainant's trademarks as the distinctive part of the disputed domain name to target and mislead Internet users who are searching for services provided by the Complainant.

This assessment is further supported by the Respondent's extensive mentioning of the Complainant's INSTAGRAM trademark on the website associated to the disputed domain name, even though it must have been obvious to the Respondent that the nature and use of the disputed domain name is intended to be and is confusing. As users are requested to log in with their official INSTAGRAM username and password, the Panel can further not exclude that the website associated to the disputed domain name is used to gain personal information from users for illegitimate purposes (commonly known as phishing).

Taking all facts of the case into consideration, the Panel is convinced that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) 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 <gramtakipci.com> be transferred to the Complainant.

*/Kaya Köklü/*

**Kaya Köklü**

Sole Panelist

Date: June 22, 2022