

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Laremy Wade
Case No. D2022-1710

1. The Parties

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

The Respondent is Laremy Wade, United States.

2. The Domain Name and Registrar

The disputed domain name <instagramsmetaverse.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 10, 2022. On May 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 12, 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 13, 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 18, 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 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 9, 2022. The Respondent sent an informal communication to the Center on June 9, 2022. The Center notified Commencement of Panel Appointment Process to the Parties on June 10, 2022.

The Center appointed Evan D. Brown as the sole panelist in this matter on June 22, 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 provides the well-known social media platform Instagram. It owns the trademark INSTAGRAM, which it has registered in a number of jurisdictions, including the United States (Reg. No. 4,146,057, registered on May 22, 2012). According to the Whois records, the disputed domain name was registered on November 30, 2021. As of the filing of the Complaint, the disputed domain name did not resolve to an active website but instead redirected Internet users to a parked page provided by the Registrar indicating that the disputed domain name may be available for purchase.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

The Respondent did not file a formal Response to the Complaint but did send an email to the Center on June 9, 2022. In this email message, the Respondent asked to the Center to "please have the counterparty produce a suitable offer for acquisition of the domain name in question", indicating that if such an offer were made, the disputed domain name would be transferred. The Center acknowledged receipt of the email message, copying the Complainant on the correspondence. The record does not indicate the Complainant attempted to negotiate a deal in response to the Respondent's invitation.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (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. The Panel finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This first element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and, second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the INSTAGRAM mark by providing evidence of its trademark registrations.

The disputed domain name incorporates the INSTAGRAM mark in its entirety. This is sufficient for showing confusing similarity under the Policy. The additional presence of the letter "s" and the word "metaverse"

does not prevent a finding of confusing similarity. The INSTAGRAM mark remains sufficiently recognizable for a showing of confusing similarity under the Policy.

For these reasons, the Panel finds the Complainant has satisfied this first element under the Policy.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. D2022-1289.

On this point, the Complainant asserts, among other things, that: (1) the Respondent is not using the disputed domain name in connection with any *bona fide* offering of goods or services, (2) the Respondent is not commonly known by the disputed domain name, and (3) the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent's favor.

Furthermore, the nature of the disputed domain name, incorporating the Complainant's widely known trademark together with the letter "s" and the word "metaverse" (such word having recently become common in the Internet lexicon), carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See *Columbia Insurance Company v. Name Redacted*, WIPO Case No. [D2022-0528](#); and [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent's bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] website or other online location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or a product or service on [the respondent's] website or location".

Because the Complainant's INSTAGRAM mark is well known, and is registered in jurisdictions around the world, the Panel finds it likely that the Respondent was aware of the mark when it registered the disputed domain name. In the circumstances of this case, without the benefit of any explanation whatsoever from the Respondent as to a possible good faith use of the disputed domain name, such a showing is sufficient to establish bad faith registration of the disputed domain name.

The circumstances also demonstrate bad faith use of the disputed domain name in terms of the Policy. Where a disputed domain name is "so obviously connected with such a well-known name and products [...] its very use by someone with no connection with the products suggests opportunistic bad faith". See *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#). Furthermore, from the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of [WIPO Overview 3.0](#)).

Bad faith use is further supported by the efforts of the Respondent to sell the disputed domain name. The disputed domain name was set to point to a parked page inviting offers to purchase the disputed domain name. The Respondent's communications with the Center, in an attempt to have the Center broker the sale of the disputed domain name, underscore the Respondent's bad faith use in these circumstances.

For these reasons, the Panel finds that the Complainant has satisfied the third element under 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 <instagramsmetaverse.com> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: July 5, 2022