

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc., Instagram LLC v. Registration Private, Domains By Proxy, LLC / Jorel Covin  
Case No. D2022-2185

### **1. The Parties**

Complainants are Meta Platforms, Inc. United States of America (“United States” or “US”), and Instagram LLC, United States, represented by Hogan Lovells (Paris) LLP, France.

Respondent is Registration Private, Domains By Proxy, LLC, United States / Jorel Covin, United States.

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

The disputed domain name <metacoininstagram.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 June 15, 2022. On June 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On Jun 16, 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 Complainant on June 17, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on June 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 Respondent of the Complaint, and the proceedings commenced on June 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 18, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 19, 2022.

The Center appointed Scott R. Austin as the sole panelist in this matter on July 25, 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

Without contest by Respondent, Complainants assert in their Complaint as amended, and its Annexes attached provide evidence sufficient to support that:

Complainant consists of (1) the company formerly known as Facebook Inc., which on October 28, 2021, announced its change of name to Meta Platforms, Inc. (“Meta”), which name change was publicized worldwide, and (2) Meta’s wholly-owned subsidiary Instagram, LLC (“Instagram”; and with Meta collectively, “Complainant”) which together comprise part of a social technology company which provides social networking website and mobile application services under the trademark META (the “META Mark”) and operates among its social networking platforms, Instagram, a world-renowned online photo and videosharing social-networking application, identified by the trademark INSTAGRAM (the “INSTAGRAM Mark” and collectively with the META Mark, the “Marks”) in which Complainant holds exclusive rights.

Complainant has used the INSTAGRAM Mark since 2010. Complainant claims worldwide fame and recognition of the META Mark and INSTAGRAM Mark based on their use worldwide for almost 2 years and 12 years respectively and submits content supporting its claims for such world-wide recognition in the Annexes to its Complaint. For example, the Annex evidence submitted shows Instagram today is the world’s fastest growing photo and video-sharing and editing software and online social network, with more than 1 billion monthly active accounts worldwide. Complainant’s official Instagram website accessed through its domain name <instagram.com> (the “Official INSTAGRAM Website”) is currently ranked as the 5th most visited website in the world according to information company Alexa. In support of its claim of worldwide fame for the Marks, Complainant also submits evidence that its application identified by the INSTAGRAM Mark is currently the most downloaded application in the world, as per Data.ai’s (formerly App Annie) Top Apps Worldwide Rankings in 2022.

Complainant is the registrant of numerous domain names consisting of or including the META and INSTAGRAM Marks under a wide range of generic Top-Level Domains (“gTLDs”) as well as under numerous country code Top-Level Domains (“ccTLDs”).

Complainant owns numerous registrations protecting the META Mark and the INSTAGRAM Mark in the United States and around the world, including:

- United States Trademark Registration No. 5548121, META, assigned to Complainant on October 26, 2021, registered with the United States Patent and Trademark Office (“USPTO”) on August 28, 2018, for a range of advertising, promotion and computer networking services, including “creating online virtual communities” in International Classes 35 and 42 and having a priority date of November 12, 2015.
- Monaco Trademark Registration No. 2200039, META, registered on February 8, 2022;
- United States Trademark Registration No. 4,146,057, INSTAGRAM, registered on May 22, 2012, for “Downloadable computer software for modifying the appearance and enabling transmission of photographs” in International Class 9 and claiming a first use date of October 6, 2010;
- European Union Trade Mark No. 014493886, INSTAGRAM, registered on December 24, 2015; and
- International Registration No. 1129314, INSTAGRAM, registered on March 15, 2012.

The disputed domain name was registered on November 26, 2021, less than a month after news of Complainant's name change from "Facebook, Inc." to "Meta Platforms, Inc." had been publicized worldwide. The disputed domain name did not and does not resolve to an active website, which nonuse amounts to passive holding by Respondent of the disputed domain name.

## **5. Parties' Contentions**

### **A. Complainant**

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant's trademark, that 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**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

There are no exceptional circumstances within paragraph 5(e) of the Rules to prevent this Panel from determining the present dispute based upon the Complaint (as amended), notwithstanding the failure of any person to lodge a substantive formal Response in compliance with the Rules. Under paragraph 14 of the Rules, where a party does not comply with any provision of the Rules, the Panel shall "draw such inferences therefrom as it considers appropriate".

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied.

The Panel will address its findings on each of these requirements in more detail below.

The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

### **6.1 Procedural Matters: Request for Consolidation of Multiple Complainants**

Neither the Policy nor the Rules expressly provides for or prohibits the consolidation of multiple Complainants, but paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes.

It is the consensus of prior UDRP panels that in assessing whether a complaint filed by multiple complainants may be brought against a single respondent the panel should consider the following factors:

- (i) whether the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion; and
- (ii) it would be equitable and procedurally efficient to permit the consolidation." See [WIPO Overview 3.0](#), section 4.11.

Prior UDRP panels have held that a "specific common grievance" is shown where complainants:

- (i) have a common legal interest in the trademark rights on which the complaint is based; or

(ii) have been the target of common conduct by the respondent which has clearly affected their individual legal interests in a similar fashion.

The Panel finds that because Complainant shows in the corporate evidence submitted that Instagram is a wholly-owned subsidiary of Meta, the two entities have a sufficient common legal interest in the META and INSTAGRAM Marks tied together for abuse through the disputed domain name clearly affecting their individual legal interests in their respective marks in a similar fashion to support consolidation of these multiple Complainants in a joint Complaint. See, *Facebook, Inc. and Instagram, LLC v. Domain Administrator, Fundacion Privacy Services Ltd.*, WIPO Case No. [D2019-2518](#).

## 6.2. Substantive Issues

### A. Identical or Confusingly Similar

Ownership of a nationally registered trademark constitutes *prima facie* evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant claims trademark rights in the META Mark and the INSTAGRAM Mark for their respective social networking website and mobile app products and services. Sufficient evidence has been submitted, in the form of electronic copies of active U.S. and international trademark registration certificates, showing the above-referenced trademark registrations for the META Mark and INSTAGRAM Mark in the name of Complainant. Complainant has through such valid and subsisting trademark registrations demonstrated its rights in the META Mark and INSTAGRAM Mark, respectively. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

With Complainant's rights in the META Mark and INSTAGRAM Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's META Mark and INSTAGRAM Mark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". [WIPO Overview 3.0](#), section 1.7. Prior UDRP panels have also held "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 normally be considered confusingly similar to that mark for purposes of UDRP standing". See, *id*; see also, *Wal-Mart Stores, Inc. v. MacLeod d/b/a/ For Sale*, WIPO Case No. [D2000-0662](#).

A side-by-side comparison between the disputed domain name and the Marks shows that the disputed domain name consists of the terms "meta" and "instagram", identical to each of the Marks, and each incorporated in its entirety into the disputed domain name, the Marks connected to each other by the descriptive term "coin" centered between the META Mark and the INSTAGRAM Mark.

Numerous prior UDRP panels have held that the addition of a term to a complainant's mark fails to prevent a finding of confusing similarity. See [WIPO Overview 3.0](#), sections 1.7 and 1.8; see also *Meta Platforms, Inc. v. oguz cinar*, WIPO Case No. [D2021-4066](#) (<facebookcoin.com>).

Finally, the Top-Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".co") typically adds no meaning or distinctiveness to a disputed domain name and is viewed as a standard registration requirement; as such it is disregarded under the paragraph 4(a)(i) analysis. Accordingly, the TLD of the disputed domain name here, ".com", does not avoid a finding of confusing similarity. See, [WIPO Overview 3.0](#), section 1.11.1; see also *Research in Motion Limited v Thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#).

In light of the above, the Panel finds the disputed domain name confusingly similar to the dominant terms used to create it which remain clearly recognizable within the META Mark and INSTAGRAM Mark, in which Complainant possesses rights. Complainant has thus satisfied its burden under paragraph 4(a)(i) of the Policy.

## B. Rights or Legitimate Interests

Under the second element of the Policy, the complainant has to make out a *prima facie* case that the respondent does not have rights to or legitimate interests in the disputed domain name, upon which the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights to or legitimate interests in the disputed domain name. If the respondent fails to come forward with such evidence, a complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also *The American Automobile Association, Inc. v. Privacy--Protect.org et al.*, WIPO Case No. [D2011-2069](#).

Paragraph 4(a)(ii) of the Policy also directs an examination of the facts to determine whether a respondent has rights or legitimate interests in a domain name. Paragraph 4(c) lists a number of ways in which a respondent may demonstrate that it does have such rights or interests.

The first example, under paragraph 4(c)(i), is where “before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services”.

Here, the annex to the Complaint shows the disputed domain name does not resolve to an active website and Respondent is therefore, passively holding the disputed domain name. Prior UDRP panels have held that without more, absence of use would not normally confer any rights or legitimate interests on a respondent. See, e.g., See *Instagram, LLC v. Zafer Demir, Yok*, WIPO Case No. [D2019-1072](#) (<Instagramhelpcenter.com>); *Indiamart Intermesh Ltd. v. Yi Zhi Ge, Ge Yi Zhi*, WIPO Case No. [D2019-0930](#). Similarly, prior UDRP panels have also specifically found use of a disputed domain name to resolve to a blank or inactive web page does not represent a *bona fide* use of the disputed domain name. See *Microsoft Corporation v. Charilaos Chrisochou*, WIPO Case No. [D2004-0186](#); [WIPO Overview 3.0](#), section 2.9.

Complainant’s submitted evidence shows nonuse of the disputed domain name. Based on the foregoing decisions, this Panel finds the disputed domain name is not being used in connection with a *bona fide* offering of goods or services sufficient to demonstrate Respondent has any rights or legitimate interests in the disputed domain name under the factors specified by paragraph 4(c)(i) of the Policy.

The second example, under paragraph 4(c)(ii), is a scenario in which a respondent is commonly known by the domain name. Complainant states that it has not given permission to Respondent to use the META Mark or the INSTAGRAM Mark. Respondent is not a licensee of Complainant. Respondent is not affiliated with Complainant in any way. Complainant has not granted any authorization for Respondent to make use of its META or INSTAGRAM Marks, in a domain name or otherwise. Complainant also shows that Respondent is not commonly known by the disputed domain name because the original Respondent listed in the Whois record submitted with the initial Complaint displayed “Registration Private, Domains By Proxy, LLC” of the United States. The Registrar identified the underlying registrant in its verification process, “Jorel Covin” also of the United States, who has been added via the amended Complaint as Respondent in addition to the original Respondent.<sup>1</sup> Neither Respondent bears any resemblance to the disputed domain

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<sup>1</sup> The Panel notes that in this proceeding the Center forwarded to the Panel a request received from the involved Registrar after revealing Respondent Jorel Covin that “Domains By Proxy is only a privacy service and should not be listed as a respondent in the case.” As Complainant’s timely filed email to the Center regarding Amendment to the Complaint noted, a substantial body of prior UDRP panels have upheld the current approach to include both the privacy service and the underlying registrant details when identifying the respondent subsequent to disclosure of any underlying-registrant details. This Panel finds that approach acceptable to continue here. See, e.g., *Meta Platforms, Inc. v. Domains By Proxy, LLC / Ali Kiper*, WIPO Case No. [D2022-1050](#); *Meta Platforms, Inc. v. Registration Private, Domains By Proxy, LLC / Zachery Tarr, Granite Consulting, LLC*, WIPO Case No. [2022-0207](#); *Instagram, LLC v. Registration Private, Domains By Proxy, LLC / Dieu Buhendwa*, WIPO Case No. [D2021-1293](#); *Facebook, Inc. v. Registration Private, Domains By Proxy, LLC / Nikki Baumann*, WIPO Case No. [D2020-1103](#); *Baring Asset Management Limited v. Registration Private, Domains By Proxy, LLC / Nahed El Shaweesh*, WIPO Case No. [D2020-1734](#); *Hyundai Motor Company, Hyundai Motor America v. Registration Private, Domains By Proxy, LLC / Eric Steele*, WIPO Case No. [D2020-2227](#); *Facebook, Inc. v. Registration Private,*

name whatsoever. Thus, there is no evidence in this case to suggest that Respondent is commonly known by the disputed domain name, that it is licensed or otherwise authorized to use Complainant's trademark, or that it has acquired any trademark rights relevant thereto. As such, the Panel finds this sub-section of the Policy is of no help to Respondent, and the facts presented here support a lack of rights or legitimate interests in the disputed domain name. See *Expedia, Inc. v. Dot Liban, Hanna El Hinn*, WIPO Case No. [D2002-0433](#).

Complainant has met its initial burden as it is generally regarded as *prima facie* evidence of no rights or legitimate interests if a complainant shows that the disputed domain name is identical or confusingly similar to Complainant's trademark, that Respondent is not commonly known by the disputed domain name, and that Complainant has not authorized Respondent to use its mark (or an expression which is confusingly similar to its mark), whether in the disputed domain name or otherwise. See, *Roust Trading Limited v. AMG LLC*, WIPO Case No. [D2007-1857](#); see also *Abbott Laboratories v. Li Jian Fu, Li Jian Fu*, WIPO Case No. [D2016-0501](#).

As to the third and final example under paragraph 4(c)(iii) of the Policy, the Panel finds there is no evidence here that Respondent is making a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name does not resolve to an active website and passive holding of a domain name cannot amount to any legitimate noncommercial or fair use of the domain name. See *Instagram, LLC v. Zafer Demir, Yok, supra*; see also *Bloomberg Finance, L.P. v. Huang Wei*, WIPO Case No. [D2015-1378](#).

In light of the above, and with no Response or other submission in this case to rebut Complainant's assertions and evidence, the Panel finds that the facts of this case demonstrate that Respondent has no rights or legitimate interests in the disputed domain name. Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

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

Finally, Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g., *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. [D2015-2202](#).

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that point to bad faith conduct on the part of a respondent. The panel may, however, consider the totality of the circumstances when analyzing bad faith under Policy, paragraph 4(a)(iii) and may make a finding of bad faith that is not limited to the enumerated factors in Policy, paragraph 4(b). See *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#). Complainant asserts that the disputed domain name was registered and is being used in bad faith for reasons that go beyond the scope of the examples of bad-faith behavior set out in paragraph 4(b) of the Policy.

Prior UDRP panels have held that a respondent's selection of a disputed domain name that comprises the complainant's mark in its entirety demonstrates a respondent's actual knowledge to support a finding of bad faith in registering and using the domain. See, e.g., *Lloyds Bank Plc v. Marc Wiese*, WIPO Case No. [D2015-0914](#); see also, *Heineken Brouwerijen B.V. v Mark Lott*, WIPO Case No. [D2000-1487](#).

The disputed domain name incorporates fully and identically both Complainant's META Mark and its INSTAGRAM Mark, connected to each other with the term "coin". With no explanation or submission from Respondent to dispute Complainant's assertions or the presented facts of this case, this Panel finds it reasonable to conclude that it is more likely than not that Respondent registered the disputed domain name with actual knowledge of Complainant's trademark rights in order to take unfair advantage of the similarity between the disputed domain name and Complainant's well-known Marks.

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*Domains By Proxy, LLC / Michael Steiner, Engrain*, WIPO Case No. [D2019-2900](#); and *Facebook, Inc. v. Registration Private, Domains By Proxy, LLC / Giap Nguyen Van and Giao Tran Ngoc*, WIPO Case No. [D2018-2762](#).



The Panel finds that the circumstances of this case, Respondent's registration of the disputed domain name with awareness of Complainant and the META Mark and INSTAGRAM Mark, and with the absence of any of its own rights or legitimate interests, leads to a conclusion of registration in bad faith by Respondent. See *Royds Withy King LLP v. Help Tobuy*, WIPO Case No. [D2019-0624](#).

Complainant also contends that Respondent's selection of terms and registration of the disputed domain name less than a month after Complainant's globally publicized announcement of its name change from Facebook, Inc. to "Meta Platforms, Inc." and introducing its use of the META Mark is no coincidence, but evidence of opportunistically targeting Complainant's META Mark even though it was not yet registered, supporting an additional basis for a finding of bad faith registration and use under the Policy. In certain limited circumstances where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on a complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith. Such scenarios include registration of a domain name: (i) shortly before or after announcement of a corporate merger, (ii) further to the respondent's insider knowledge (e.g., a former employee), (iii) further to significant media attention (e.g., in connection with a product launch or prominent event), or (iv) following the complainant's filing of a trademark application. [WIPO Overview 3.0](#), section 3.8.2.

Factors indicating Respondent's bad faith registration include: the timing and circumstances of the registration as discussed above following Complainant's globally publicized announcement of its name change introducing its new META Mark on October 28, 2021; no credible explanation for Respondent's choice of the disputed domain name in light of the circumstances discussed above; and the indicia generally suggesting that Respondent had specifically targeted Complainant by registering the disputed domain name, corresponding to the META Mark recently introduced by Complainant that received worldwide media attention. See [WIPO Overview 3.0](#), section 3.8.2; see also, e.g., *BML Group Limited v. Rikard Beach, Proxy My Whois AB*, WIPO Case No. [D2015-1897](#) (citing *St Andrews Links Ltd v. Refresh Design*, WIPO Case No. [D2009-0601](#)).

As, as noted in 6B above, Respondent is passively holding the disputed domain name based on either non-use or linking to an inactive website. Prior UDRP panels have applied the doctrine of passive holding under a totality of circumstances approach, to hold that non-use of a domain name that is confusingly similar to a complainant's distinctive and famous marks would not prevent a finding of bad faith. In reaching that determination UDRP panels have typically considered factors such as: (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. See [WIPO Overview 3.0](#), Section 3.3.

Applying the factors typically considered under the doctrine to the facts present here, the Panel concludes that the disputed domain name has been registered and is being used in bad faith. First, both of Complainant's marks are distinctive and well-known thanks to Complainant's global publicity announcing the arrival of the META Mark as part of its famous owner's corporate name change, and over a decade of use of the INSTAGRAM Mark before Respondent registered the disputed domain name on November 25, 2021. See, e.g., *Meta Platforms, Inc. v. Whois Privacy Registrant, Private by Design, LLC / Giovanni Niemann and Dangidi Dangido*, WIPO Case No. [DIO2022-0008](#); *Instagram, LLC v. Saddam Hussain*, WIPO Case No. [D2018-0078](#).

Second, Respondent has concealed its identity, and failed to submit a response in this proceeding or to respond to the registrar's registrant contact form that Complainant's lawyers submitted to Respondent in an attempt to resolve the matter amicably. Respondent also has failed to provide any evidence of actual or contemplated good-faith use of the disputed domain name since its registration. During that same period of apparent non-use by Respondent, Complainant's META Mark and INSTAGRAM Mark have grown in recognition to the level of worldwide fame, supporting the implausibility of any good faith use to which the disputed domain name may now be put. The factors present here are well-settled as supporting a finding of bad faith use for passive holding or non-use of a disputed domain name that is confusingly similar to a

complainant's famous or well-known mark. See *Instagram, LLC v. Asif Ibrahim*, WIPO Case No. [D2020-2552](#); *Bloomberg, supra*; [WIPO Overview 3.0](#), Section 3.3

The Panel finds Complainant's arguments and evidence persuasive and has received no arguments or evidence from Respondent to the contrary. Considering all the circumstances, the Panel concludes that Respondent has registered and used the disputed domain name in bad faith and Complainant has satisfied 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, <metacoininstagram.com>, be transferred to Complainant, Meta Platforms, Inc.

*/Scott R. Austin/*

**Scott R. Austin**

Sole Panelist

Date: August 12, 2022