

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Registration Private, Domains By Proxy, LLC / Mustafa Tere

Case No. D2022-2907

1. The Parties

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

The Respondent is Registration Private, Domains By Proxy, LLC, United States / Mustafa Tere, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <instagramactivitysupport.com> (the “Disputed Domain Name”) 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 August 6, 2022, including the Disputed Domain Name and the domain name <instagramassistcentre.com>. On August 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name and the other domain name. On August 9, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Name and the other domain name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on August 10, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On August 15, 2022, the Complainant filed an amended Complaint and a request to withdraw the domain name <instagramassistcentre.com> from the Complaint. The partial withdrawal was duly notified on August 15, 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 August 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 5, 2022. The Respondent did not submit any response.

Accordingly, the Center notified the Respondent's default on September 6, 2022.

The Center appointed Mariya Koval as the sole panelist in this matter on September 12, 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 an American company which operates the Instagram social networking service, which enables its users to create their own personal profiles, post photos and videos, and connect with each other on their mobile devices. Instagram has more than 500 million daily active accounts and more than one billion monthly active users from all over the world. Approximately 89% of Instagram users are outside of the United States. Instagram provides translation support for over 35 languages as part of its social networking services and mobile application. In recent years, the Instagram mobile application has consistently ranked among the top apps in the market. The Complainant provides support to its users through its online Help Center available at its main website.

The Complainant is the owner of a number of INSTAGRAM trademark (the "INSTAGRAM Trademark") registrations throughout the world, among which are:

- International Trademark Registration No. 1129314, registered on March 15, 2012, in respect of goods and services in classes 9 and 42;
- United States Trademark Registration No. 4146057, registered on May 22, 2012, in respect of goods in class 9;
- United States Trademark Registration No. 4795634, registered on August 18, 2015, in respect of goods and services in classes 9, 38, 41, 42, and 45;
- European Union Trademark Registration No. 012111746, registered on March 6, 2014, in respect of goods and services in classes 9, 38, 41, 42, and 45;
- European Union Trademark Registration No. 014493886, registered on December 24, 2015, in respect of goods and services in classes 25, 35, 38, 41, and 45.

The Complainant operates, among others, the domain names <instagram.com> (registered on June 4, 2004), <instagram.net> (registered on November 6, 2010), <instagram.org> (registered on May 10, 2015), <instagramhelp.com> (registered on September 26, 2015), <instagramsupport.com> (registered on October 7, 2017), reflecting its INSTAGRAM Trademark for providing its social network services and support to the users.

The Disputed Domain Name was registered on June 13, 2021. As at the date of this decision, the Disputed Domain Name resolves to a page which has the following indication "Beware of fake site! Visiting instagramactivitysupport.com may result in the installation of malware or the theft of personal information (such as passwords, phone numbers, and credit card information)."

5. Parties' Contentions

A. Complainant

The Complainant contends that it owns the exclusive rights to the INSTAGRAM Trademark, which it has used for over eleven years. The Complainant's use of the trademark, in the United States and throughout

the world, has been extensive, continuous, and substantially exclusive. The Complainant has made, and continues to make, a substantial investment of time, effort, and expense in the promotion of its goods and services, and the INSTAGRAM Trademark. As a result of the Complainant's efforts and use, the INSTAGRAM Trademark is inextricably linked with the products and services offered by the Complainant. The Trademark ranked nineteenth in Interbrand's current Best Global Brands report (Annex 9 to the Complaint). The INSTAGRAM Trademark is unquestionably recognized around the world as signifying high-quality, authentic goods and services provided by the Complainant.

The Complainant further contends that the Disputed Domain Name is confusingly similar to the Complainant's INSTAGRAM Trademark in view of the Disputed Domain Name incorporates the Complainant's Trademark in its entirety, and the descriptive words do not remove the confusing similarity between the Disputed Domain Name and the INSTAGRAM Trademark, especially as the words are descriptive of and relevant to the Complainant's services.

The Complainant also claims that the Respondent has no rights or legitimate interest in the Disputed Domain Name. The Complainant has not licensed nor authorized the Respondent to use the Complainant's INSTAGRAM Trademark, nor does the Respondent have any legal relationship with the Complainant that would entitle the Respondent to use the INSTAGRAM Trademark. Further, neither the WhoIs data for the Disputed Domain Name nor the Respondent's use of the Disputed Domain Name support that the Respondent is known by the Disputed Domain Name. Additionally, the Complainant - who monitors use of its INSTAGRAM Trademark - is not aware of the Respondent being known by the Disputed Domain Name in any other way. The Respondent has no legitimate reason for using the INSTAGRAM Trademark within the Disputed Domain Name.

The Respondent is not making a *bona fide* offering of goods or services under the Disputed Domain Name. The Respondent appears to use the Disputed Domain Name for abusive activity: the Disputed Domain Name has been flagged by security vendors as malicious for use in connection with phishing and other suspicious activity, and harmful content has been detected at the Disputed Domain Name. The Disputed Domain Name does not resolve to an active website. Additionally, accessing the Disputed Domain Name using the Google Chrome web browser generates a warning that the website "may trick you into doing something dangerous like installing software or revealing your personal information," and indicating that phishing activity was recently detected in connection with the Disputed Domain Name.

The Complainant also alleges that the Respondent has registered and is using the Disputed Domain Name in bad faith. The Respondent's bad faith is evidenced by the fact that the Disputed Domain Name has been flagged as malicious for use in connection with phishing, malware, and other suspicious activity.

The Respondent has registered the Disputed Domain Name that is confusingly similar to the Complainant's INSTAGRAM Trademark. The Respondent's registration of the Disputed Domain Name on June 13, 2021 postdates the registration and use of the INSTAGRAM Trademark by many years. In view of the fact that the INSTAGRAM Trademark is so obviously connected with the Complainant and its well-publicized mobile application, and the Disputed Domain Name clearly references this Trademark, the registration and use of the Disputed Domain Name by the Respondent, who has no connection with the Complainant, supports a finding of bad faith.

Moreover, the Disputed Domain Name is confusingly similar to the Complainant's domain names <instagramhelp.com> and <instagramsupport.com> owned by the Complainant, which redirect to the Complainant's webpage providing support to Instagram users. Though the Disputed Domain Name may not resolve to an active website at present, it could conceivably be used in the future to redirect to similar content, creating confusion and presenting an even greater security risk to users.

Given the fame of the Complainant's INSTAGRAM Trademark, and the Respondent's unauthorized incorporation of the INSTAGRAM Trademark into the Disputed Domain Name, there are no circumstances under which the Respondent's use of the Disputed Domain Name could plausibly be in good faith under the Policy.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, in order for the complainant to succeed it must satisfy the panel that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which 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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has properly asserted its rights in the INSTAGRAM Trademark due to the long use and number of registrations globally. The Panel notes that the registration of the Complainant's Trademark significantly predates the registration of the Disputed Domain Name. The Panel finds that the Complainant has established that the INSTAGRAM Trademark is well known.

The Disputed Domain Name completely reproduces the Complainant's INSTAGRAM Trademark in combination with the dictionary words "activity" and "support", and the generic Top-Level Domain ("gTLD") ".com". According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. In this case, the addition of the terms "activity" and "support" to the INSTAGRAM Trademark does nothing to prevent a finding of confusing similarity.

Also, in accordance with [WIPO Overview 3.0](#), section 1.11, the applicable gTLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Pursuant to section 1.7 of the [WIPO Overview 3.0](#), in cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's INSTAGRAM Trademark pursuant to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has used its INSTAGRAM Trademark for more than 10 years and its domain name <instagram.com> since 2004, which is long before the Respondent registered the Disputed Domain Name in 2021.

The Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy. The Complainant has never authorized in any way, licensed, or permitted the Respondent to use its INSTAGRAM Trademark.

In accordance with section 2.1 of the [WIPO Overview 3.0](#) while the overall burden of proof in UDRP proceedings is on the Complainant, the Complainant is required to make out a *prima facie* case that the

Respondent lacks rights or legitimate interests. If such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element.

Taking into account the facts and arguments set out above, the Panel finds that the Complainant has made a *prima facie* case: the Respondent registered the Disputed Domain Name long after the INSTAGRAM Trademark had been registered; there is no evidence that the Respondent owns any INSTAGRAM Trademarks, nor that it is commonly known by the Disputed Domain Name. Therefore, the Respondent has failed to come forward with any evidence to rebut such *prima facie* case.

The Disputed Domain Name is not pointed to an active website but has been flagged by security vendors as malicious for use in connection with phishing and other suspicious activity, and harmful content has been detected at the site according to the notice at the website. In accordance with Section 2.13.1 of the [WIPO Overview 3.0](#) Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.

The Panel finds that the Respondent's use of the Disputed Domain Name for possible phishing purposes does not amount to a *bona fide* offering of goods or services.

Further, taking into account the long use and fame of the Complainant's INSTAGRAM Trademark, which also partially represents the Complainant's full company name, it is implausible to assume that the Respondent was unaware of the Complainant's INSTAGRAM Trademark at the time of registration of the Disputed Domain Name.

Moreover, in accordance with the [WIPO Overview 3.0](#), section 2.5.1, where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. Therefore, the addition of the terms "activity" and "support", which strengthen the confusing similarity of the Disputed Domain Name with the Complainant's domain name <instagramsupport.com>, where the Complainant provides support to Instagram users, to the Complainant's Trademark in the Disputed Domain Name, is further evidence, that the Respondent was very well aware of the Complainant's INSTAGRAM Trademark and business at the time of registration of the Disputed Domain Name and has done so for the only purpose of creating an impression that the Disputed Domain Name is connected with the Complainant and its INSTAGRAM Trademark.

In light of the above, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that indicate bad faith conduct on the part of the respondent, namely:

"(i) circumstances indicating that the respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the disputed domain name; or

(ii) the respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location."

The Complainant registered its INSTAGRAM Trademark in 2012 and registered its domain name <instagram.com> in 2004. Thus first use of INSTAGRAM Trademark by the Complainant is more than 15 years before the Respondent registered the Disputed Domain Name. Moreover, the Complainant's INSTAGRAM Trademark is original, highly distinctive and well known, and it is most unlikely that the Respondent could have registered the Disputed Domain Name, which incorporates the INSTAGRAM Trademark in its entirety, accidentally. In view of this, the Panel is of opinion that the Respondent was likely well aware of the Complainant's Trademark when he registered the Disputed Domain Name in 2021.

The Disputed Domain Name incorporates the Complainant's Trademark in its entirety that creates a strong likelihood of confusion with the Complainant's Trademark as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name.

In accordance with the [WIPO Overview 3.0](#), section 3.4, UDRP panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution (in some such cases, the respondent may host a copycat version of the complainant's website). Many such cases involve the respondent's use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers. Taking into account the Respondent's use of the Disputed Domain Name in connection with a possible phishing and other suspicious activity, such Respondent's behavior cannot be in any way considered as a good faith.

In addition, according to section 3.1.4 of the [WIPO Overview 3.0](#), UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is of opinion that it is clear that the Respondent, having registered and used the Disputed Domain Name, which is confusingly similar to the Complainant's well-known INSTAGRAM Trademark, primarily intended to disrupt the Complainant's business and reputation. In view of the absence of any evidence to the contrary and that the Respondent did not file any statement, the Panel concludes that the Respondent has registered and is using the Disputed Domain Name in bad faith.

The Panel agrees with the Complainant that the Respondent is clearly engaged in cybersquatting in violation of the Policy.

Therefore, having examined all the circumstances of the case the Panel finds that the Respondent registered and is using the Disputed Domain Name in bad faith.

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 <instagramactivitysupport.com> be transferred to the Complainant.

/Mariya Koval/

Mariya Koval

Sole Panelist

Date: September 26, 2022