

## **ADMINISTRATIVE PANEL DECISION**

Instagram, LLC. v. baran can  
Case No. D2022-4657

### **1. The Parties**

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

The Respondent is baran can, Türkiye.

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

The disputed domain name <Instagram-copyrighthelp.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 December 5, 2022. On December 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 9, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 12, 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 December 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 December 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 12, 2023.

The Center appointed Tuukka Airaksinen as the sole panelist in this matter on January 20, 2023. 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 since 2010 the Instagram social networking service and mobile application. It is the owner of the trademark INSTAGRAM, which is registered in many countries, such as the United States of America under No. 4146057 as of May 22, 2012.

The disputed domain name was registered on June 17, 2021 and does not resolve to an active website.

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

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

The disputed domain name includes the Complainant's trademark in its entirety with the addition of the words "copyright help". The Complainant's trademark also contains a slight misspelling of the Complainant's trademark in that the letter "i" is replaced by the letter "l". This is not sufficient to remove similarity between the Complainant's trademark and the disputed domain name.

The Respondent has no rights or legitimate interests to the disputed domain name. The Respondent is not authorized to use the Complainant's trademark and the Respondent is not known by the disputed domain name. The website does not resolve to an active website and has been reported as unsafe by several security vendors as malicious for use in connection with phishing and malware.

The Complainant's trademark is so famous that it would have been inconceivable that the Respondent would have registered it without knowing of the Complainant's trademark. The only reason for the Respondent to register the disputed domain name is to create confusion with the Complainant's trademark.

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

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

#### **6. Discussion and Findings**

In order to obtain the transfer of a domain name, a complainant must prove the three elements of paragraph 4(a) of the Policy, regardless of whether the respondent files a response to the complaint or not. The first element is that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The second element a complainant must prove is that the respondent has no rights or legitimate interests in respect of the domain name. The third element a complainant must establish is that the domain name has been registered and is being used in bad faith.

##### **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy requires that the Complainant establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Consequently, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to this trademark.

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[t]he applicable Top Level Domain ('TLD') 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".

The disputed domain name is confusingly similar to the Complainant's trademark, which is clearly recognizable in the disputed domain name. The replacement of the letter "i" with the letter "I" is not sufficient to prevent a finding of confusing similarity with the Complainant's trademark. It is merely a typographical error easily typed in by the Complainant's target audience. Furthermore, the addition of terms is not sufficient to prevent a finding of confusing similarity between the Complainant's trademark and the disputed domain name. See section 1.9 of the [WIPO Overview 3.0](#).

This means that the disputed domain name is confusingly similar with the Complainant's trademark and hence the first element of the Policy has been fulfilled.

## **B. Rights or Legitimate Interests**

It is widely accepted among UDRP panels that once a complainant has made a *prima facie* case indicating the absence of the respondent's rights or legitimate interests in a disputed domain name the burden of production shifts to the respondent to come forward with evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of the Policy. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); and section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain name, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain name and is not commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy.

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that has not been rebutted by the Respondent. Considering the Panel's findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain name. Therefore, the Panel finds that the second element of the Policy is fulfilled.

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

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides that the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

"(i) circumstances indicating that [the respondent has] registered or has acquired the 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 domain name; or

(ii) [the respondent has] registered the 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 domain name primarily for the purpose of disrupting the business or competitor; or

(iv) by using the 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 Panel finds, in accordance with the Complaint, that the Complainant's trademark is well-known in its industry. Further, the replacement of the letter "i" with the letter "l", which makes this a typical "typosquatting" case, is evidence of the intention to confuse Internet users and capitalize on the fame of the Complainant's trademark. It is therefore inconceivable that the Respondent would not have been aware of the Complainant or its trademark when registering the disputed domain name.

Currently, the disputed domain name does not refer to an active website. Accordingly, the disputed domain name is not in active use as an address for a specific website.

This, however, does not prevent the finding of bad faith under the doctrine of passive holding. See section 3.3 of [WIPO Overview 3.0](#).

Considering that the Panel has found that the Complainant's trademark is well-known, the Respondent has not responded to the Complaint, the disputed domain name reproduces a typosquatting version of the Complainant's trademark along with the terms "copyrightshelp", the Panel considers, on balance, that the disputed domain name has been registered and is used in bad faith.

Therefore, the Panel finds that the third element of the Policy is fulfilled.

## **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, <Instagram-copyrighthelp.com> be transferred to the Complainant.

*/Tuukka Airaksinen/*

**Tuukka Airaksinen**

Sole Panelist

Date: February 3, 2023