

## **ADMINISTRATIVE PANEL DECISION**

Instagram, LLC v. sarbrina Kane

Case No. D2023-0845

### **1. The Parties**

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

Respondent is sarbrina Kane, United States of America.

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

The Disputed Domain Name <instagramautomations.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 February 24, 2023. On February 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On February 27, 2023, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on March 3, 2023, 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 March 7, 2023.

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 March 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 3, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on April 6, 2023.

The Center appointed Richard W. Page as the sole panelist in this matter on April 14, 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

Complainant is a world-renowned online photo- and video-sharing social networking application. Since its launch in 2010, Complainant has rapidly acquired and developed considerable goodwill and renown worldwide. Acquired by Facebook, Inc. (now Meta Platforms, Inc.) in 2012, today Complainant is one of the world's fastest growing photo, video-sharing, editing software and online social network, with more than 2 billion monthly active accounts worldwide.

Complainant's Instagram app has consistently ranked among the top "apps" for mobile devices, including for iOS and Android operating systems. The Instagram app has been the recipient of numerous awards, including "App of the Year" in 2011 from Apple Inc. The Instagram app is currently the second most downloaded app worldwide, according to Forbes.

The launch of the Instagram app in October 2010 was highly anticipated and obtained media coverage in specialized online technology publications. For instance, on September 20, 2010, only weeks before Instagram's launch, *Tech Crunch* published an article entitled "Distilled from Burbn, Instagram Makes Quick Beautiful Photos Social (Preview)" (September 20, 2010), which stated that "Instagram is an iPhone photo-sharing application that allows you to apply interesting filters to your photos to make them really pop. The app will be launching in the coming weeks".

Complainant's exponential growth and explosive popularity have been widely reported by specialized technology publications, including *Tech Crunch* and *Mashable.com* as well as mainstream media, including major international publications such as *The New York Times*, *The Washington Post* (United States), *The Telegraph* and *The Guardian* (United Kingdom).

Given the exclusive online nature of Complainant's business, Complainant's domain names consisting of its trademark are not only the heart of its business, but also a primary way for its millions of users to avail themselves of its services. Complainant is the registrant of numerous domain names consisting of or including the INSTAGRAM Mark under a wide range of generic Top-Level Domains (gTLDs) as well as under numerous country code Top-Level Domains.

Complainant has also made substantial investments to develop a strong presence online by being active on various social-media platforms, including Facebook, Twitter and LinkedIn. For instance, Complainant's official Facebook page has over 60 million "likes" and over 33 million followers on Twitter.

Complainant has secured ownership of numerous trademark registration for the INSTAGRAM Mark in many jurisdictions throughout the world, including but not limited to the following:

International Registration No. 1129314, INSTAGRAM, registered March 15, 2012;

United States Trademark Registration No. 4146057, INSTAGRAM, registered on May 22, 2012; and

European Union Trademark No. 014493886, INSTAGRAM, registered on December 24, 2015.

The Disputed Domain Name contains the entirety of the INSTAGRAM Mark followed by the descriptive term "automations" and the gTLD ".com".

The Disputed Domain Name redirects to a website that features a webinar hosted by sarbrina Kane on the subject of "Instagram automations". The website features the following description: "AUTOMATE TO DOMINATE/INSTARGRAM AUTOMATIONS/ MAKING MONEY WHILE YOU SLEEP/SAS SOCIETY"

The website also features a form where Internet users are asked to enter their information to purchase “Instagram automations” course packages, with prices ranging from USD 190 to USD 2,990. The website does not contain any disclaimer clearly disclosing the absence of any relationship with Complainant. On November 28, 2022, Complainant’s lawyers sent a cease and desist letter to the Registrant by email, the email address featured on the website to which the Disputed Domain Name resolves. Complainant’s lawyers received no response and sent a follow-up email to the Registrar on January 4, 2023. No response was received.

The Disputed Domain Name was registered on September 17, 2022.

## **5. Parties’ Contentions**

### **A. Complainant**

Pursuant to paragraph 4(a)(i) of the Policy, Complainant contends that the presence of its INSTAGRAM Mark in its entirety in the Disputed Domain Name is sufficient to establish confusing similarity between the Disputed Domain Name and the INSTAGRAM Mark.

Complainant further contends that the addition of the descriptive term “automations” does not prevent a finding of confusing similarity with the INSTAGRAM Mark, which remains clearly recognizable in the Disputed Domain Name.

Complainant further contends that the addition of the gTLD “.com” may be disregarded for the purposes of assessing confusing similarity, as it is a standard requirement of registration.

Complainant submits that Respondent has no rights or legitimate interests in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

Complainant further submits that there is no evidence that Respondent is commonly known by the Disputed Domain Name. Complainant further asserts that Respondent registered the Disputed Domain Name using a privacy service. The identity of the underlying registrant has been disclosed as sarbrina Kane, which bears no resemblance to the Disputed Domain Name. Respondent’s use of the Disputed Domain Name to redirect to a third-party website as described above does not support any reasonable claim of being commonly known by the Disputed Domain Name.

Complainant further submits that Respondent is not using the Disputed Domain Name in connection with a *bona fide* offering of good or services.

Complainant further submits that 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 the INSTAGRAM Mark, in a domain name or otherwise.

Complainant further submits that Respondent’s use of the Disputed Domain Name contravenes Instagram’s Brand Resources guidelines, creates a misleading impression of association with Complainant, and creates confusion with the INSTAGRAM Mark.

Complainant asserts that the Disputed Domain Name was registered and is being used in bad faith, citing paragraphs 4(b)(iv) and 4(a)(iii) of the Policy.

Complainant further asserts that Respondent is using the Disputed Domain Name, which is identical to the INSTAGRAM Mark, to attract Internet users to Respondent’s own website providing paid “Instagram automations” packages, clearly for commercial gain.

Complainant further asserts that Respondent used the Disputed Domain Name to redirect Internet users to its website where it offers for sale its “Instagram automations” course packages. Complainant infers that Respondent’s intention is to exploit the goodwill and reputation attached to the INSTAGRAM Mark for commercial gain by creating a false impression of association with Complainant.

Complainant further asserts that the term “Instagram” is highly distinctive and exclusively associated with Complainant. All search results obtained by typing this term into Google’s search engine refer to Complainant.

Complainant further asserts that Respondent had actual knowledge of Complainant and the INSTAGRAM Mark when it registered the Disputed Domain Name with a view to deriving profit from its unauthorized use of the INSTAGRAM Mark. Rather than acting as a genuine service provider, Respondent is using the Disputed Domain Name to market its paid ancillary services to Internet users who are redirected to its website.

Complainant further asserts that Respondent’s website does not feature any disclaimer or indication clarifying that Respondent has no relationship or affiliation with Complainant.

Complainant further asserts that the inference of bad faith on the part of Respondent is further evidenced by its lack of response to Complainant’s cease and desist letter and the follow-up correspondence prior to the filing of this Complaint.

## **B. Respondent**

Respondent did not reply to Complainant’s contentions.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.”

Even though Respondent has failed to file a Response or to contest Complainant’s assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the INSTAGRAM Mark in which Complainant has rights; and,
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and,
- iii) that the Disputed Domain Name has been registered and is being used in bad faith.

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

Complainant contends that it is the owner of numerous registrations for the INSTAGRAM Mark. Section 1.2.1 of the [WIPO Overview 3.0](#) states that registration of a trademark is *prima facie* evidence of Complainant having enforceable rights in the INSTAGRAM Mark.

For purposes of this proceeding, the Panel finds that Complainant has enforceable rights in the INSTAGRAM Mark.

Section 1.7 of the [WIPO Overview 3.0](#) says that inclusion of the entire trademark in the Disputed Domain Name will be considered confusingly similar. Section 1.8 of the [WIPO Overview 3.0](#) instructs that the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a finding of confusing similarity. Section 1.11.1 of the [WIPO Overview 3.0](#) instructs that gTLDs such as (.com) may be disregarded for purposes of assessing confusing similarity.

The Panel finds that the entirety of the INSTAGRAM Mark is included in the Disputed Domain Name and that the additional phrase “automations” does not prevent a finding of confusing similarity with the INSTAGRAM Mark. The gTLD “.com” can be disregarded.

Therefore, Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy and the Disputed Domain Name is confusingly similar to the INSTAGRAM Mark.

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

Complainant submits that Respondent has no rights or legitimate interests in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

Section 2.1 of the [WIPO Overview 3.0](#) states that once Complainant makes a *prima facie* case in respect of the lack of rights or legitimate interests of Respondent, Respondent carries the burden of demonstrating it has rights or legitimate interests in the Disputed Domain Name. Where Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or legitimate interests in the Disputed Domain Name:

(i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or

(ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain Name, even if you have acquired no trademark or service mark rights; or

(iii) you [Respondent] are making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the INSTAGRAM Mark.

Complainant submits Respondent is not using the Disputed Domain Name in connection with a *bona fide* offering of goods or services.

Complainant further submits that 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 the INSTAGRAM Mark, in a domain name or otherwise.

Complainant further submits that Respondent’s use of the Disputed Domain Name contravenes Instagram’s Brand Resources guidelines, creates a misleading impression of association with Complainant, and creates confusion with the INSTAGRAM Mark.

Complainant further submits that there is no evidence that Respondent is commonly known by the Disputed Domain Name. Complainant further asserts that Respondent registered the Disputed Domain Name using a privacy service. The identity of the underlying registrant has been disclosed as sabrina Kane, which bears no resemblance to the Disputed Domain Name. Respondent’s use of the Disputed Domain Name to redirect to a third-party website as described above does not support any reasonable claim of being commonly known by the Disputed Domain Name.

The Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests in the Disputed Domain Name and that Respondent has not contested these submissions.

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

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

Complainant asserts that Respondent registered and is using the Disputed Domain Name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Name:

(i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to Complainant who is the owner of the INSTAGRAM Mark or to a competitor of that Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Dispute Domain Name; or

(ii) you [Respondent] have registered the Disputed Domain Name in order to prevent Complainant from reflecting the INSTAGRAM Mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you [Respondent] have registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Disputed Domain Name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the INSTAGRAM Mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on your website or location.

Complainant asserts that the Disputed Domain Name was registered and is being used in bad faith, citing paragraph 4(b)(iv) of the Policy.

Complainant further asserts that Respondent is using the Disputed Domain Name, which is confusingly similar to the INSTAGRAM Mark, to attract Internet users to Respondent's own website providing paid "Instagram automations" packages, clearly for commercial gain.

Complainant further asserts that Respondent used the Disputed Domain Name to redirect Internet users to its website where it offers for sale its "Instagram automations" course packages. Complainant infers that Respondent's intention is to exploit the goodwill and reputation attached to the INSTAGRAM Mark for commercial gain by creating a false impression of association with Complainant.

Complainant further asserts that the term "Instagram" is highly distinctive and exclusively associated with Complainant. All search results obtained by typing this term into Google's search engine refer to Complainant.

The Panel finds that Complainant has shown the requirements of paragraph 4(b)(iv) of the Policy and thereby 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, <instagramautomations.com> be transferred to Complainant.

*/Richard W. Page/*

**Richard W. Page**

Sole Panelist

Date: April 25, 2023