

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. erick Cedillo, securitymaillnstagram
Case No. D2023-1785

1. The Parties

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

The Respondent is erick Cedillo, securitymaillnstagram, Mexico.

2. The Domain Name and Registrar

The disputed domain name <securitymaillnstagram.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2023. On April 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 21, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 25, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On April 25, 2023, the Center received an email communication from the Respondent. The Complainant filed an amended Complaint on April 27, 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 the Respondent of the Complaint, and the proceedings commenced on May 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2023. On April 25, 2023, the Respondent sent an informal email communication to the Center. The Respondent did not submit any formal response. The Center notified the commencement of Panel appointment process on May 23, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on May 26, 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 is an online photo and video-sharing social networking application. Since its launch in 2010, it became a fast growing photo/video sharing and editing software and online social network, with more than 1 billion monthly active accounts worldwide.

The Complainant owns numerous trademark registrations for INSTAGRAM in many jurisdictions around the world, including, for instance, International trademark registration No. 1129314, registered on March 15, 2012.

In addition to the <instagram.com> domain name, the Complainant owns and operates numerous other domain names consisting of its trademark in combination with various generic and country code Top-Level Domain (“gTLD” and “ccTLD”) extensions, including <instagram.net>, <instagram.org> and also <instagramsecurity.com>.

The disputed domain name was registered on October 9, 2022, and resolves to a commercial parking page that refers and links to Zoho website building services.

5. Parties’ Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the Complainant’s trademark. The disputed domain name, which adds the terms “security” and “mail” before a deliberate misspelling of the Complainant’s trademark that uses a lowercase “l” instead of an “i”, is confusingly similar to the Complainant’s trademark. The disputed domain name plainly misappropriates sufficient textual components from the Complainant’s trademark, such that an ordinary Internet user who is familiar with the Complainant’s trademarks would, upon seeing the disputed domain name, think an affiliation exists between that disputed domain name and the Complainant and/or its trademark. The Respondent has added the terms “security” and “mail” before a deliberate misspelling of the Complainant’s trademark to form the disputed domain name. Accordingly, the disputed domain name fully incorporates the Complainant’s trademark, and the dictionary terms do not remove the confusing similarity between the disputed domain name and the Complainant’s trademark, especially as the words are descriptive of and relevant to the Complainant’s services. The disputed domain name uses the Complainant’s entire trademark and deliberately replaces the letter “i” in the mark with the lowercase letter “l,” which closely resembles the upper case letter “i”. Such common misspellings and typographical variations have consistently been found to satisfy the confusingly similar element. The addition of a gTLD has no distinguishing value.

The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has neither licensed nor authorized the Respondent to use the Complainant’s trademark, nor does the Respondent have any legal relationship with the Complainant that would entitle the Respondent to use the Complainant’s trademark. The Whois data for the disputed domain name does not support that the Respondent is known by the disputed domain name. The Complainant, who monitors use of its 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 Complainant’s trademark within the disputed domain name, and instead, is using the disputed domain name to direct to a parking page that advertises website building services and invites visitors to click a “Get Started” button. The disputed domain name has been flagged by at least one security vendor as malicious. The Respondent’s registration of the disputed domain

name and use of the Complainant's trademark within the disputed domain name is violation of the Complainant's relevant policies.

The disputed domain name was registered and is being used in bad faith. The Respondent's bad faith is evidenced by the fact that the disputed domain name was flagged as malicious. The Respondent has registered the disputed domain name that is confusingly similar to the Complainant's trademark. The Respondent registered the disputed domain name on October 9, 2022, which postdates the registration and use of the Complainant's trademark by many years. Because the Complainant's trademark is so obviously connected with the Complainant and its well-publicized mobile application, and the disputed domain name clearly references the Complainant's trademark, the registration and use of the disputed domain name by the Respondent, who has no connection with the Complainant, supports a finding of the bad faith. The only reason for the Respondent's registration and use of the disputed domain name is to create a likelihood of confusion with the Complainant and its trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website with the Complainant. The disputed domain name is also confusingly similar to the domain name <instagramsecurity.com> owned by the Complainant, which redirects to the Complainant's Instagram Help Center informing users about security and email-related topics. Though the disputed domain name may resolve to a parking page at present, it could conceivably be used in the future to redirect to similar content and present a security risk to users. Given the fame of the Complainant's trademark, and the Respondent's unauthorized incorporation of the Complainant's 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.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However, the Respondent sent an informal communication to the Center on April 25, 2023 containing the following wording "I do not understand what it is? I do not give permission to anyone else to use the domain, nor to claim it".

6. Discussion and Findings

A. Identical or Confusingly Similar

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)"), 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. Thus, the Panel disregards the gTLD ".com" for the purposes of the confusing similarity test.

According to section 1.9 of the [WIPO Overview 3.0](#), a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. The Panel considers the disputed domain name consisting of intentional misspelling of the Complainant's trademark using "l" instead of "i" as the first letter of the Complainant's trademark to imitate upper case "i".

According to section 1.8 of the [WIPO Overview 3.0](#) 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. The Panel finds that the addition of terms "security" and "mail" in the disputed domain name does not prevent finding it confusingly similar to the Complainant's trademark.

Considering the above, the Panel finds the disputed domain name is confusingly similar to the Complainant's trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain name.

The available evidence do not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, *e.g.*, *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, *e.g.*, *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

According to section 2.5.3 of the [WIPO Overview 3.0](#) in the broadest terms, while panels will weigh a range of case-specific factors such as those listed above in section 2.5.2, judging whether a respondent's use of a domain name constitutes a legitimate fair use will often hinge on whether the corresponding website content *prima facie* supports the claimed purpose (*e.g.*, for referential use, commentary, criticism, praise, or parody), is not misleading as to source or sponsorship, and is not a pretext for tarnishment or commercial gain. The Panel finds that in the present case the use of the disputed domain name confusingly similar to the Complainant's well-known trademark to refer to third party services misleads customers and is a pretext for commercial gain, and thus does not constitute legitimate fair use of the disputed domain name.

Noting the high risk of implied affiliation between the disputed domain name and the confusingly similar well-known trademark of the Complainant, the Panel finds that there is no plausible fair use to which the disputed domain name could be put that would not have the effect of being somehow connected to the Complainant (see, *e.g.*, *Instagram, LLC v. Super Privacy Service LTD c/o Dynadot / Zayed*, WIPO Case No. [D2019-2897](#)).

Considering the above, the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to section 3.1.4 of the [WIPO Overview 3.0](#), the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is convinced that the Complainant's trademark is well established through long and widespread use and the Complainant has acquired a significant reputation and level of goodwill in its trademark both in the United States and internationally. Thus, the Panel finds that the disputed domain name confusingly similar to the Complainant's trademark was registered in bad faith.

The disputed domain name is listed on one or more blacklists indicating that it had previously been used in connection with spam, malware, or other domain name abuse activities, which confirms the bad faith use (see *e.g.*, *Instagram, LLC v. yusuf polat, schowix*, WIPO Case No. [D2021-2791](#)).

According to paragraph 4(b)(iv) of the Policy 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: by using the domain name, you 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 Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location. In this case, the disputed domain name confusingly similar to the Complainant's trademark resolves to a website referring to and promoting third party services, making a false impression of affiliation with the Complainant to intentionally attract Internet users by creating likelihood of

confusion with the Complainant's trademark as to the source of the website and its products. The Panel finds the above confirms the disputed domain name was registered and used in bad faith.

Considering the above, the Panel finds the disputed domain name was registered and is being used in bad faith. Therefore, the Complainant has established its case under 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 <securitymailinstagram.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: June 6, 2023