

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Can Karakoc
Case No. D2023-1826

1. The Parties

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

The Respondent is Can Karakoc, Türkiye.

2. The Domain Names and Registrar

The disputed domain names <igprofile.com> and <viewerig.com> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 24, 2023. On April 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On April 25, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center verified that the 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 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 28, 2023. On May 8, 2023, the Respondent sent an email to the Center indicating possible settlement. Accordingly on May 9, 2023, the Center forwarded the Respondent’s email to the Complainant. On May 10, 2023, the Complainant sent an email to the Center indicating that it does not wish to explore settlement and requesting to proceed.

The Center appointed Knud Wallberg as the sole panelist in this matter on June 21, 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, Instagram, LLC (Instagram), is a world-renowned online photo and video sharing social-networking application. Since its launch in 2010, Instagram, has rapidly acquired and developed considerable goodwill and renown worldwide. Acquired by Meta Platforms, Inc. (formerly known as Facebook, Inc.) in 2012, Instagram today is one of the world's fastest growing photo and video sharing and editing software and online social networks.

In addition to its strong online presence, the Complainant owns numerous trademarks INSTAGRAM in many jurisdictions around the world, and also owns the European Union trademark registration of the mark IG No. 017946393, IG, registered on January 31, 2019, for goods and services in international classes 9, 42, and 45;

The disputed domain name <igprofile.com> was registered on November 29, 2019, and the disputed domain name <viewerig.com> was registered on February 22, 2019.

At the time of filing of the Complaint the disputed domain names resolved to websites, which purported to provide a tool to view content from private Instagram profiles.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to the trademarks in which it has rights, since its IG trademark is immediately recognizable in the disputed domain names as the leading element, and that the addition of the terms "profile" and "viewer" to the Complainant's IG trademark does not prevent a finding of confusing similarity.

The Complainant further submits that the Respondent has no rights or legitimate interests in the disputed domain names, since the Respondent is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy that might demonstrate their rights or legitimate interests in the disputed domain names.

The Complainant finally submits that the disputed domain names were registered and are being used in bad faith.

The Complainant thus submits that the Respondent could not credibly argue that it did not have knowledge of Instagram or its INSTAGRAM and IG trademarks when registering the disputed domain names.

It is also submitted that the Respondent is using the disputed domain names in bad faith to intentionally attract, for commercial gain, Internet users to their websites by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the websites, in accordance with paragraph 4(b)(iv) of the Policy. The disputed domain names are thus used by the Respondent to point to websites, which purport to offer a tool for the unauthorized viewing of content from private Instagram profiles, in violation of the Complainant's Terms of Use and the Meta Developer Policies. Such a tool places the privacy and security of Instagram users at risk, given that such content may be stored and later used for unauthorized purposes by third parties.

B. Respondent

The Respondent did not reply to the Complainant's contentions. In the above-mentioned e-mail from the Respondent, the Respondent stated the following: "I registered these domain names for hobby purposes. I am not active at the moment. I can transfer it to the rightful owners."

6. Preliminary Issue: Respondent's willingness to transfer the Disputed Domain Names

The parties to this proceeding have not been able to settle the dispute using the "standard settlement process".

As far as the Respondent's willingness to "transfer" the disputed domain names, the Panel finds that the Respondent's reply is ambiguous and does clearly not assent to the claims put forward in the Complaint that the registration and use of the disputed domain names was done in bad faith as stipulated in paragraph 4(a) of the Policy. In such cases a UDRP panel has different possible courses to follow, as outlined in section 4.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), and in the present case the Panel agrees with the UDRP panel in *Research In Motion Limited v. Privacy Locked LLC / Nat Collicot*, WIPO Case No. [D2009-0320](#), that the Panel must satisfy itself that the three elements of paragraph 4(a) of the Policy are in fact presented before granting the requested remedy.

Considering all the circumstances of the present case, the Panel will therefore proceed to review the facts of the case and subsequently make a decision on the merits.

7. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain names. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the trademark and service mark IG for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the mark is recognizable within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms here, "profile" and "viewer" may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names.

The Panel considers that the record of this case reflects that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4. Rather, the disputed domain names are used by the Respondent to point to websites, which purport to offer a tool for the unauthorized viewing of content from private Instagram profiles.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel considers that the record of this case reflects that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its websites 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. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Based on the available record, the Panel finds that the third element of the Policy has been established

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 names, <igprofile.com> and <viewerig.com>, be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: July 6, 2023