

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Anas Bouziane
Case No. D2023-2078

1. The Parties

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

The Respondent is Anas Bouziane, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <instagramlikes.net> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 10, 2023. On May 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 10, 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, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 12, 2023, 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 May 17, 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 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 13, 2023.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on July 11, 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 a world-renowned social networking application created in 2010. The Complainant owns many trademark registrations for INSTAGRAM such as United States registration no. 4,146,057 registered on May 22, 2012, and European Union registration no. 014493886 registered on December 24, 2015.

The disputed domain name was registered by on October 19, 2022, and does not currently resolve to an active website. Previously, it resolved to a website which stated “Buy Followers & Likes Delivered in Seconds,” purportedly offering social medial “followers” and “likes” for sale.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant’s trademark. The Complainant owns numerous trademark registrations for INSTAGRAM. The disputed domain name incorporates the Complainant’s trademark in its entirety adding the term “likes”, which does not prevent a finding of confusing similarity as the Complainant’s trademark remains recognizable. The generic Top-Level Domain (“gTLD”) “.net” is not relevant in the assessment of confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant did not authorize the Respondent to use its trademark in the disputed domain name nor is the Respondent affiliated with the Complainant or is it a licensee of the Complainant. The Respondent is not using the disputed domain name in connection with any *bona fide* offering of goods or services. The requirements of the *Oki Data* test are not met in the current case. The services previously offered via the disputed domain name violate the Terms of Use of the Complainant. Currently, there is passive holding which does not amount to a *bona fide* offering of goods or services. The Respondent is not commonly known by the disputed domain name as there is no evidence to suggest so. The disputed domain name was registered using a privacy service. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The Respondent must have been obtaining financial gain from the previous use of the disputed domain name. There can be no fair use when the composition of the domain name impersonates or suggests sponsorship or endorsement by the trademark owner. The use of the Complainant’s trademark together with the term “likes” suggests affiliation.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant’s trademark is distinctive and well-known as recognized by prior UDRP panels. The Complainant’s trademark was used well before the registration of the disputed domain name. The Respondent must have been aware of the Complainant’s trademark. The Respondent did not display any *bona fide* intent. The Respondent has been using the disputed domain name to attract Internet traffic for commercial gain by creating a likelihood of confusion with the Complainant’s trademark. Bad faith use is also demonstrated through the use of the website selling false “likes” and “followers” thus damaging the Complainant’s reputation and goodwill. The current passive use does not prevent a finding of bad faith. Failure to reply to the cease-and-desist letter is a further indication of bad faith and so is the use of privacy service.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant owns trademark registrations for INSTAGRAM. The Panel is satisfied that the Complainant has established its ownership of the trademark INSTAGRAM.

The disputed domain name incorporates the Complainant's trademark INSTAGRAM in its entirety. The term "likes" does not prevent a finding of confusing similarity. The gTLD ".net" can be ignored when assessing confusing similarity as it is viewed as a standard registration requirement.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts, *inter alia*, that the Respondent is not authorized by the Complainant to use its trademark and the Respondent is not commonly known by the disputed domain name. Therefore, the Complainant has established a *prima facie* case, and the burden of production shifts to the Respondent to show that it has rights or legitimate interests.

The Respondent has not provided any evidence to show that it has any rights or legitimate interests in the disputed domain name. The absence of a response by the Respondent allows the Panel to draw inferences, and under the circumstances, the absence of a response leaves the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name unrebutted.

Having said that, the Panel finds it useful to assess whether the Respondent has used the disputed domain name at a certain point in time in connection with a *bona fide* offering of goods or services as it offered "likes" and "followers". The Panel does not find such use to constitute a *bona fide* offering of goods or services because the Respondent has targeted the Complainant and its trademark when choosing the disputed domain name. The Respondent was clearly aware of the Complainant and its business. On this basis, it is clear that the Respondent was targeting the Complainant's trademark when choosing the disputed domain name. Therefore, the Panel is of the view that the Respondent is trying to capitalize on the reputation and goodwill of the Complainant's trademark.

The current passive use of the disputed domain name does not confer any rights or legitimate interests.

Additionally, prior UDRP panels have found that domain names identical to or comprising a complainant's trademark plus certain additional terms are seen as tending to suggest sponsorship or endorsement by the trademark owner and carry a risk of implied affiliation (see section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

Consequently, the Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Respondent must have been aware of the Complainant's trademark as it is well-known and the Respondent has used the disputed domain name to promote a service for providing "followers" and "likes", which relates to the core business of the Complainant. Furthermore, the Complainant's trademark was registered well before the registration of the disputed domain name. Given the above-mentioned

circumstances, the Panel is of the view that the Respondent has used the disputed domain name, to attract Internet users for commercial gain, which falls squarely within the meaning of paragraph 4(b)(iv) of the Policy.

Further, prior UDRP panels have recognized that 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 itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

As to the current use of the disputed domain name, the disputed domain name resolves to an inactive website. Prior UDRP panels have found that passive holding does not prevent a finding of bad faith if the totality of circumstances supports an inference of bad faith. See section 3.3 of the [WIPO Overview 3.0](#). Noting the concealment of the Respondent's identity using a privacy service, the Respondent's failure to provide any good-faith explanation for his registration, the use of the inherently misleading disputed domain name, the absence of a plausible use of the disputed domain name that would be legitimate and the absence of response to the cease-and-desist letter (*Johnson & Johnson v. Daniel Wistbacka*, WIPO Case No. [D2017-0709](#)), the Panel finds that the current passive holding of the disputed domain name does not prevent the Panel's bad faith finding.

Accordingly, the Panel finds that the Complainant has 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 <instagramlikes.net> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: July 25, 2023