

## **ADMINISTRATIVE PANEL DECISION**

Instagram, LLC v. zeeshan khan  
Case No. D2023-3228

### **1. The Parties**

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

The Respondent is zeeshan khan, Pakistan.

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

The disputed domain name <instagrampro.pro> is registered with Dynadot, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 26, 2023. On July 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 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 (Redacted For Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 28, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On August 3, 2023, the Center sent a reminder email. On August 9, 2023, the Complainant confirmed by email that it did not wish to make any amendments to the Complaint.

The Respondent sent the Center informal emails on August 2, 3, and 10, 2023. The Center acknowledged receipt of these communications.

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 August 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 6, 2023.


On September 12, 2023, the Center sent to the Complainant an email concerning the Respondent's email communications to the Center. On September 13, 2023, the Complainant confirmed that the Complainant did not wish to wish to suspend the proceeding to explore settlement options.

The Center appointed William F. Hamilton as the sole panelist in this matter on September 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, Instagram, LLC ("Instagram"), is an internationally renowned online photo and video sharing social-network application. Instagram has more than 1 billion monthly active accounts worldwide. Instagram's principal website is "www.instagram.com".

Among other international trademark registration for the trademark INSTAGRAM (the "Mark"), the Complainant owns United States Trademark Registration No. 4146057, dated May 22, 2012.

The disputed domain name was registered on December 27, 2022. The disputed domain name resolves to a website displaying the Complainant's Mark and logo  and offering for sale a social media product called "Instagram Pro APK" which is advertised as a "relatable platform that connects millions of people socially."

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

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

The Complainant asserts the disputed domain name is confusingly similar to the Mark because the disputed domain name is composed by entirely adopting the Mark and adding the suffix "pro." The Complainant asserts that the Complainant never authorized the Respondent to use the disputed domain name, that the Respondent is not generally known by the disputed domain name, never operated a business under the disputed domain name, has not advertised the disputed domain name, and never engaged in any *bona fide* commercial activity in connection with the disputed domain name. The Complainant asserts that the Respondent obviously knew of the Mark and used the disputed domain name in bad faith to offer a competitive product.

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

The Respondent did not formally reply to the Complainant's contentions. On August 2, 3, and 10, 2023, the Center received vague and ambiguous emails from the Respondent claiming to have purchased the disputed domain name without an appreciation for any "rules and regulations". The Respondent further claimed to be reluctant to surrender the disputed domain name due to the cost associated with its purchase and maintenance.

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

##### **6.1. Procedural Issue: Respondent Identity**

Despite the Center's invitation to amend the Complaint in light of the registrant information disclosed by the Registrar, Complainant did not do so. However, in view of the Policy's definition of "Respondent" in paragraph 1 of the Rules being "the holder of a domain-name registration against which a complaint is initiated", the Panel will treat the Registrar-disclosed registrant, namely, "zeeshan khan", as Respondent in view of Respondent's holding of the disputed domain name's registration.

Moreover, the Panel notes that the Respondent did reply to the Center's communications and did not object or rebut its identification as Respondent.

## 6.2 Substantive Issues

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

### A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's Mark.

The disputed domain name is confusingly similar to the Mark because the disputed domain name is composed of the Mark and the suffix "pro". A domain name which wholly incorporates a complainant's registered mark is sufficient to establish confusingly similarity for the purposes of the Policy when, as here, the Mark is clearly recognizable within the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8 ("where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographic, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element"). In this case, the Mark is clearly recognizable in the disputed domain name notwithstanding the addition of the suffix "pro".

The Top-Level Domain of the disputed domain name, in this case ".pro", may be disregarded for the purposes of assessment under the first element, as it is viewed as a standard registration requirement. See [WIPO Overview 3.0](#), section 1.11.1. *Monster Energy Company, a Delaware Corporation v. J.H.M. den Ouden*, WIPO Case No. [D2016-1759](#).

The Complainant has met its burden under paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

The Panel finds on the evidence presented that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has specifically disavowed providing the Respondent with permission to use the disputed domain name or the Mark. There is no evidence that the Respondent has conducted any *bona fide* business under the disputed domain name or is commonly known by the disputed domain name. The Complainant has established a *prima facie* case in its favor, which shifts the burden of production on this point to the Respondent. The Respondent, however, has failed to come forth with any evidence showing any rights or legitimate interests in the disputed domain name. The Respondent's mere purchase of an available domain name does not automatically confer rights or legitimate interests onto the Respondent, particularly one that incorporates a well-known trademark like the Complainant's without any authorization to do so. Moreover, the disputed domain name will likely confuse unsuspecting Internet users into believing the disputed domain name will resolve to a website associated, sponsored, or affiliated with the Complainant. Such association seems to have been the intent of the Respondent given the prior use of the disputed domain name to host content impersonating the Complainant. The facts and circumstances presented to the Panel demonstrate that the Respondent does not have any rights or legitimate interests in the disputed domain name.

The Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

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

Under paragraph 4(b) of the Policy, bad faith may be established by any one of the following non-exhaustive scenarios:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 on the evidence presented that the disputed domain name was registered and used in bad faith. The Respondent has clearly used the Complainant's Mark in the disputed domain name to attract Internet visitors to the Respondent's website to promote its own competitive social media product for commercial gain. It is beyond doubt that the Respondent has attempted to attract internet users to the Respondent's website by using the Mark in the disputed domain name to create a likelihood of confusion that Internet users will believe that the disputed domain name will resolve to a website offering services that are sponsored or affiliated with the Complainant.

The Complainant has met its burden 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 <instagrampro.pro> be transferred to the Complainant.

*/William F. Hamilton/*

**William F. Hamilton**

Sole Panelist

Date: October 4, 2023