

## ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. zhongguo li  
Case No. D2024-2615

### 1. The Parties

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

The Respondent is zhongguo li, China.

### 2. The Domain Name and Registrar

The disputed domain name <instagramsave.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 June 26, 2024. On June 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 the Complainant on June 28, 2024, 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 July 3, 2024.

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 July 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 25, 2024.

The Center appointed Enrique Ochoa de G. Argüelles as the sole panelist in this matter on August 1, 2024.

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, is a world-renowned online photo- and video-sharing social-networking application.

The Complainant was acquired by Meta Platforms, Inc. (formerly known as Facebook, Inc.) in 2012,

The Complainant today is the world's fastest growing photo- and video-sharing and editing software and online social network, with more than 2 billion monthly active accounts worldwide and uses the domain name <instagram.com> for its webpage.

The Complainant, among others is the holder of the following trademark registrations:

- United States Trademark Registration No. 4,146,057, INSTAGRAM, registered on May 22, 2012 for class 9 in full force and effect, as evidenced in the Database of the United States Patent and Trademark Office ("USPTO");
- European Union Trademark No. 14493886, INSTAGRAM, registered on December 24, 2015 for classes 25, 35, 38, 41, 45 in full force and effect, as evidenced in the Database of the European Union Intellectual Property Office ("EUIPO"); and
- International Registration No. 1129314, INSTAGRAM, registered on March 15, 2012 for classes 9 and 42 in full force and effect, as evidenced in the Database of the Global Brand Database of WIPO.

The abovementioned trademarks were duly registered before the disputed domain name.

The abovementioned trademarks as well all other INSTAGRAM trademarks of the Complainant will be referred to "INSTAGRAM Trademarks".

The Complainant has a strong presence online by being active on various social-media platforms, including Facebook, Twitter and LinkedIn. All evidenced and verified by the Panel on the corresponding platform.

The Respondent registered the disputed domain names on September 10, 2019.

On 18 April 2024, in an attempt to resolve the matter amicably, the Complainant's lawyers submitted a notice via the Registrar's registrant contact form. No response was received.

The disputed domain name resolves to a website that has no reference to INSTAGRAM and displays among others the following phrase: "Connection timed out Error code 522 Visit cloudflare.com for more information. 2024-08-14 23:24:57 UTC". Before filing of the Complaint, the disputed domain name resolved to a website entitled "InstagramSave" which purported to offer a tool to download videos, photos, and other contents from the Complainant's Instagram platform.

#### **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 name.

Notably, the Complainant contends that:

- The Complainant owns numerous trademark registrations for INSTAGRAM in jurisdictions throughout the world;
- The Complainant has therefore established trademark rights in INSTAGRAM for the purposes of paragraph 4(a)(i) of the Policy;
- The disputed domain name incorporates the Complainant's INSTAGRAM trademark in its entirety, as the leading element, with the addition of the term "save" under the generic Top-Level Domain ".com";
- The inclusion of the Complainant's INSTAGRAM trademark in its entirety in the disputed domain name is sufficient to establish confusing similarity between the disputed domain name and the Complainant's trademark pursuant to paragraph 4(a)(i) of the Policy;
- The addition of the descriptive term "save" in the disputed domain name does not prevent a finding of confusing similarity with the Complainant's INSTAGRAM trademark, which remains recognizable in the disputed domain name;
- The addition of the term ".com" may be disregarded for the purposes of assessing confusing similarity, as it is a standard requirement of registration;
- The Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name;
- The Complainant asserts that the Respondent is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy that would demonstrate its rights or legitimate interests in the disputed domain name;
- The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy;
- The Respondent is not a licensee of the Complainant;
- The Respondent is not affiliated with the Complainant in any way;
- The Complainant has not granted any authorization for the Respondent to make use of its INSTAGRAM trademark, in a domain name or otherwise;
- The website previously at the disputed domain name purported to provide a tool for downloading content from Instagram, including from private accounts;
- The Respondent's use of the disputed domain name as described above violates the Meta Developer Policies by going beyond the limits placed on the functionality of the Instagram platform and facilitates breach of the Instagram Terms of Service;
- The service offered on the Respondent's website purportedly allowed its users to download videos from private Instagram accounts. Prior panels have found that such use does not constitute a bona fide offering of goods or services;
- There is no evidence to suggest that the Respondent is commonly known by the disputed domain name, as contemplated by paragraph 4(c)(ii) of the Policy;
- The disputed domain name has been registered using a proxy service;

- The Respondent's use of the disputed domain name as detailed above does not support any reasonable claim of being commonly known by the disputed domain name, nor does it give rise to any reputation in the disputed domain name itself, independent of the Complainant's trademark rights;
- The Complainant submits that the disputed domain name was registered and is being used in bad faith, for reasons that go beyond the scope of the factors listed at paragraph 4(b) of the Policy;
- The Complainant's trademark is inherently distinctive and well-known throughout the world in connection with its online photo-sharing social network. Furthermore, the Complainant's INSTAGRAM trademark was continuously and extensively used well before the disputed domain name was registered in 2019 and has rapidly acquired considerable reputation and goodwill worldwide;
- Prior UDRP panels have recognized the strength and renown of the Complainant's INSTAGRAM trademark and have ordered the transfer of such disputed domain names to the Complainant;
- The term "instagram" is highly distinctive and is exclusively associated with the Complainant. All search results obtained by typing the term "instagram" into Google's search engine available at <google.com> refer to the Complainant;
- The Respondent's prior knowledge of the Complainant and its trademark rights as well as the Respondent's intent to target the Complainant through the disputed domain name is made clear from the contents of the Respondent's website, which offered tools for the illegitimate downloading of Instagram content, made explicit reference to the Complainant's Instagram platform, and featured variations of the Complainant's figurative trademarks;
- Prior panels have held that the unauthorized downloading of content from the platform of the Complainant and its subsidiaries may place the privacy and security of users of such platforms at risk and amounts to bad faith;
- The Respondent's failure to respond to the Complainant's notice submitted via the Registrar's registrant contact form is an additional indication of the Respondent's bad faith;
- In the surrounding circumstances, the Respondent's use of a proxy service to conceal its identity with regard to the disputed domain name further supports an inference of bad faith on the part of the Respondent; and
- The Complainant asserts that the disputed domain name was registered and is being used in bad faith, in accordance with paragraph 4(a)(iii) of the Policy.

## **B. Respondent**

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

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) the disputed domain name has been registered and is being used in bad faith.

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

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms like “save” may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

In a nutshell, the disputed domain name includes the whole of the INSTAGRAM Trademarks and adds the term “save” plus a hyphen and since the generic Top-Level Domain (“gTLD”) suffix is usually disregarded - in this case “.com” - all said circumstances aim to a finding of confusing similarity under the first element. For easy reference *Swarovski Aktiengesellschaft v. Simon Zhang*, WIPO Case No. [D2014-0583](#).

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. 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 name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity such as unauthorized downloading of content can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, in case *Scribd, Inc. v. ngel*, WIPO Case No. [D2023-3309](#) the decision sets forth: “The Panel finds that using the disputed domain name to offer unauthorized access to copyrighted material available only to subscribers to the Complainant’s platform amounts to fraudulent activity. [WIPO Overview 3.0](#), section 2.13.1.”.

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.

In this case, the Panel notes that the Respondent:

- Should have been aware of the existence of INSTAGRAM Trademarks and its fame;
- Received a notice submitted via the Registrar's registrant contact form never replied;
- Did not file a response to the Complaint; and
- Registered the disputed domain names without authorization of the Complainant to take advantage of the fame of INSTAGRAM Trademarks and to attract and mislead Internet users to unlawful sites.

And all these circumstances point to the fact that the disputed domain name was registered and is used in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity such as unauthorized downloading of content constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

For better reference addressing [WIPO Overview 3.0](#), section 3.2.1 and section 3.4. See *Lemon Inc. v. Talha Zafar*, WIPO Case No. [D2023-3557](#).

Furthermore, the current passive holding of the disputed domain name does not prevent a finding of bad faith under the circumstances of this case. [WIPO Overview 3.0](#), section 3.3.

The Panel finds that the Complainant has established the third element 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 <instagramsave.com> be transferred to the Complainant.

*/Enrique Ochoa de G. Argüelles/*

**Enrique Ochoa de G. Argüelles**

Sole Panelist

Date: August 15, 2024