

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Joney Singhal, K4 Media & Technologies LLP
Case No. D2024-2692

1. The Parties

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

The Respondent is Joney Singhal, K4 Media & Technologies LLP, India.

2. The Domain Name and Registrar

The disputed domain name <igtvdownloader.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 July 1, 2024. On July 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 2, 2024, 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 July 5, 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 10, 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 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 5, 2024. The Response was filed with the Center on July 23, 2024.

The Center appointed Andrea Jaeger-Lenz as the sole panelist in this matter on September 9, 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 operates a world-known online photo and video sharing social-networking application called Instagram. It was launched in 2010, acquired in 2012 by Facebook, Inc. (now Meta Platforms, Inc.) and has rapidly grown. Nowadays, the Complainant counts more than 2.3 billion monthly active photo and video sharing accounts worldwide (Annexes 6 and 7 of the Complaint). The logo and favicon used and trademarked by the Complainant for its Instagram application display a gradient colour scheme ranging from yellow via orange and pink to purple. In 2018, the Complainant announced the launch of a standalone application called IGTV, being an acronym for “Instagram Television”. The IGTV application for android and iOS smartphones enabled users to post long-form videos on the Complainant’s Instagram feeds. The launch of the IGTV application was widely reported (Annex 8 of the Complaint). In 2022, Meta Platforms announced the shutdown of the IGTV application in standalone. Nevertheless, the IGTV video functionality is currently available via the Instagram application.

The Complainant has secured trademark protection, amongst others, for the IGTV acronym as follows (Annex 11 of the Complaint):

- US trademark registration no. 6,211,694 IGTV (word), registered on 1 December 2020, for goods and services in Classes 9, 35, 38, 41, 42, and 45;
- European Union (“EU”) trademark registration no. 017938727 IGTV (word), registered on 26 July 2019, for goods and services in Classes 9, 35, 38, 41, 42, and 45.

The disputed domain name was registered on February 1, 2023. Up until the commencement of the present proceedings, the disputed domain name resolved to a website advertising services of an “Instagram Downloader”, allegedly facilitating downloads of whichever materials from Instagram and working on any type of device, making use of various referrals to Instagram and IGTV and using a gradient colour scheme in the same colours as the Instagram logo and favicon. There is a footer on the website in small typeface according to which “IGTV Downloader” were not affiliated with Instagram (Annex 12 of the Complaint).

The Complainant, on 12 April 2024, submitted a domain owner contact form to the Registrar of the disputed domain name alleging that the name or content of the website constitutes trademark infringement, which remained unanswered (Annex 13 of the Complaint).

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, on the first element, the Complainant contends that it owns trademark registrations for IGTV and has therefore established trademark rights. The disputed domain name comprises its IGTV trademark in its entirety and the, according to the Complainant, descriptive denomination “downloader” and is therefore still recognizable within the disputed domain name. The Top-Level Domain (“TLD”) “.com” may, so the Complainant says, be disregarded for the assessment on confusing similarity as it is a standard registration requirement.

On the second element, the Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name. In the first place, the Respondent is, according to the Complainant, not using the disputed domain name in connection with a bona fide offering for goods and services. He is not a licensee of the Complainant, not affiliated to it, nor has the Complainant ever granted him an authorization to use the IGTV trademark. While the Respondent’s website under the disputed domain name purports to offer a downloading tool from the Complainant’s Instagram application, none of the Oki Data criteria as per WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section

2.8, under which a bona fide offering might be given, are present in the case at hand: In particular, the Respondent is not providing services for the proper use of the Complainant's product, but, in contrast, purports to provide an unauthorized Instagram downloader tool. This tool, says the Complainant, violates the Meta Developer Policies (Annex 14) and facilitates breach of the Instagram Terms of Use (Annex 15), plus puts the security and privacy of Instagram users at risk. The colour scheme and the references to Instagram suggest affiliation with the Complainant. In light of this, the writing in small font, where the Respondent discloses a lack of relationship with the Complainant, is not sufficiently accurate and prominent. Further, the Complainant puts forth that the Respondent is not commonly known by the disputed domain name, considering in particular the initial registration of it by proxy (Annex 1 of the Complaint). There is no evidence that the Respondent acquired any rights in the denomination of the disputed domain name. Finally, the Complainant holds that the Respondent is not making any legitimate or noncommercial fair use of the disputed domain name, given that the services allegedly provided by the Respondent contravene use regulations for its Instagram platform and the fact that the mentioning of Instagram and use of a similar colour scheme of the Complainant exploit the goodwill associated with the Complainant's trademarks.

On the third element, the Complainant submits that the disputed domain name was registered and is being used in bad faith. As to registration in bad faith, the Complainant points to the widely publicized launch of the IGTV Instagram television in 2018 which cannot have remained unnoticed by the Respondent upon creation of the disputed domain name, plus the website content of the Respondent with reference to Instagram and the IGTV trademark is indicative of a targeting of the Complainant by the Respondent. As to use in bad faith, the Respondent has, says the Complainant, taken steps to resolve the disputed domain name to a website that alleged to provide a tool for the unauthorized download of content from Instagram violating the Meta Developer Policies as well as the Instagram Terms of Use. It points to prior UDRP case law according to which unauthorized automated accessing and downloading from social media platforms amounts to bad faith use. At the same time, the Respondent – by use of the Instagram and IGTV trademarks plus colour scheme – seeks to create an impression of association with the Complainant. The disclaimer-like wording does not effectively counteract this impression, given the small font and lacking visibility. Using a proxy service and failure to respond to a contact request, according to the Complainant, complete the finding of bad faith.

B. Respondent

The Respondent comments on all three elements as follows:

On the first element, the Respondent puts forth that his logo and website do not disrespect and copyrights or trademarks of the Complainant. He does not find the disputed domain name to be confusingly similar with trademarks of the Complainant, as the Complainant has no rights over all keywords "IGTV". The additional term downloader is not proprietary to the Complainant, but a general term related to the most popular activity on the Internet.

On the second element, the Respondent contends that he has rights or legitimate interests in the disputed domain name. He states that, upon receipt of the present Complaint, he removed the downloading tool from the website under the disputed domain name. Besides that, the Respondent finds the logo used on his website to be entirely different, but nevertheless removed it from the website.

On the third element, the Respondent announces that he will soon begin services with a bona fide offering of goods or services. The disputed domain name would not be used to take advantage of the Complainant's reputation.

6. 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 name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

While the Respondent believes that the Complainant does not have rights over all the names containing the keyword "igtv", the Panel notes that the Complainant introduced evidence of its registered trademark rights in the mark IGTV, which satisfies the prima facie standing requirement to file a UDRP case. Accordingly, 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. In particular, the Complainant has shown trademark rights in the denomination IGTV.

The entirety of this trademark is reproduced within the disputed domain name. In addition, the Panel finds the mark is recognizable 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, here "downloader", 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, as the word "downloader" is a descriptive term that characterized a person or tool which downloads content from the Internet. [WIPO Overview 3.0](#), section 1.8.

In the present case, for the above stated reasons, 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. In particular, this Panel agrees with earlier panel views that the use of a disputed domain name to offer unauthorized downloading from Instagram cannot constitute any legitimate or fair use (see *Meta Platforms, Inc. v. Muhammad Shahbaz*, WIPO Case No. [D2024-0288](#) <facebookvideodownloader.live>). The points submitted by the Respondent do not overrule the facts and arguments presented by the Complainant. In particular, 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. He merely alleged that, after receipt of the Complaint, he removed the downloading tool and the logo objected to from the website under the disputed domain name. Such actions, however, cannot retroactively confer rights or legitimate interests on a Respondent, considering also that, after close of any given UDRP proceedings, the removed website content can again be restored.

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 the present case, the Panel notes that the Respondent has purportedly offered a tool for downloading content from the Complainant's Instagram platform which jeopardizes an Instagram user's security and privacy, making use of the disputed domain name and presenting the content on a website using the Instagram name and similar colour scheme.

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.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. In assessing this, the Panel notes the composition of the disputed domain name, consisting of the Complainant's trademark and a descriptive term, as well as the clear targeting of the Complainant's trademark via the disputed domain name's similar color scheme and use of the Complainant's brand name on the website, all of which falsely suggest an affiliation with the Complainant. Further, the Panel has duly taken into consideration the disclaimer-type language on the Respondent's website. While in cases where the respondent appears to otherwise have a right or legitimate interest in a disputed domain name, a clear and sufficiently prominent disclaimer might lend support to circumstances suggesting its good faith. On the other hand, where the overall circumstances of a case point to the respondent's bad faith, the mere existence of a disclaimer cannot cure such bad faith. In such cases, panels may consider the respondent's use of a disclaimer as an admission by the respondent that users may be confused, [WIPO Overview 3.0](#), section 3.7. In the present case, against the overall look and feel of the Respondent's website as per Annex 12 of the Complaint, the relatively insignificant footer is not apt to counteract the false impression of affiliation or indorsement by the Complainant.

Against the above findings, the defense put forth by the Respondent to the extent that he would soon begin a bona fide offering, without presenting any details or particulars whatsoever, is clearly insufficient.

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 <igtvdownloader.com> be transferred to the Complainant.

/Andrea Jaeger-Lenz/

Andrea Jaeger-Lenz

Sole Panelist

Date: September 23, 2024