

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Devid Grey, Cyryl grabowski, Vladislav Sakharchuk,
Case No. D2024-3183

1. The Parties

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

The Respondents are Devid Grey, Seychelles; Cyryl grabowski, United States; Vladislav Sakharchuk, Ukraine.

2. The Domain Names and Registrars

The disputed domain name <glassagram.com> (the “First disputed domain name”) is registered with Nicenic International Group Co., Limited; the disputed domain name <glassagram.net> (the “Second disputed domain name”) is registered with Hostinger Operations, UAB; the disputed domain name <instawatch.pro> (the “Third disputed domain name”) is registered with CloudFlare, Inc. (collectively the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 2, 2024. On August 2, 2024, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On August 3, and August 5, 2024, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (REDACTED FOR PRIVACY, Domain Admin, Privacy Protect, LLC (PrivacyProtect.org), REDACTED FOR PRIVACY, PrivacyGuardian.org llc, DATA REDACTED) and contact information in the Complaint.

The Center sent an email communication to the Complainant on August 6, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint on August 9, 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 Respondents of the Complaint, and the proceedings commenced on August 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 3, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on September 9, 2024.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on September 17, 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. Further Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since one of the Respondent’s mailing addresses is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the Center successfully sent the Written Notice of the Complaint to the Respondent’s physical address in Ukraine, however the same could not be delivered because of the Respondent’s absence. The Panel also notes that the Center sent the Notification of Complaint by email to the Respondent at its email address as registered with the Registrar and to a postmaster email address as specified by the Rules. The records indicate that the notification email was successfully sent to the Respondent. Moreover, the website hosted at the disputed domain name references an address in Bulgaria, which raises doubts as to the genuineness of the Respondent’s address in Ukraine.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no serious doubt (albeit in the absence of any Response) that the Respondent registered and has used the disputed domain name in bad faith and with the intention of unfairly targeting the Complainant’s goodwill in its trademark.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition, the Panel will proceed to a Decision accordingly.

5. Factual Background

Launched in 2010, the Complainant, commonly known as “Insta” or “IG”, is an online photo and video sharing social networking application, presently counting with more than two billion monthly active accounts worldwide.

The Complainant is the owner, amongst others, of the following trademark registrations (Annex 12 to the Complaint):

- United States trademark registration No. 4146057 for INSTAGRAM, registered on May 22, 2012, claiming first use in commerce on October 6, 2010;

- International trademark registration No. 1129314 for INSTAGRAM, registered on March 15, 2012;
- European Union trademark registration No. 015868797 for GRAM, registered on January 12, 2017;
- United States trademark registration No. 5061916 for INSTA, registered on October 18, 2016; and
- European Union trademark registration No. 014810535 for INSTA, registered on May 23, 2018.

The First disputed domain name was registered on February 25, 2020, and presently resolves to an active webpage offering access to “anonymous social media viewer options” depicting images of the Complainant’s social network.

The Second disputed domain name was registered on February 9, 2022, and presently does not resolve to an active webpage. In the past, the Second disputed domain name resolved to a webpage offering access to “anonymous social media viewer options” depicting images of the Complainant’s social network.

The Third disputed domain name was registered on July 15, 2022, and presently resolves to an active webpage offering access to a software that allows users view “private stories for 48 hours” as well as to download “photo and video content” from the Complainant’s social network.

6. 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 asserts to be one of the world’s leading providers of online social networking services and applications, actively promoting and using its INSTAGRAM trademark throughout the world.

The Complainant submits that the disputed domain names are subject to common control by either the same person or connected parties and for reasons of fairness, equity and efficiency, the Complainant requests consolidation of the multiple Respondents to the same Complaint, given that: i) the disputed domain names appear to have been registered using false registrant information; ii) the disputed domain names resolve or redirected to websites purporting to offer tools to view Instagram content anonymously; iii) the websites to which the disputed domain names <glassagram.com> and <instawatch.pro> resolve are highly similar; at the time of submission of the Complaint, the disputed domain name <glassagram.net> redirected to the website at the disputed domain name <instawatch.pro>; and iv) the First and Second disputed domain names follow the same naming pattern, i.e., they comprise the same string “glassagram” at the Second Level, under their respective generic Top-Level Domains.

The disputed domain names are, according to the Complainant, confusingly similar to the Complainant’s trademarks, creating a likelihood of confusion given that the presence of its GRAM or INSTA trademarks in the disputed domain names is sufficient to establish confusing similarity between the disputed domain names and the Complainant’s GRAM and INSTA trademarks.

Moreover, the Complainant asserts that the Respondents have no rights or legitimate interests in respect of the disputed domain names given that:

- (a) the Respondents are not licensees of the Complainant, nor are they affiliated with the Complainant in any way; also not having the Complainant granted any authorization for the Respondent to make use of its GRAM, INSTA or INSTAGRAM trademarks, in a domain name or otherwise;

(b) the Respondents have not used the disputed domain names in connection with a bona fide offering of goods or services in accordance with paragraph 4(c)(i) of the Policy nor have the disputed domain names been used for legitimate noncommercial or fair use purpose in accordance with paragraph 4(c)(iii) of the Policy given that the use of the disputed domain names in connection with websites purportedly offering subscriptions for the use of tools for anonymously viewing content from Instagram without the need for an Instagram account, what characterizes both a breach of the Terms of Service as well as may put the security of Instagram users at risk, as content scraped from the Instagram platform may be stored and used for unauthorized purposes by third parties;

(c) the Respondents' websites do not accurately and prominently disclose their lack of relationship with the Complainant; and

(d) the Respondents are not commonly known by the disputed domain names.

As to the registration of the disputed domain names in bad faith, the Complainant asserts that the Respondents knew or should have known of the Complainant's trademark rights at the time of the registration of the disputed domain names considering that it has acquired considerable goodwill and renown worldwide.

Further, the Respondents' intent to target the Complainant can easily be inferred from the use made of the disputed domain names which created a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites.

Moreover, the Complainant states that several customers have complained that the services purportedly provided through the First disputed domain name have not been delivered despite payment of a subscription fee, therefore inferring the Complainant that the Respondent has used the First disputed domain name as part of a fraudulent scheme.

Lastly, prior panels have held that the unauthorized viewing 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 (*Instagram, LLC v. Private WhoIs, Global Domain Privacy Services Inc / Aleksandr Lyahevich, Private Person*, WIPO Case No. [D2021-0463](#)).

B. Respondents

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

7. Discussion and Findings

7.1. Procedural Matter - Consolidation of Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that: (i) all disputed domain names appear to have been registered using false registrant information; ii) all disputed domain names resolve or redirected to websites purporting to offer tools to view Instagram content anonymously; iii) the websites to which the First and Third disputed domain names resolved are highly similar; having, at the time of submission of the Complaint, the Second disputed domain name redirected Internet users to the website available at the Third disputed domain name; and iv) the First and Second disputed domain names follow the same naming pattern.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants in a single proceeding.

7.2. Substantive Matter

Paragraph 4(a) of the Policy sets forth three requirements, which have to be met for this Panel to order the transfer of the disputed domain names to the Complainant:

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

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain names.

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 3.0](#), section 1.7.

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

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.

In the present case, the Respondents' use of the disputed domain names purportedly offering services in connection with the Complainant's platform, without any explanation of the lack of relationship between the Parties, cannot be considered a bona fide offering of goods or services.

In addition to that, the absence of any indication that the Respondents have been commonly known by the disputed domain names, or that they have acquired any registered trademarks or trade names corresponding to the disputed domain names, as well as the Complainant's statement that no authorization, license or permission had been given for the Respondents to register and use the disputed domain names corroborate the indication of the Respondents' lack of rights or legitimate interests in the disputed domain names.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondents do not have rights or legitimate interests with respect to the disputed domain names.

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 use made of the disputed domain names characterizes the Respondents' intent of commercial gain by misleadingly diverting the Complainant's consumers or merely profiting from revenues and or data that solely will be accessible for them in view of the association with the Complainant's notorious trademarks.

Such use, in this Panel's view, constitute an attempt to profit from the fame and goodwill associated with the Complainant's famous trademarks, thus unfairly capitalizing on the INSTAGRAM, GRAM or INSTA trademarks by creating a likelihood of confusion in Internet users who are likely to believe that the disputed domain names are either connected, endorsed, or authorized by the Complainant, what is not true.

Two other relevant factors corroborate the finding of the Respondents' bad faith conduct in this case: the retention of a privacy protection services as well as the indication of false or incomplete contact details by the Respondents when registering the disputed domain names.

For the reasons above, the Panel finds that the Respondents' conduct amounts to bad faith registration and use of the disputed domain names pursuant to paragraph 4(b)(iv) of the Policy.

The Panel finds that the Complainant has established the third element of the Policy.

8. 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 <glassagram.com>, <glassagram.net> and <instawatch.pro> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: September 25, 2024