

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Rolf Berwers, Namik Hondzo, Rolf Rolf
Case No. D2024-3261

1. The Parties

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

The Respondents are Rolf Berwers, Namik Hondzo, and Rolf Rolf, all from Bulgaria and represented by DEEN LEGAL, LLC, United States.

2. The Domain Names and Registrar

The disputed domain names <instalikesusa.com>, <instalikesusa.net>, and <instalikeusa.com> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 8, 2024. On August 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 12, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Registration Private, Domains By Proxy, LLC and REDACTED FOR PRIVACY) and contact information in the Complaint.

The Center sent an email communication to the Complainant on August 14, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, 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 23, 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 August 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 23, 2024. The Respondent sent email communications to the Center on September 20, 2024, and September 23, 2024.

The Center appointed Mihaela Maravela as the sole panelist in this matter on September 30, 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

According to information in the Complaint, the Complainant operates an online photo- and video-sharing social-networking application. The Instagram application was launched in 2010, it was acquired by Facebook, Inc. (now Meta Platforms, Inc.) in 2012, and today it is one of the world's fastest growing photo- and video-sharing and editing software and online social network, with more than 2.3 billion monthly active accounts worldwide. Instagram is currently the most downloaded app worldwide, according to The Financial Times and The Evening Standard.

The Complainant is the exclusive owner of several registered trademarks consisting of or including INSTAGRAM, and INSTA, including the United States trademark registration No. 5061916 for INSTA, registered on October 18, 2016, for class 9, the European Union trademark registration No. 014810535 for INSTA, registered on May 23, 2018, for class 9, the International trademark registration No. 1129314 for INSTAGRAM, registered on March 15, 2012, for classes 9 and 42, the European Union trademark registration No. 14493886 for INSTAGRAM, registered on December 24, 2015, for classes 25, 35, 38, 41, and 45.

The disputed domain names <instalikesusa.com> and <instalikesusa.net> were registered on April 12, 2024 and the disputed domain name <instalikeusa.com> was registered on June 24, 2020. The disputed domain names <instalikeusa.com> and <instalikesusa.com> resolve to or redirect to a website where the Respondent purports to offer Instagram likes and followers for sale, and the disputed domain name <instalikesusa.net> resolves to a parking page.

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 names.

Notably, the Complainant contends that the disputed domain names include the Complainant's INSTA trademark as their leading element, followed by the terms "like USA" or "likes USA", and that the addition of such terms to its INSTA trademark does not prevent a finding of confusing similarity between its trademark and the disputed domain names.

As regards the second element, the Complainant argues that 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 INSTA trademark, in a domain name or otherwise. Further, the Complainant submits that the disputed domain names <instalikeusa.com> and <instalikeusa.com> point to a website where the Respondent purports to offer Instagram likes and followers for sale. Prices for the Respondent's services vary, ranging from USD 0.99 to USD 249. Such use of the disputed domain names cannot be considered either legitimate noncommercial or fair use, as the

Respondent is clearly seeking to unfairly exploit the goodwill of the Complainant's trademarks for its own profit. While the Respondent's website primarily targets Instagram, similar followers, views, and subscribers are offered for other online platforms, including TikTok, Twitter and YouTube. The Complainant submits that the Respondent has failed to comply with all four of the Oki Data criteria, as (i) the Respondent is not providing sales or repairs in relation to a product provided by the Complainant, rather, the Respondent is making unauthorized use of the Complainant's INSTA and INSTAGRAM trademarks (in the disputed domain names and on the website to which the disputed domain names resolve or redirect) to market its own ancillary services in relation to the Complainant, (ii) the Respondent does not exclusively offer services exclusively in relation to the Instagram platform, as the Respondent's websites purport to offer followers, views, and subscribers for the third-party platforms TikTok, Twitter and YouTube, (iii) there is no disclaimer on the Respondent's websites clarifying its lack of relationship with the Complainant, and (iv) by registering three domain names, the Respondent has engaged in a bad faith pattern of abusive domain name registration targeting the Complainant's INSTA trademark.

The Complainant further submits that the services offered via the Respondent's website at which the disputed domain names <instalikeusa.com> and <instalikeusa.com> resolve or redirect, as described above, violate Instagram's Terms of Use as well as the Meta Developer Policies as automated Instagram activities and user actions have the effect of misleading Instagram users, and fake or "automated" likes and followers and related actions give the false impression of genuine interest in the content posted. Moreover, such activities facilitate or induce others into violating Instagram's Terms of Use.

Further, the Complainant argues that the disputed domain name <instalikesusa.net> resolves to a parking page that lacks substantive content, and that prior UDRP panels have found that the non-use of a domain name does not amount to use of the domain names in connection with any bona fide offering of goods or services. Moreover, there is no evidence to suggest that the Respondent is commonly known by the disputed domain names, as contemplated by paragraph 4(c)(ii) of the Policy.

With respect to the third element, the Complainant argues that its INSTAGRAM trademark is inherently distinctive and well-known throughout the world in connection with its online photo sharing social network, having been continuously and extensively used since its launch in 2010, therefore the Respondent could not credibly argue that it did not have knowledge of the Complainant or its INSTAGRAM or INSTA trademarks when registering the disputed domain names in 2020 and 2024. Since the Respondent registered the disputed domain names, it has not displayed any bona fide intent in relation to them. Rather, the Respondent has taken steps to create a website that makes unauthorized use of the Complainant's INSTA and INSTAGRAM trademarks, offering social media "followers" and "likes" for sale, thereby eroding the authenticity of the Instagram user experience in violation of Instagram's Terms of Use and the Meta Developer Policies for commercial gain. By registering three domain names, the Complainant submits that the Respondent has engaged in an abusive pattern of trademark-abusive domain name registration, targeting the Complainant's INSTA trademark, in bad faith.

In addition, the underlying registrant information indicates that the Respondent is based in Bulgaria. The Respondent's website states that the Respondent is a "marketing agency based in USA", while the "Contact Us" page on the Respondent's websites lists a physical address in the United Kingdom. The Complainant submits that the lack of consistent contact information on the Respondent's websites and in terms of the underlying registrant information, together with the registration of the disputed domain names using a proxy service, further evidences the Respondent's bad faith. The fact that the disputed domain name <instalikesusa.net> does not resolve a website with substantive content does not prevent a finding of bad faith.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions by the due date for the Response. In its communication of September 20, 2024, after the due date for the Response, it seems that the Respondent forwarded the Complaint to its attorney. In the email communication of September 23, 2024, also after the deadline for the Response, the representative of the Respondent informed the Center that it

will be requesting additional time to respond. Although the Center responded to this communication, outlining that as the Response period has passed, the Center cannot grant any additional time for the Response, and also pointing to the provisions concerning supplemental submissions, expressly informing the Respondent that “if the Center receives any Supplemental Filing from you, it will transmit it to the Panel (when appointed), and it will be in the Panel’s sole discretion to consider and/or admit it in rendering its decision, and whether to order further procedural steps, if any”, no supplemental submission was filed by the Respondent.

Considering that the Respondent was duly notified, that it had been granted 20 days to respond as per article 5(a) of the Rules, and that no extension was requested within such deadline as per article 5(b) or 5(d) of the Rules, the Panel considers that the Respondent was awarded a fair opportunity to duly present its case and will proceed with a decision on the merits.

6. Discussion and Findings

6.1. Consolidation: 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 submits that (i) all disputed domain names were registered via the same Registrar using a proxy service, (ii) there are clear commonalities in the underlying registrant information for all three disputed domain names, including the same registrant street, same registrant city, state/province and postal code, same registrant country, and the same registrant email address, (iii) the disputed domain names <instalikesusa.com> and <instalikesusa.net> were registered at the same time of day on April 12, 2024, (iv) the disputed domain name <instalikesusa.com> redirects to the website at the disputed domain name <instalikesusa.com>. For these reasons, 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 takes note of and agrees with the un rebutted statements of the Complainant and also notes that the consolidation of the disputed domain names is justified as, inter alia: (i) the disputed domain names are similar in construction, as all of them incorporate the Complainant’s trademark INSTA with the addition of descriptive term(s); (ii) two of the websites to which the disputed domain names resolve or redirect are similar, resolving or redirecting to a website where the Respondent purports to offer Instagram likes and followers for sale; and (iii) significantly, all three disputed domain names have identical registrant contact email addresses (as well as additional registration similarities), showing clear evidence of common control.

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 (referred to below as “the Respondent”) in a single proceeding.

6.2. Substantive issues

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the [WIPO Overview 3.0](#).

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain names are 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 names, and (iii) the disputed domain names have been registered and are being used in bad faith.

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 the trademark INSTA 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 names. Accordingly, the disputed domain names are 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, “like”, “likes”, or “usa”, may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

It is the settled view of panels applying the Policy that the generic Top-Level Domains (“gTLD”) (here “.com” and “.net”) may be disregarded under the first element test. See [WIPO Overview 3.0](#), section 1.11.

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 names. 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 names such as those enumerated in the Policy or otherwise.

The Respondent has not reasonably explained why and for what purposes it has registered the disputed domain names. It has not submitted any contrary evidence to the Complainant's allegations. In its informal communications, the Respondent failed to address the allegation of the Complainant regarding the unauthorized use of the disputed domain names. The use of the disputed domain names <instalikeusa.com> and <instalikesusa.com> in connection to a website where the Respondent purports to offer Instagram likes and followers for sale shows that the Respondent targets the Complainant and takes unfair advantage of its trademark to exploit its popularity to attract Internet users to the Respondent's website and to offer them its services likely for commercial gain or to somehow benefit the Respondent. Moreover, the Panel notes that the Respondent's website includes services related to third party, competitors of the Complainant and fails to include any disclaimer explaining the lack of relationship with the Complainant. The Panel therefore does not regard this conduct of the Respondent as a legitimate activity that may give rise to rights or legitimate interests of the Respondent in the disputed domain names under the Policy. Further, the disputed domain name <instalikesusa.net> resolves to a parking page, which according to the Panel does not give rise to any rights or legitimate interests in the disputed domain name considering the circumstances of this case.

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.

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.

The disputed domain names were registered many years after the Complainant obtained registration of its INSTAGRAM and INSTA trademarks. The Respondent has not denied knowledge of the Complainant and its trademarks. The disputed domain names are confusingly similar with the Complainant's trademarks. Moreover, the website at the disputed domain names <instalikeusa.com> and <instalikesusa.com> purport to offer Instagram likes and display the trademarks of the Complainant. Under these circumstances it is obvious that the Respondent was aware of the Complainant's trademarks at the registration of the disputed domain names and targeted those trademarks. The Panel finds that the Respondent registered the disputed domain name in bad faith.

Furthermore, as the disputed domain names <instalikeusa.com> and <instalikesusa.com> resolve or redirect to a website which, for a fee, purport to artificially increase the number of Instagram "followers", "likes", "views", and "comments", the Respondent intentionally created a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website and the services offered therein, in bad faith, within the meaning of paragraph 4(b)(iv) of the Policy.

As regards the disputed domain name <instalikesusa.net> Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name <instalikesusa.net> does not prevent a finding of bad faith under the Policy.

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 names <instalikesusa.com>, <instalikesusa.net>, and <instalikeusa.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: October 14, 2024