

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Niyaz Khan, Ergonomic solutions
Case No. D2024-3290

1. The Parties

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

The Respondent is Niyaz Khan, Ergonomic solutions, Nepal.

2. The Domain Name and Registrar

The disputed domain name <privateinstaviewer.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 12, 2024. On August 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 13, 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 (REDACTED FOR PRIVACY, See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 19, 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 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 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 12, 2024. The Respondent sent an email communication to the Center on August 23, 2024.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on September 23, 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

Launched in 2010, the Complainant, commonly known as “Insta”, is an online photo and video sharing social networking application, presently counting with over 2.3 billion monthly active accounts worldwide.

The Complainant is the owner, amongst others, of the following trademark registrations:

- United States 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 Trade Mark No. 015868797 for GRAM, registered on January 12, 2017;
- United States Registration No. 5061916 for INSTA, registered on October 18, 2016; and
- European Union Trade Mark No. 014810535 for INSTA, registered on May 23, 2018.

The disputed domain name was registered on June 23, 2016, and presently resolves to an active webpage offering “View Private Instagram Profiles with Pictures Videos and Comments. Get Full Access to any Private or Locked Instagram Profile in a Matter of Seconds”.

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 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 disputed domain name is, according to the Complainant, confusingly similar to the Complainant’s trademark, comprising the Complainant’s INSTA trademark, preceded by the term “private” and followed by the term “viewer”, creating a likelihood of confusion.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name given that:

- (a) the Respondent is not a licensee of the Complainant, nor is it affiliated with the Complainant in any way; also not having the Complainant granted any authorization for the Respondent to make use of its INSTA trademark, in a domain name or otherwise;
- (b) the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services in accordance with paragraph 4(c)(i) of the Policy nor has the disputed domain name 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 name in connection with a website purportedly offering a tool to view content from private profiles on the Complainant’s Instagram platform which prompts Internet users to

click through multiple pages, including commercial advertisements and a “human verification step” and to disclose personal identifying information in response to various questions, under the guise of being able to view private content from the Complainant’s Instagram platform, thus obtaining revenue from commercial advertisements and personal identifying information; and

(c) the Respondent is not commonly known by the disputed domain name.

As to the registration of the disputed domain name in bad faith, the Complainant asserts that the Respondent knew or should have known of the Complainant’s trademark rights at the time of the registration of the disputed domain name considering that it has acquired considerable goodwill and renown worldwide and which is further evidenced by the Respondent’s explicit reference to the Complainant’s INSTAGRAM and INSTA trademarks at the website that resolves from the disputed domain name.

Additionally, the Respondent’s intent to target the Complainant can easily be inferred from the use made of the disputed domain name which creates a likelihood of confusion with the Complainant’s trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website.

Moreover, the Complainant contends that the collection of Internet users’ personal identifying information under the guise of accessing private Instagram content constitutes illegitimate use of the disputed domain name as such behaviour is manifestly considered evidence of bad faith.

Lastly, the Respondent’s failure to respond to the Complainant’s cease and desist letter and Registrar registrant contact form is a further indicator of the Respondent’s bad faith.

B. Respondent

The Respondent did not formally reply to the Complainant’s contentions. On August 23, 2024, the Respondent sent an email communication to the Center merely stating “How may I help you”.

6. Discussion and Findings

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 name to the Complainant:

- (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 has been registered and is 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 name.

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.

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 (“private” and “viewer”) may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

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 Respondent’s use of the disputed domain name purportedly offering services in connection with the Complainant’s platform, while submitting Internet users to commercial advertisements and requiring the disclosure of personal identifying information in response to various questions, under the guise of being able to view private content from the Complainant’s Instagram platform, cannot be considered a bona fide offering of goods or services.

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

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

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 name characterizes the Respondent’s 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, constitutes an attempt to profit from the fame and goodwill associated with the Complainant's famous trademarks, thus unfairly capitalizing on the INSTA and INSTAGRAM trademarks by creating a likelihood of confusion in Internet users who are likely to believe that the disputed domain name is either connected, endorsed, or authorized by the Complainant, which is not true.

Two other relevant factors corroborate the finding of the Respondent's bad faith conduct in this case: the retention of a privacy protection service and the lack of reply to the cease and desist letter sent prior to this proceeding.

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 <privateinstaviewer.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: October 1, 2024