

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Marcin Hryculak
Case No. D2024-3365

1. The Parties

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

The Respondent is Marcin Hryculak, Poland.

2. The Domain Name and Registrar

The disputed domain name <insta-viewer.icu> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 16, 2024. On August 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 16, 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 (Whols Privacy, Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 20, 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 22, 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 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 23, 2024.

The Center appointed Peter Burgstaller as the sole panelist in this matter on October 2, 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 is a San Francisco, United States, based company, incorporated in 2010. It developed a web-based mobile application that enables users to share pictures and videos with their friends and others as well as view, comment and like post shared by their friends. As of August 2012, the Complainant operates as subsidiary of Facebook and is now part of the Meta Group.

The Complainant owns numerous trademark registrations containing the mark INSTA, inter alia:

- United States trademark registration for INSTA (word), Reg. No. 5,061,916, registered October 18, 2016;
- European Union trademark registration for INSTA (word), Reg. No. 14810535, registered May 23, 2018;
- International trademark registration for INSTAGRAM (word), Reg. No 1129314, registered March 15, 2012, designation for several countries inter alia Australia, Switzerland, Japan, Norway, and Türkiye.

Furthermore, the Complainant has registered several domain names containing the mark INSTAGRAM, inter alia <instagram.com>, registered on June 4, 2004 or <instagram.net>, registered on November 6, 2010.

The disputed domain name was registered on August 17, 2022.

At the time of filing this Complaint, the disputed domain name resolved to a website that purported to offer a tool to view and download content from private profiles on the Complainant's Instagram platform, including stories and photos; in reality, by entering a username into the viewer tool, Internet users were prompted to click through multiple pages, including a "human verification" stage and to click on a link to complete a "short offer", which required them to disclose personal identifying information or to sign up to a free trial of a third-party service, under the guise of being able to view private content from the Complainant's Instagram platform.

The Complainant sent a cease-and-desist letter to the Respondent on June 19, 2024; the Respondent did not reply.

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 disputed domain name fully incorporates the Complainant's INSTA trademark; the disputed domain name is therefore confusingly similar to the Complainant's INSTA trademarks. The addition of the term "viewer" in the disputed domain name does not prevent a finding of confusing similarity.

The Respondent lacks rights or legitimate interests in the disputed domain name, since it has never assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use the INSTA trademark in any manner. The Respondent is moreover unable to demonstrate that it is using the

disputed domain name in connection with a bona fide offering of goods or services or it is commonly known by the disputed domain name or it is making a legitimate noncommercial or fair use of the disputed domain name – it is to the contrary:

- the Complainant submits that the Respondent is using the disputed domain name to attract Internet users to its website under the premise of being able to view private content from the Complainant's platform, but in reality, the Respondent seeks to generate revenue from click-through links and the collection of Internet users' personal identifying information. Such use of the disputed domain name does not constitute a bona fide offering of goods or services;

- even if the Respondent's viewer tool purportedly offered its website were to enable Internet users to view Instagram content, which the Complainant submits that it does not, such use of the disputed domain name would go beyond the technical limits placed on the platform by the Complainant and would be in violation of the Meta Group's Developer Policies, and hence would breach the Complainant's Terms of Use.

Finally, the Respondent has registered and is using the disputed domain name in bad faith with the intent to falsely suggest that the Respondent is in some way related to the Complainant and to attract Internet users to the Respondent's website, which in turn prompts Internet users to complete commercial offers to generate revenue.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (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 with respect to 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

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 submitted evidence, which incontestably and conclusively establishes rights in the mark INSTA.

In the present case the disputed domain name is confusingly similar to the famous and well-known INSTA mark in which the Complainant has rights, since it only adds the term "viewer" and a hyphen to the mark. It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of a term will not prevent a finding of confusing similarity under the first element of the Policy. [WIPO Overview 3.0](#), section 1.8.

This is the case at present, since the INSTA mark is clearly recognizable in the disputed domain name.

Finally, it has also long been held that generic Top-Level Domains (“gTLDs”) (in this case “.icu”) are generally disregarded when evaluating the confusing similarity of a disputed domain name. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, 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.

While 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 often impossible 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. 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 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 Complainant has not assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use the INSTA trademark in any manner.

Further, the Respondent is not known under the disputed domain name and the disputed domain name is not being used for a bona fide offering of goods or services; rather the disputed domain name is used to misleadingly obtain Internet users’ personal identifying information which cannot constitute a claim of legitimate noncommercial or fair use of a domain name. In fact, the disputed domain name resolved to a website which purported to offer a tool to view content from private profiles on the Complainant’s Instagram platform. By entering a username into the viewer tool, Internet users are prompted to click through multiple pages, including a “human verification” stage and to click on a link to complete a “short offer”, which required them to disclose personal identifying information or to sign up to a free trial of a third-party service, under the guise of being able to view private content from the Complainant’s Instagram platform.

The use of the disputed domain name for such illegitimate purposes does not constitute a bona fide offering of goods or services.

The Respondent did not reply to the Complainant’s contentions and did not provide any evidence showing its rights or legitimate interests in the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy, both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith; and
- the disputed domain name is being used by the Respondent in bad faith.

The Complainant has established rights in the registered trademark INSTA long before the registration of the disputed domain name. Furthermore, the trademark INSTA is not only distinctive and famous as such but also well-known as the abbreviation of the Complainant's famous trademark INSTAGRAM. Both, INSTA and INSTAGRAM have been extensively used on the Internet for years.

Because of the distinctiveness and reputation of the INSTA mark, it is inconceivable for this Panel that the Respondent has registered the disputed domain name without knowledge of the Complainant's rights. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a distinctive trademark by an unaffiliated entity (as it is in the present case) can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4. Finally, a simple online search for "insta" would have shown the Complainant and its famous INSTA and INSTAGRAM marks. [WIPO Overview 3.0](#), section 3.2.3.

Moreover, the use of the disputed domain name referring to the Complainant's trademarks and services indicates knowledge of the Complainant and its trademarks.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

It is well accepted that the use of a domain name that is deceptively similar to a famous and well-known trademark to obtain click-through-revenue is bad faith use under the meaning of the Policy – this is the case at present:

The disputed domain name resolved to a website which purported to offer a tool that enables Internet users to view and download Instagram content anonymously and pretended that the website is associated with the Complainant's famous and well-known INSTA trademark to attract Internet users to its website. In fact, the Respondent's website prompted Internet users to complete a "human verification" stage by completing a commercial offer and disclosing personal identifying data and/or signing up for a trial of third-party services to do so, on the false premise that on completion of the verification stage, the Internet user would be able to access the desired Instagram content.

It has furthermore long been established under UDRP decision that to set up an elaborate phishing scheme, based on enticing unsuspecting consumers to provide sensitive information, by means of an inherently misleading domain name, is clearly dishonest. The only goal is to rely on the deception of consumers to obtain their private details for commercial advantage of some sort.

The evidence and documents produced and put forward by the Complainant together with the fact that the Respondent neither responded to the cease-and-desist letter, nor filed a Response and hence presented any evidence of any good faith registration and use with regard to the disputed domain name further supports the finding of bad faith.

Based on the available record, 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 <insta-viewer.icu> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: October 16, 2024