

## **ADMINISTRATIVE PANEL DECISION**

Instagram, LLC v. Andrei Frolowsky  
Case No. D2024-3501

### **1. The Parties**

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

The Respondent is Andrei Frolowsky, Belarus.

### **2. The Domain Name and Registrar**

The disputed domain name <instanavigation.com> (the “Disputed Domain Name”) 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 August 28, 2024. On August 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 28, 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, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 2, 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 September 6, 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 September 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 29, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 3, 2024.

The Center appointed Mariia Koval as the sole panelist in this matter on October 8, 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 an American company which operates the “Instagram” social networking service, which enables its users to create their own personal profiles, post photos and videos, and connect with each other on their mobile devices. Since its launch in 2010, Instagram has rapidly acquired and developed considerable goodwill and renown worldwide. Acquired by Meta Platforms, Inc. in 2012, the Complainant is today one of the world’s fastest growing photo and video sharing and editing software and online social network, with more than 2 billion monthly active accounts worldwide. Approximately 80% of Instagram users are outside of the United States. Instagram provides translation support for over 32 languages as part of its social networking services and mobile application. In recent years, the Instagram mobile application has consistently ranked among the top applications in the market. Instagram has consistently ranked amongst the top “apps” for mobile devices, including for iOS and Android operating systems. Instagram has been the recipient of numerous awards, including “App of the Year” in 2011 from Apple Inc. Instagram is currently the most downloaded app for iOS phones worldwide, according to applications information company Data.ai.

The Complainant is the owner of a number of INSTAGRAM and INSTA trademark registrations (collectively, the “INSTA Trademarks”) throughout the world, among which are:

- International Trademark Registration No. 1129314 for INSTAGRAM, registered on March 15, 2012, in respect of goods and services in classes 9 and 42;
- United States Trademark Registration No. 4146057 for INSTAGRAM, registered on May 22, 2012, in respect of goods in class 9;
- European Union Trademark Registration No. 014493886 for INSTAGRAM, registered on December 24, 2015, in respect of goods and services in classes 25, 35, 38, 41, and 45;
- United States Trademark Registration No. 5061916 for INSTA, registered on October 18, 2016, in respect of goods in class 9;
- European Union Trademark Registration No. 014810535 for INSTA, registered on May 23, 2018, in respect of goods in class 9.

The Complainant operates, among others, the domain names <instagram.com> (registered on June 4, 2004), <instagram.net> (registered on November 6, 2010), <instagram.org> (registered on May 10, 2015) and others, reflecting its INSTA Trademarks for providing its social network services and support to the users. The Complainant has also made substantial investments to develop a strong presence online by being active on various social media platforms, including Facebook, Twitter and LinkedIn. For instance, Instagram’s official Facebook page has over 61 million Facebook “likes” and over 33 million followers on Twitter.

The Disputed Domain Name was registered on March 17, 2021. At the time of the filing of the Complaint, the Disputed Domain Name resolved to a website where a tool for viewing anonymously and downloading content from Instagram is offered.

On June 21, 2024, the Complainant attempted to contact the Respondent (Annex 12 to the Complaint), but no response was received.

## **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 is confusingly similar to the Complainant's INSTA Trademarks since the Disputed Domain Name reproduces the Complainant's INSTA Trademarks in its entirety with the addition of the term "navigation". This added term does not prevent a finding of confusing similarity between the Complainant's INSTA Trademarks and the Disputed Domain Name.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name since the Respondent is neither a licensee of the Complainant nor is he affiliated with the Complainant in any way. The Complainant has not granted any authorization for the Respondent to make use of its INSTA Trademarks, in the Disputed Domain Name or otherwise. Also, there is no evidence to suggest that the Respondent is commonly known by the Disputed Domain Name.

The Respondent is making unauthorized use of the Complainant's INSTA Trademarks to market his own ancillary services, namely purporting to provide a tool that enables Internet users to anonymously view and download content from Instagram. The Respondent's website does not accurately and prominently disclose its relationship with the Complainant. The disclaimer is on the bottom of the website, hardly visible. The Respondent's website may therefore mislead Internet users into believing that it is operated or authorized by the Complainant, when in fact it is not. The Complainant highlights that tools for the unauthorized viewing and downloading of content from Instagram violate the Meta Developer Policies, as such activities go beyond the limits that the Complainant has placed on its product functionality. Such tools also facilitate breach of the Instagram Terms of Use by users of the Complainant's Instagram platform, as the unauthorized viewing and downloading of content from the Instagram platform interferes with the intended operation of the Instagram service. Further, the unauthorized accessing and collecting of Instagram content may put the security of Instagram users at risk, as content scraped from the Instagram platform may be stored and later used for unauthorized purposes by third parties.

The Complainant further claims that the Respondent has registered and is using the Disputed Domain Name in bad faith. The Complainant's INSTA Trademarks are well known throughout the world. Therefore, the Complainant submits that the Respondent could not credibly argue that it did not have knowledge of Instagram social network or its INSTA Trademarks when registering the Disputed Domain Name in March 2021. Moreover, the Respondent's intent to target the Complainant when registering the Disputed Domain Name may be inferred from the contents of the website under the Disputed Domain Name, which make explicit reference to Instagram and make prominent use of the Complainant's INSTA Trademarks.

The Complainant further notes that from the time since the Respondent registered the Disputed Domain Name, it has not displayed any bona fide intent in relation to the Disputed Domain Name. Rather, the Respondent has taken steps to set up a website purportedly providing a tool for viewing and downloading content from Instagram, in violation of Instagram's Terms of Use and the Meta Developer Policies. The use of the Complainant's INSTA Trademarks as well as the use of a gradient color scheme similar to that used by the Complainant for its Instagram platform (Annex 9 to the Complaint), the Complainant submits that the Respondent is seeking to target the Complainant's INSTA Trademarks to create an impression of association with the Complainant. Also, the website at the Disputed Domain Name features commercial advertising banners, from which the Complainant infers that the Respondent derives click-through revenue.

### **B. Respondent**

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

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant to succeed must satisfy the panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which 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 was 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 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 Disputed Domain Name completely reproduces the Complainant's INSTA trademark in combination with the word "navigation" and the generic Top-Level Domain ("gTLD") ".com". According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. In this case, the addition of the term "navigation" to the INSTA trademark does not prevent a finding of confusing similarity.

Also, in accordance with [WIPO Overview 3.0](#), section 1.11.1, the applicable gTLD in a domain name (such as, ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Pursuant to [WIPO Overview 3.0](#), section 1.7, in cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's INSTA Trademarks pursuant to paragraph 4(a)(i) of the Policy.

### 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. 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. Based on the case records, there is no evidence that the Respondent owns any trademark registrations for the Disputed Domain Name, nor that he is commonly known by the Disputed Domain Name.

The Panel concludes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's INSTA Trademarks. Moreover, there is no element from which the Panel could infer the Respondent's right over the Disputed Domain Name, or that the Respondent might be commonly known by the Disputed Domain Name.

The Panel notes that the Disputed Domain Name is used to promote and offer a tool that purportedly offers anonymous view and download of content from Instagram, making direct reference to the Complainant's platform. Considering also the risk of implied affiliation carried by the composition of the Disputed Domain Name, the Respondent's use of the Complainant's INSTA Trademarks to promote services for the unauthorized viewing and downloading of content from the Instagram platform cannot be considered as a bona fide offering of goods or services. The Panel also notes that the website under the Disputed Domain Name contains the following disclaimer "The site is a fan page. InstaNavigation.com is not connected with Instagram.", which is poorly visible on the bottom of the website. The Panel also concludes that the website cannot be considered as a fan site since it does not contain any features that are inherent to such a site. Therefore, the Panel agrees with the Complainant that the website does not accurately and prominently disclose its relationship with the Complainant. Thus, it is more than likely that Internet users could be confused as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. Indeed, the content of the Respondent's website appears to be designed to generate the impression to be visiting one of the Complainant's website or its affiliated entities.

In view of the above-described use of the Disputed Domain Name, the Panel finds that the Respondent is not using the Disputed Domain Name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain.

Moreover, in accordance with the [WIPO Overview 3.0](#), section 2.5.1, where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. The addition of the term "navigation", to the Complainant's INSTA Trademarks in the Disputed Domain Name, may imply assisting users in finding or exploring content, profiles and suggest a tool or feature browsing within Instagram and therefore the composition of the Disputed Domain Name is further evidence, that the Respondent was very well aware of the Complainant's INSTA Trademarks and business at the time of registration of the Disputed Domain Name and has done so for the only purpose of creating an impression that the Disputed Domain Name is connected with the Complainant and its INSTA Trademarks.

In light of the above, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Therefore, the second element of the paragraph 4(a) of the Policy has been met by the Complainant.

### **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 registered and is using the Disputed Domain Name in bad faith in view of the following. The Complainant obtained the registrations of the INSTA Trademarks much earlier than the Respondent registered the Disputed Domain Name in 2021. Taking into account all

circumstances of this case and worldwide fame of the Complainant's INSTA Trademarks, the Panel finds that the Respondent was well aware of the Complainant's business and its INSTA Trademarks when registering the confusingly similar Disputed Domain Name that completely incorporates the Complainant's INSTA Trademarks. The Panel considers it is bad faith that the Respondent deliberately chose the Disputed Domain Name to create a likelihood of confusion with the Complainant's INSTA Trademarks, so as to create a false association or affiliation with the Complainant.

Moreover, the Respondent's knowledge of the Complainant's INSTA Trademarks is also supported by the use of the Disputed Domain Name which resolves to a website where a tool for viewing anonymously and downloading content from Instagram is offered for use. Internet users might have been under the impression that it is a website created and operated by the Complainant or a certified service provider of the Complainant, which is not true. Also, in view of the Disputed Domain Name combines the INSTA Trademarks, which are inherently distinctive and well-known worldwide, with a word "navigation"; the combination "instanavigation" is very likely to be perceived by the Internet users as a reference to the online tool through which a user can access some navigational guidance how to use the Instagram social network. Therefore, the Panel finds that the Respondent was very likely aware of the Complainant's INSTA Trademarks at the time of registration and used the Disputed Domain Name to intentionally attempt to attract Internet users to his website, for commercial gain, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of his website and the services provided therein, according to paragraph 4(b)(iv) of the Policy.

According to section 3.1.4 of the [WIPO Overview 3.0](#), UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is of the opinion that it is clear that the Respondent, having registered and used the Disputed Domain Names, which are confusingly similar to the Complainant's widely-known INSTA Trademarks, intended to disrupt the Complainant's business and confuse Internet users seeking or expecting the Complainant's website. In view of the absence of any evidence to the contrary and the fact that the Respondent did not file any response to either the Complainant's contact attempt, or to these proceedings otherwise, the Panel concludes that the Respondent has registered and is using the Disputed Domain Names in bad faith.

In view of the foregoing, the Panel finds that the paragraph 4(a)(iii) of the Policy has been satisfied by the Complainant and accordingly, the Disputed Domain Name was registered and is being used in bad faith.

## **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 <instanavigation.com> be transferred to the Complainant.

*/Mariia Koval/*

**Mariia Koval**

Sole Panelist

Date: October 22, 2024