

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. FlokiNET Ltd WhoisProtection, FlokiNET Ltd
Case No. D2024-3902

1. The Parties

The Complainant is Instagram, LLC, United States of America (“US”), represented by Greenberg Traurig, LLP, US.

The Respondent is FlokiNET Ltd WhoisProtection, FlokiNET Ltd, Seychelles.

2. The Domain Name and Registrar

The disputed domain name <story-insta.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 24, 2024. On September 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 25, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 27, 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 amendment to the Complaint on October 2, 2024.

The Center verified that the Complaint together with the amendment to the 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 October 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 25, 2024.

The Center appointed Ian Blackshaw as the sole panelist in this matter on October 31, 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, commonly known as “Insta”, is a world-renowned online photo- and video-sharing social-networking service and mobile application. Since its launch in 2010, the Complainant has rapidly acquired and developed considerable goodwill and renown worldwide. Acquired by Facebook, Inc. (now Meta Platforms, Inc.) in 2012, today the Complainant has more than 2 billion monthly active accounts worldwide.

Instagram has consistently ranked among the top “apps” for mobile devices, including for iOS and Android operating systems. The Complainant has been the recipient of numerous awards, including “App of the Year” in 2011 from Apple Inc. Instagram is currently the 2nd most downloaded app worldwide, according to Forbes.

The Complainant is the registrant of numerous domain names consisting of or including the INSTAGRAM or INSTA trademarks under a wide range of generic Top-Level Domains (“gTLDs”) as well as under numerous country code Top-Level Domains (“ccTLDs”). 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, the Complainant’s official Facebook page has over 61 million Facebook “likes”, and the Complainant’s official Twitter account has over 33 million followers.

In addition to its strong online presence, the Complainant has secured ownership of numerous trademark registrations for INSTAGRAM and INSTA in numerous jurisdictions throughout the world, including:

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

The disputed domain name was registered on October 24, 2022. The disputed domain name resolves to a website displaying the Complainant’s trademarks and trade dress, purportedly offering services related to the Complainant’s application.

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.

The Complainant asserts that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights because the disputed domain name is composed of the Complainant’s INSTA trademark in full, preceded by the word “story” and a hyphen, which does not prevent confusing similarity.

The Complainant further asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name, and is not licensed by or affiliated to the Complainant. Moreover, the composition of the disputed domain name carries a risk of implied affiliation. Here, the Respondent configured the disputed domain name to resolve to web-content that specifically targets the Complainant by offering an unauthorized and illegitimate “Fully Anonymous Insta Story Viewer”, whilst making prominent use of the Complainant’s trademarks; specifically,

the Complainant's well-known INSTA trademark within the name of the Respondent's putative "Insta Story Viewer" service, the Complainant's distinctive INSTAGRAM color gradient, and, in at least one instance, the Complainant's INSTAGRAM logo. The Complainant contends that the Respondent is making neither a bona fide offering of goods or services, nor a legitimate noncommercial or fair use, and that the Respondent is unable to claim safe harbor set out for resellers or distributors as provided in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

Lastly, the Complainant asserts that the disputed domain name was registered and is being used in bad faith. The Complainant points to the strong reputation of the Complainant's INSTA and INSTAGRAM trademarks, the composition of the disputed domain name, the misleading use of the Complainant's trademarks and trade dress on the Respondent's website while displaying commercial pop-up advertising, and the Respondent's lack of reply to the Complainant's cease and desist communications as indicators of bad faith.

B. Respondent

The Respondent, having been duly notified of the Complaint and of these proceedings, did not reply to the Complainant's contentions or take any part in these proceedings.

6. Discussion and Findings

To qualify for cancellation or transfer of the disputed domain name, the Complainant must prove each of the following elements of paragraph 4(a) of the Policy, namely:

- (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.

In accordance with paragraph 15(a) of the Rules, the Panel shall decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

In accordance with paragraph 14(a) of the Rules, in the event that a party, in the absence of exceptional circumstances, does not comply with any of the time periods established by the Rules or the Panel, the Panel shall proceed to a decision on the Complaint; and under paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences as it considers appropriate.

In accordance with paragraph 10(d) of the Rules, the Panel shall determine the admissibility, relevance, materiality, and weight of the evidence.

In previous UDRP decisions in which the respondents failed to file a response, the panels' decisions were based upon the complainants' reasonable assertions and evidence, as well as inferences drawn from the respondents' failure to reply. See *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#); and *Köstritzer Schwarzbierbrauerei v. Macros-Telekom Corp.*, WIPO Case No. [D2001-0936](#).

Nevertheless, the Panel must not decide in the Complainant's favor solely based on the Respondent's default. See *Cortefiel, S.A. v. Miguel García Quintas*, WIPO Case No. [D2000-0140](#).

In the present case, the Panel must decide whether the Complainant has introduced elements of proof, which allow the Panel to conclude that its allegations are true.

A. Identical or Confusingly Similar

It is well established in previous UDRP decisions that, where the disputed domain name incorporates a complainant's registered trademark, this may be sufficient to establish that the disputed domain name is identical or confusingly similar for the purposes of the Policy. See *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#).

In the present case, the disputed domain name incorporates the Complainant's INSTA trademark, and this makes the disputed domain name confusingly similar to the Complainant's INSTA trademark. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The addition of a hyphen and the word "story" in the disputed domain name does not prevent a finding of confusing similarity between the Complainant's trademarks and the disputed domain name. [WIPO Overview 3.0](#), section 1.8.

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's INSTA trademarks, in which the Complainant has demonstrated rights to the satisfaction of the Panel.

The first element of the Policy, therefore, has been met.

B. Rights or Legitimate Interests

In order to determine whether the Respondent has any rights or legitimate interests in respect of the disputed domain name (paragraph 4(c) of the Policy), attention must be paid to any of the following circumstances, in particular, but without limitation:

- whether there is any evidence of the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services before any notice to the Respondent of the dispute;
- whether the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights;
- whether the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

There is no evidence before the Panel to show that the Respondent was acting in pursuance of any rights or legitimate interests with respect to the disputed domain name. On the contrary, if the Respondent had any such rights or legitimate interests, the Respondent would have reasonably been expected to assert them, which the Respondent clearly has not done so, by not replying to the Complaint or taking any part in these proceedings. See *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#).

There is also no evidence before the Panel that the Respondent has been authorized or licensed by the Complainant to use the Complainant's well-known and widely used INSTA trademark. In fact, in the view of the Panel, the adoption by the Respondent of a domain name confusingly similar to the well-known and widely used Complainant's INSTA trademark would appear not to be by mere chance but by design, inevitably leading to confusion on the part of Internet users and consumers seeking information about the Complainant and its business activities. Moreover, the use of the Complainant's trademarks and trade dress on the Respondent's website is misleading and falsely suggests an affiliation with the Complainant that does not exist.

In fact, in the view of the Panel, the use of the descriptive word “story” adds to the confusion of Internet users seeking information about the Complainant and its business activities since it directly relates to terminology used by the Complainant for its application.

Further, the Panel finds that the Respondent is consequentially trading unfairly on the Complainant’s well-known and widely used INSTA and INSTAGRAM trademarks, and also the valuable goodwill that the Complainant has established in them through the Complainant’s prior commercial use, without any rights or justification for doing so. Accordingly, the Panel finds that the Respondent has not used or undertaken any demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services.

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.

Therefore, for all the above reasons, and those advanced by the Complainant above, the Panel concludes that the Respondent has neither rights nor legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Regarding the bad faith requirement, paragraph 4(b) of the Policy lists four examples of acts, which constitute prima facie evidence of bad faith. However, this list is not exhaustive, but merely illustrative. See *Nova Banka v. Iris*, WIPO Case No. [D2003-0366](#).

Based on the evidence provided on the record, the Panel considers that the Respondent, by registering the disputed domain name confusingly similar to the Complainant’s well-known and widely used INSTA trademark, is trading unfairly on the Complainant’s valuable goodwill established in them.

Previous UDRP panels have taken the view 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”. [WIPO Overview 3.0](#), section 3.1.4.

Also, the effect of such conduct on the part of the Respondent is to mislead Internet users and consumers into thinking that the Respondent is, in some way or another, connected to, sponsored by, or affiliated with the Complainant and its services; or that the Respondent’s activities are approved or endorsed by the Complainant. None of which the Panel can find, on the basis of the evidence provided on the record, is, in fact, the situation. Such misleading consequences, in the view of the Panel, are indicative of bad faith on the part of the Respondent. See *Columbia Insurance Company v. Pampered Gourmet*, WIPO Case No. [D2004-0649](#).

Furthermore, the Panel agrees with the Complainant’s above assertions regarding the misleading, unfair and unauthorized content, style, layout, and use of the of the Respondent’s website, to which the disputed domain name resolves provides further indication of bad faith on the part of the Respondent in the registration and use of the disputed domain name.

In addition, the Respondent has configured the disputed domain name to resolve to web-content that serves popup advertisements when Internet visitors attempt to search for an Instagram profile to view, thereby generating profit for the Respondent.

The failure of the Respondent to answer and comply with the Complainants’ cease and desist letter, as mentioned above, is also indicative of bad faith on the part of the Respondent in these circumstances. See *America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. [D2000-1460](#) and the cases cited therein.

Finally, the failure of the Respondent to answer the Complaint or take any part in the present proceedings, again, in the view of the Panel and under the circumstance of this case, is another indication of bad faith on the part of the Respondent. See *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#).

Therefore, taking all these particular facts and circumstances into account, and for all the above-mentioned reasons, the Panel concludes that the Respondent has registered and is using the disputed domain name 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 <story-insta.com> be transferred to the Complainant.

/Ian Blackshaw /

Ian Blackshaw

Sole Panelist

Date: November 8, 2024