

ADMINISTRATIVE PANEL DECISION

Instagram, LLC v. Sergiy Dotsenko
Case No. D2024-3906

1. The Parties

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

The Respondent is Sergiy Dotsenko, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <insta-stories.site> 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 September 26, 2024. On September 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 30, 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 October 1, 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 October 11, 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 proceeding commenced on October 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 4, 2024. The Respondent sent an email communication to the Center on October 1, 2024. The Center informed the Parties that it would proceed with Panel Appointment on November 5, 2024.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on November 11, 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

A. Complainant

The Complainant is a company founded in the United States in 2010 and the operator of the well-known INSTAGRAM online photo and video sharing social-networking application, with more than 2 billion monthly active accounts worldwide.

In addition to numerous registrations for its INSTAGRAM trade mark, the Complainant is the owner of registrations in jurisdictions worldwide for its trade mark INSTA (the "Trade Mark"), including United States registration No. 5061916, with a registration date of October 18, 2016; and European Union registration No. 014810535, with a registration date of May 23, 2018.

B. Respondent

The Respondent is an individual resident in Ukraine.

C. The Disputed Domain Name

The disputed domain name <insta-stories.site> was registered on September 29, 2023.

D. Use of the Disputed Domain Name

The disputed domain name previously resolved to a website featuring the Complainant's INSTAGRAM trade mark, using a similar pink and orange colour scheme to the corporate livery adopted and used by the Complainant; and offering anonymous viewing and downloading from the Complainant's Instagram app. The disputed domain name displayed the following disclaimer at the bottom: "Insta-Stories.site is not connected with Instagram. We do not host Instagram Stories on our servers, all rights belong to their owners". It also displayed a copyright notice: "© 2023 Insta-Stories.site".

As at the date of this Decision, the disputed domain name is no longer resolved to any active website.

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 Respondent's registration and use of the disputed domain name facilitates breach of the Instagram terms of use by allowing unauthorised viewing and downloading of content from the Instagram app.

B. Respondent

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

In his email to the Center, the Respondent stated as follows:

“Hey, could you elaborate on the situation ?

This is the first time I’m hearing about some complaints. What’s the Complaint ? (feels like a Kafka’s “Process”)

I no longer own the domain as it expired on 30th of sept and i had no intent of using it. Moreover I’ve shut down the domain on my side”.

6. Discussion and Findings

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 Trade Mark 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 trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Trade 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 (here, “stories”) may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

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.

Panels have held that the use of a domain name for illegitimate or illegal activity (here, providing unauthorised anonymous access to the Instagram app, including unauthorised anonymous downloading of content) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Panels have held that the use of a domain name for illegitimate or illegal activity (here, providing unauthorised anonymous access to the Instagram app, including unauthorised anonymous downloading of content) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

The disputed domain name includes a disclaimer and is at the bottom of the website. The Panel finds that the mere existence of a disclaimer cannot cure the Respondent's illegitimate use of the disputed domain name and further affirms the Respondent's prior knowledge of the Complainant. [WIPO Overview 3.0](#), section 3.7.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes 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 name <insta-stories.site> be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Date: November 14, 2024