

## **ADMINISTRATIVE PANEL DECISION**

Instagram, LLC v. Domains By Proxy, LLC / Furkan Baban; Furkan Azs;  
Asker Akbas

Case No. D2022-2377

### **1. The Parties**

The Complainant is Instagram, LLC, United States of America, represented by Tucker Ellis, LLP, United States of America.

The Respondent is Domains By Proxy, LLC, United States of America / Furkan Baban; Furkan Azs; Asker Akbas, Türkiye.

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

The disputed domain names <instagram-verified-badges-support.com>, <Instagram-verified-badge.com>, and <Instagram-verified-badges.com> are registered with Wild West Domains, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2022. On June 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 1, 2022, and on July 8, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 8, 2022, 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 July 12, 2022.

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 July 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 11, 2022.

The Center appointed Taras Kyslyy as the sole panelist in this matter on August 23, 2022. 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 online photo and video-sharing social networking application. Since its launch in 2010, it became a fast growing photo/video sharing and editing software and online social network, with more than 1 billion monthly active accounts worldwide. The Complainant offers Verified Badges on Instagram, a feature that allows users to find public figures, celebrities, and brands more easily on the Instagram platform.

The Complainant owns numerous trademark registrations for INSTAGRAM in many jurisdictions around the world, including, for instance, International trademark registration No. 1129314, registered on March 15, 2012.

The disputed domain name <instagram-verified-badges-support.com> was registered on May 14, 2020, and resolved to a commercial webpage selling hosting services. The disputed domain name <Instagram-verified-badge.com> was registered on May 20, 2020, and did not resolve to any active website. The disputed domain name <Instagram-verified-badges.com> was registered on May 19, 2020, and did not resolve to any active website. At the time of the decision the disputed domain names do not resolve to any active websites.

#### **5. Parties' Contentions**

##### **A. Complainant**

The disputed domain names are identical or confusingly similar to the Complainant's trademark. The disputed domain names plainly misappropriate sufficient textual components from the Complainant's trademark, such that an ordinary Internet user who is familiar with the Complainant's trademark would, upon seeing the disputed domain names, think an affiliation exists between the disputed domain names and the Complainant and/or its trademark. The Respondent has added the descriptive terms "verified" and "badge" or "badges" to the Complainant's trademark, with one of the disputed domain names further including the term "support", to form the disputed domain names. Accordingly, the disputed domain names incorporate the Complainant's entire trademark, and the descriptive word "support" does not remove the confusing similarity between the disputed domain names and the Complainant's trademark, especially as the word is descriptive of and relevant to Complainant's services. Accordingly, the disputed domain names are not sufficiently distinguishable from the Complainant's trademark. Two of the disputed domain names feature the Complainant's entire trademark and merely replace the letter "i" in the mark with the lowercase letter "l", which closely resembles the letter "l". The disputed domain names contain hyphens, which does not change that the disputed domain names are confusingly similar to the Complainant's trademark. The addition of a generic Top-Level Domain ("gTLD") has no distinguishing value.

The Respondent has no rights or legitimate interests in the disputed domain names. The Complainant has neither licensed nor authorized the Respondent to use the Complainant's trademark, nor does the Respondent have any legal relationship with the Complainant that would entitle the Respondent to use the Complainant's trademark. Further, neither the Whois data for the disputed domain names nor the resolving websites available at the disputed domain names support that the Respondent is known by any of the disputed domain names. The disputed domain names are either used to redirect to a commercial site or are listed on one or more blacklists indicating that they have been used in connection with spam, malware, or other domain name abuse, and all have been flagged by several security vendors as malicious. The Respondent's use of <instagram-verified-badges-support.com> to resolve to a commercial website selling hosting services is not a *bona fide* offering of goods or services because the Respondent plainly seeks to

benefit from the goodwill of the Complainant's trademark. There is no evidence of the Respondent's use of, or demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services. The Complainant's brand guidelines, expressly prohibit the use of the Complainant's trademark in this manner.

The disputed domain names were registered and are being used in bad faith. Registration and use of the disputed domain name <instagram-verified-badges-support.com> to resolve to an unrelated commercial website indicates bad faith. The Respondent's bad faith is further indicated by the fact that the disputed domain names <Instagram-verified-badge.com> and <Instagram-verified-badges.com> are listed on one or more blacklists indicating use in connection with spam, malware, or other domain name abuse, and all of the domain names have been flagged by several security vendors as malicious. The Respondent has registered the disputed domain names that are confusingly similar to the Complainant's trademark. The Respondent registered the disputed domain names in May 2020, which postdates the registration and use of the Complainant's trademark by many years. Because the Complainant's trademark is so obviously connected with the Complainant and its well-publicized mobile application, and the disputed domain names clearly reference the Complainant's trademark, the registration and use of the disputed domain names by the Respondent, who has no connection with the Complainant, supports a finding of bad faith. The Respondent's bad faith is further indicated by the fact that the disputed domain names were registered using false contact information. Given the fame of the Complainant's trademark, and the Respondent's unauthorized incorporation of the Complainant's trademark into the disputed domain names, there are no circumstances under which the Respondent's use of the disputed domain names could plausibly be in good faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Preliminary Issues – Consolidation**

The Complainant requested the Panel to hear the present dispute brought against three Respondents as a consolidated Complaint.

Paragraph 10(e) of the Rules states that a “[p]anel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules”. Paragraph 10(c) of the Rules provides, in relevant part, that “the [p]anel shall ensure that the administrative proceeding takes place with due expedition”.

Section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) summarizes the consensus view of UDRP panels on the consolidation of multiple respondents, in part, as follows: “Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario.”

The Complainant asserts, among other things, that the Respondents should be treated as one respondent in this proceeding, as the disputed domain names are under common control, since (i) all of the disputed domain names target the Complainant's trademark, either using it in its entirety or the common misspelling “Instagram”, (ii) all of the disputed domain names add the terms “verified” and “badge” or “badges” with one or more hyphens, (iii) all of disputed the domain names were registered with the same Registrar, (iv) two of the disputed domain names use the same privacy service, Domains By Proxy, LLC, (v) the disputed domain names share identical registration information, including the name “Furkan” in the registrant name (<Instagram-verified-badge.com> and <Instagram-verified-badges.com>), the registrant street

(<instagram-verified-badges-support.com> and <Instagram-verified-badge.com>), the registrant phone number (<Instagram-verified-badges-support.com and Instagram-verified-badge.com), the registrant email (<instagram-verified-badges-support.com> and <Instagram-verifiedbadges.com>), (vi) the disputed domain names use the name servers azure-dns.com, azure-dns.net, azure-dns.org, and azure-dns.info (<Instagram-verified-badge.com> and <Instagram-verified-badges.com>), (vii) at least some of the listed registrant information for each disputed domain name appears to be false. The Complainant also asserts that requiring to file separate complaints would cause the Complainant to incur considerable additional time and expense. Additionally, the Complainant's arguments concerning the disputed domain names are essentially the same and they can be conveniently and efficiently dealt with together.

The Panel accepts these arguments in favor of consolidation and grants the request to consolidate the Respondents into one proceeding. Hereafter, the Panel will refer to the Respondents as "the "Respondent".

## **B. Identical or Confusingly Similar**

According to section 1.11.1 of the [WIPO Overview 3.0](#) the applicable gTLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards gTLD ".com" for the purposes of the confusing similarity test.

According to section 1.7 of the [WIPO Overview 3.0](#) 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. The Panel finds that the disputed domain name <instagram-verified-badges-support.com> incorporates the entirety of the Complainant's trademark.

According to section 1.9 of the [WIPO Overview 3.0](#) a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. The Panel considers the disputed domain names <Instagram-verified-badge.com> and <Instagram-verified-badges.com> consisting of intentional misspelling of the Complainant's trademark using "l" instead of "I".

According to section 1.8 of the [WIPO Overview 3.0](#) 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. The Panel finds that the addition of descriptive words "verified", "badges" and hyphens to all of the disputed domain names, as well as the addition of word "support" to the disputed domain name <instagram-verified-badges-support.com> would not prevent finding the confusing similarity with the Complainant's trademark.

Considering the above the Panel finds the disputed domain names are confusingly similar to the Complainant's trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

## **C. Rights or Legitimate Interests**

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain names.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain names.

The available evidence show that the Respondent is not commonly known by the disputed domain names, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain names could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

The Respondent has no right or legitimate interests in the disputed domain names resolving to inactive websites (see, e.g., *Philip Morris USA Inc. v. Daniele Tornatore*, WIPO Case No. [D2016-1302](#)).

According to section 2.13.1 of the [WIPO Overview 3.0](#), UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. According to section 2.13.2 of the [WIPO Overview 3.0](#), panels are generally not prepared however to accept merely conclusory or wholly unsupported allegations of illegal activity, including counterfeiting, even when a respondent is in default. On the other hand, UDRP panels have found that circumstantial evidence can support a complainant's otherwise credible claim of illegal respondent activity. In the present case, the Panel finds that defining the disputed domain names as malicious by independent blacklisting services prove these were used for illegal activity and thus cannot confer rights or legitimate interests on the Respondent.

Noting the high risk of implied affiliation between the disputed domain names and the confusingly similar well-known trademark of the Complainant, the Panel finds that there is no plausible fair use to which the disputed domain names could be put that would not have the effect of being somehow connected to the Complainant (see, e.g., *Instagram, LLC v. Super Privacy Service LTD c/o Dynadot / Zayed*, WIPO Case No. [D2019-2897](#)).

Considering the above the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain names. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

#### **D. Registered and Used in Bad Faith**

According to section 3.1.4 of the [WIPO Overview 3.0](#) the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is convinced that the Complainant's trademark is well established through long and widespread use and the Complainant has acquired a significant reputation and level of goodwill in its trademark both in the United States of America and internationally. Thus, the Panel finds that the disputed domain names confusingly similar to the Complainant's trademark were registered in bad faith.

According to section 3.4 of the [WIPO Overview 3.0](#) Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. The disputed domain names are listed on one or more blacklists indicating that it had previously been used in connection with spam, malware, or other domain name abuse activities, which confirms the bad faith use (see e.g., *Instagram, LLC v. yusuf polat, schowix*, WIPO Case No. [D2021-2791](#))

Considering the above the Panel finds the disputed domain names were registered and are being used in bad faith. Therefore, the Complainant has established its case under paragraph 4(a)(iii) 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 names, <instagram-verified-badges-support.com>, <Instagram-verified-badge.com>, and <Instagram-verified-badges.com> be transferred to the Complainant.

*/Taras Kyslyy/*

**Taras Kyslyy**

Sole Panelist

Date: August 25, 2022