

## **ADMINISTRATIVE PANEL DECISION**

Instagram, LLC v. Sebastian Farias, and Stories IG Team  
Case No. D2023-2032

### **1. The Parties**

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

The respondents are Sebastian Farias, Chile, and Stories IG Team, Latvia. (For reasons set out below at paragraph 6.1 the respondents are referred to together herein as the "Respondent".)

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

The disputed domain names <instadp.net>, <instastories.net>, and <storiesig.net> are registered with Name.com, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 5, 2023. On May 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 9, 2023, 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 (Whois Agent) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 11, 2023, 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 May 15, 2023.

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 May 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 20, 2023.

The Center appointed Aaron Newell as the sole panelist in this matter on June 23, 2023. 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 operates the widely-used Instagram social networking platform and downloadable software application whereby users can upload, publish and share images and videos, and communicate with one another.

The Complainant provides evidence that its INSTAGRAM name is sometimes shortened by users to “INSTA” and “IG”. The Complainant owns registered trade mark rights in each of the three noted name, such as United States trade mark registration no. 5061916, INSTA, registered on October 18, 2016, European Union trade mark registration no. 017946393, IG, registered on January 31, 2019, and European Union trade mark registration no. 014493886, INSTAGRAM, registered on December 24, 2015.

The disputed domain names were registered on the following dates:

- <instadp.net>, August 17, 2017;
- <instastories.net>, August 16, 2018; and
- <storiesig.net>, September 30, 2019.

The Complainant provides evidence that the disputed domain names are all used in connection with an online platform whereby users can bypass certain controls that the Complainant places on its own platform and software. In turn, the online platform enables its users to download content hosted by the Complainant that would not otherwise be downloadable, and that is intended by both the Complainant and its users to be unavailable for download.

The Complainant also provides evidence demonstrating that, at certain times, material that resembles third party advertising has also been published at one or more of the disputed domain names.

The Panel notes that the Respondent did not respond to the Complaint or otherwise engage in the proceedings.

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

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

The Complainant asserts that:

- (i) it is a well-known provider of downloadable application software and an online platform enabling users to publish and share images and videos;
- (ii) it provides these services under the name INSTAGRAM, and that the INSTAGRAM downloadable software application is one of the most downloaded software applications in the world;
- (iii) for over a decade it has received significant media coverage around the world and various awards, including recognition in Interbrand's “Best Global Brands” publication for 2022;
- (iv) it owns registered trade mark rights in trade marks that are confusingly similar to the disputed domain names, being INSTAGRAM, INSTA, and IG (which it asserts is a commonly-used abbreviation of “Instagram”);

- (v) at the disputed domain names, the Respondent enables users to bypass the Complainant's privacy controls and download user content hosted by the Complainant but not intended to be available for download. This includes the ability to download "Instagram Stories" which are published by users in the expectation that they will only be available for viewing for a short period of time, and not available for permanent download by third parties, especially third parties who do not have Instagram accounts and are therefore not bound by Instagram's Terms and Conditions. The Complainant asserts that in this way the Respondent compromises the privacy of the Complainant's users. The Complainant provides compelling supporting evidence that the disputed domain names were so used, including screenshots;
- (vi) the Respondent does not have any trade mark rights in the names "instadp", "instastories" and/or "storiesig", is not using the disputed domain names in connection with any *bona fide* offering of goods or services, is not commonly known by the disputed domain names, and is not making a legitimate noncommercial or fair use of the disputed domain names;
- (vii) the Respondent is using the domain names in a confusing way in order to attract Internet users who might believe that the disputed domain names are associated with the Complainant, and is doing so while circumventing the Complainant's Terms of Use and policies, and for commercial gain.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Preliminary Issue – Nominally Different Respondents**

Nominally there are two respondents in this case: Sebastian Farias, and Stories IG Team. The former was revealed to be the registrant of <instadp.net>, and <instastories.net>, the latter of <storiesig.net>. The Complainant asks that the Complaint proceed as a single Complaint against both nominal respondents. Its request is based on the assertion that Mr Farias and Stories IG Team are the same or connected, that the domain names are under common control and that to require separate proceedings for each party would be inefficient.

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". There is no requirement to consolidate. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2 sets out that when there are multiple named respondents in a given case, a panel may consolidate and render a single decision after considering 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." The same section of the [WIPO Overview 3.0](#) also states that "[p]rocedural efficiency would also underpin panel consideration of such a consolidation scenario".

The Complainant provides the following evidence and makes the following assertions in support of its request for consolidation:

- (i) all three disputed domain names are pointing to similar websites offering an "Instagram downloader";
- (ii) all three disputed domain names are registered with the same Registrar;
- (iii) all three disputed domain names are under privacy protection with Domain Protection Services, Inc;

- (iv) all three disputed domain names use Cloudflare domain name servers;
- (v) all three disputed domain names resolve to websites featuring an identical disclaimer that “[Website name] is not affiliated with Instagram™. We do not host any Instagram content. All rights belong to their respective owners”.
- (vi) the disputed domain name <storiesig.net> resolves to a website which contains, at the bottom of the homepage, hyperlinks to the websites of each of the disputed domain names; and
- (vii) all three disputed domain names were registered under the generic Top-Level Domain (“gTLD”) “net”.

In the Panel’s view, the Complainant’s evidence indicates that it is likely that the three disputed domain names are connected and part of a single operation or enterprise, and under common control.

Further, the Panel notes that neither of the named respondents disputed the Complainant’s assertions in this regard.

Accordingly, the Panel determines that Sebastian Farias and Stories IG Team are likely to be connected, that the concerned domain names and websites are under common control, and that it is fair, equitable and efficient for all parties for the Complaint to proceed against all three disputed domain names in a single proceeding. The Panel will use the term Respondent to refer to Mr Farias and Stories IG Team together.

## **6.2 Substantive Assessment**

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain names are identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and used in bad faith.

The Respondent’s failure to file a Response does not automatically result in a decision in favor of the Complainant (see, e.g., *Airbus SAS, Airbus Operations GmbH v. Alesini Pablo Hernan / PrivacyProtect.org*, WIPO Case No. [D2013-2059](#)). However, the Panel may draw appropriate inferences from the Respondent’s lack of a Response.

The Panel finds as follows:

### **A. Identical or Confusingly Similar**

The disputed domain names are <instadp.net>, <instastories.net> and <storiesig.net>.

The Complainant has provided evidence that it owns registered trade mark rights in INSTAGRAM, INSTA and IG.

INSTA is entirely incorporated in <instadp.net> and <instastories.net>.

IG is entirely incorporated in <storiesig.net>.

In respect of each of the disputed domain names, the Respondent clearly intends for the domain name to refer to the Complainant. The Respondent’s intentions are for the disputed domain names to call the Complainant to mind.

When the registered trade marks of the complainant are entirely incorporated in the disputed domain names, panels normally determine that the disputed domain names are confusingly similar to the registered trade marks. See [WIPO Overview 3.0](#) section 1.7: “While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.”

Here, the inclusion of the word “stories” or the letters “dp” do not offset the confusing similarity with the Complainant’s trade marks.

In the circumstances, the Panel finds that the Complainant has satisfied the first criteria.

## **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 the disputed domain names. While the overall burden of proof in UDRP proceedings is on the complainant, previous UDRP 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. See [WIPO Overview 3.0](#), section 2.1.

By way of its contentions outlined at 5 A (v) through (vii) above, the Complainant has shifted the burden to the Respondent to positively demonstrate rights or a legitimate interest in the disputed domain names.

The Respondent has failed to respond, has not rebutted the Complainant’s contentions and has therefore failed to discharge this burden.

The Panel finds that the Complainant has satisfied the second requirement.

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

The Complainant has provided evidence of the Respondent’s use of the disputed domain names to attract users to websites where the Respondent provides access to content from the Complainant’s Instagram service. This content would not otherwise be accessible without an Instagram account.

The Complainant’s business is in part dependent on its services being used by registered account-holders. Accordingly, in bypassing the Complainant’s controls and making Instagram content available to users without accounts, the Respondent is compromising the Complainant’s business.

Further, the access provided by the Respondent includes the ability to download from the Complainant content that is not intended to be available for download. This is another way in which the Respondent compromises the Complainant’s business, as well as the privacy of its users.

The Respondent is carrying out this conduct in a way that could confuse Internet users, as the disputed domain names refer directly to the Complainant and incorporate the Complainant’s registered trade mark rights, along with other indicia of the Complainant’s business (*i.e.* the term “stories” to refer to specific types of content published by the Complainant and its users).

Further, the Respondent is simultaneously using the disputed domain names to generate advertising revenue. Again, this was not disputed by the Respondent, who did not engage in the proceedings.

Policy paragraph 4(b) sets out that:

“For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

In the absence of any explanation, argument or evidence from the Respondent, the Panel takes the view that the Respondent’s conduct can be described by both of 4(b)(iii) and 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the Complainant has satisfied the third requirement.

## **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, <instadp.net>, <instastories.net>, and <storiesig.net>, be transferred to the Complainant.

*/Aaron Newell/*

**Aaron Newell**

Sole Panelist

Date: July 7, 2023