

ADMINISTRATIVE PANEL DECISION

Meta Platforms, Inc., Instagram, LLC v. Ali Burak Yay, facebookhesap.com,
Ali Burak Yay, Ali Burak Yay, Bm bilisim
Case No. D2023-2082

1. The Parties

The Complainants are Meta Platforms, Inc., (the “First Complainant”), and Instagram, LLC (the “Second Complainant”), United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

The Respondents are Ali Burak Yay, facebookhesap.com, Türkiye, Ali Burak Yay, Türkiye, and Ali Burak Yay, Bm bilisim, Türkiye, self-represented.

2. The Domain Names and Registrars

The disputed domain names <facebookhesap.com> and <instagramhesap.com> are registered with Google LLC.

The disputed domain name <instatakip.com> is registered is registered with TurnCommerce, Inc. DBA NameBright.com (the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 10, 2023. On May 11, 2023, the Center transmitted by email to the Registrars requests for registrar verification in connection with the disputed domain names. On May 11, and May 15, 2023, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (Contact Privacy Inc. Customer 7151571251 and NameBrightPrivacy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 16, 2023, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint or to file a separate complaint for each of the disputed domain names. The Complainant filed amended Complaint on May 17, 2023.

On May 16, 2023, the Center informed the parties in Turkish and English, that the language of the registration agreement the disputed domain name <instatakip.com> is English, and the language of the registration agreements for the disputed domain names <facebookhesap.com> and <instagramhesap.com>

is Turkish. On May 17, 2023, the Complainant requested English to be the language of the proceeding. The Respondents did not submit any comment on the Complainant's submission.

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 Respondents of the Complaint both in English and in Turkish languages, and the proceedings commenced on May 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 12, 2023. The Response was filed with the Center on May 22, 2023. The Center notified the Parties of the commencement of panel appointment process on June 19, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on June 22, 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 First Complainant is a leading social media technology company. Among others, the First Complainant operates the internationally well-known online platforms and networks of Facebook, Instagram, WhatsApp, and Meta Quest.

The First Complainant is the owner of the famous trademark FACEBOOK, which is registered and used around the world. Among others, the First Complainant is the owner of the United States Trademark Registration No. 3041791 (registered on January 10, 2006), and the International Trademark Registration No. 1075094 (registered on July 16, 2010), designating Türkiye, where the Respondents are reportedly located (Annex 14 to the Complaint).

The First Complainant further owns various domain names, which comprise its FACEBOOK trademark, such as <facebook.com> (Annex 7 to the Complaint).

The Second Complainant was acquired by the First Complainant in 2012 (Annex 2 to the Complaint) and provides online photo and video sharing services. Since 2010, these services are provided through its internationally known and popular online platform, which primarily consists of a mobile application and a website available at <instagram.com> (Annex 9 to the Complaint).

The Second Complainant is the owner of the famous trademarks INSTAGRAM and INSTA, which are registered in a large number of jurisdictions. For instance, the Second Complainant owns the INSTAGRAM trademark, which is registered as United States Trademark Registration No. 4146057, registered on May 22, 2012, and the Turkish Trademark Registration No. 2012 85440, registered on April 28, 2015. In addition, the Second Complainant owns the INSTA trademark, which is registered as United States Trademark Registration No. 5061916, registered on October 18, 2016, and the Turkish Trademark Registration No. 2015 95210, registered on June 27, 2016 (Annex 14 to the Complaint).

The Respondents are reportedly located in Türkiye.

The registration dates of the disputed domain names are as follows:

| | |
|----------------------|-------------------|
| <facebookhesap.com> | March 28, 2021 |
| <instagramhesap.com> | December 18, 2021 |
| <instatakip.com> | July 4, 2016 |

The screenshots, as provided by the Complainants, show that the disputed domain names resolve to websites mainly offering for sale accounts for the Complainant's social media platforms as well as "followers" and "likes" by prominently using the Complainant's FACEBOOK, INSTAGRAM and INSTA word marks (Annex 15 to the Complaint).

On March 13, 2023, the Complainants sent a cease-and-desist letter to the Respondents and tried to solve the dispute amicably by requesting a transfer of the disputed domain names (Annex 17 to the Complaint). The Respondents did not reply.

5. Parties' Contentions

A. Complainant

The Complainants request the transfer of the disputed domain names.

The Complainants first ask for consolidation of the Complainants and the Respondents.

In addition, the Complainants are of the opinion that the disputed domain names are confusingly similar to their FACEBOOK, INSTAGRAM and INSTA trademarks.

Furthermore, the Complainants argue that the Respondents have no rights or legitimate interests in respect of the disputed domain names.

Finally, it is argued that the Respondents have registered and are using the disputed domain names in bad faith.

B. Respondent

The Respondents filed two Responses in English language on May 22, 2023, and June 12, 2023, mainly arguing that they do not infringe the Complainants' trademarks and asserting that the Complainants have not suffered any material or moral damages by the disputed domain names and offering to transfer the disputed domain names.

6. Discussion and Findings

6.1. Procedural Issues

A. Language of the Proceeding

The Panel determines in accordance with the Complainants' request and the Rules, paragraph 11(a), that the language of this administrative proceeding shall be English.

Although the language of the registration agreement of the disputed domain names <facebookhesap.com> and <instagramhesap.com> is Turkish (with the disputed domain name <instatakip.com> having an English registration agreement), the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceedings in Turkish and request a Turkish translation of the Complaint while the Respondents have failed to raise any objection or even to respond to the Center's communication about the language of the proceedings, even though communicated in Turkish and in English.

The Panel particularly notes that the Respondents were given the opportunity to respond in Turkish and that this opportunity remained unused by the Respondents. Instead, the Respondents filed their Responses on May 22, and June 12, 2023 in English language.

Hence, the Panel concludes that the Respondents can read, write, and understand English.

Consequently, the Panel is convinced that the Respondents will not be prejudiced by a decision being rendered in English.

B. Consolidation of Multiple Complainants

The Complainants have requested consolidation of the Complainants on the basis that the Second Complainant is a wholly owned subsidiary of the First Complainant and they have a common grievance against the Respondents.

The Panel agrees with the Complainants' request and considers that it is fair and equitable in the circumstances of the case to order the consolidation as requested (see section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

Consequently, the Panel accepts the consolidation of both Complainants in this administrative proceeding and, for the ease of reference, will jointly refer to them as "the Complainant" in the following, whenever appropriate.

C. Consolidation of Multiple Respondents

UDRP panels generally apply the principles for consolidation as set out at section 4.11.2 of the [WIPO Overview 3.0](#).

Section 4.11.2 of the [WIPO Overview 3.0](#) states the following: "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."

In this regard, previous UDRP panels particularly considered the following aspects in determining whether a consolidation is appropriate: similarities in or relevant aspects of (i) the registrants' contact information (ii) the content or layout of websites corresponding to the disputed domain names, (iii) whether the registrants are targeting a specific sector, and (iv) the relevant language/scripts of the disputed domain names.

In light of the criteria set out above, there are in view of the Panel strong indications that all disputed domain names are under common control.

The Panel finds that the Complainant has provided sufficient evidence that all disputed domain names (1) are registered to Ali Burak Yay, who is reportedly based in Ankara, Türkiye, using the same telephone number, (2) were registered using the same physical address in Türkiye, and (3) are resolving to websites similar in their content and referring with respective links to each other (Annex 15 to the Complaint).

The Panel concludes that the Respondents must be one and the same person, or at least act collaboratively and, hence, accepts that all disputed domain names are under common control. Consequently, the Panel finds that in the present case a consolidation of multiple respondents is procedurally efficient, fair, and reasonable to the Parties.

The Panel therefore, for the purpose of this decision, accepts the case to be dealt with in a consolidated Complaint and will refer, whenever appropriate, to "the Respondent" in the following.

6.2. Substantive Issues

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

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain names are identical or confusingly similar to the trademarks 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 are being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not formally replied to the Complaint. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the [WIPO Overview 3.0](#).

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having trademark rights in FACEBOOK, INSTAGRAM and INSTA (Annex 14 to the Complaint).

The Panel further finds that the disputed domain names are confusingly similar to the Complainant's registered trademarks, as each of them fully incorporate one of the Complainant's trademarks.

As stated at 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 would generally not prevent a finding of confusing similarity. The addition of the term "hesap" (which is Turkish and means "account" in the English language) or the term "takip" (which is also Turkish and means "follow" in English) does not, in view of the Panel, serve to prevent a finding of confusing similarity between the disputed domain names and the Complainant's trademarks.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production of evidence shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain names to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license to use the Complainant's FACEBOOK, INSTAGRAM and/or INSTA trademarks within the disputed domain names.

In its Response, the Respondent failed to demonstrate any of the non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or provide any other evidence of a right or legitimate interest in the disputed domain names. The allegations made by the Respondent that the Complainant's trademarks have not been used in a commercial way and were not infringed are in view of the Panel obviously unfounded (Annex 15 to the Complaint). Rather, the Panel is convinced that the

Respondent deliberately has chosen the disputed domain names to cause confusion with the Complainant, its trademarks and its social media services.

In addition, the Panel notes that the nature of the disputed domain names carries a risk of implied affiliation or association with the Complainant because the allegedly offered services by the Respondent are directly linked to the Complainant's social media platforms (see section 2.5.1 of the [WIPO Overview 3.0](#)).

The Panel also does not see any indication for assessing a *bona fide* offering of goods or services by the Respondent.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In the Panel's view, the Respondent has registered and is using the disputed domain names in bad faith.

The Panel is convinced that the Respondent must have had the Complainant's trademarks in mind when registering the disputed domain names. The Panel believes that the Respondent deliberately attempted to create a likelihood of confusion among Internet users and/or to freeride on the goodwill of the Complainant's FACEBOOK, INSTAGRAM and INSTA trademarks, apparently for commercial gain and/or to disrupt the Complainant's business.

After having reviewed the Complainant's screenshots of the websites linked to the disputed domain names, which are allegedly offering the sale of accounts, followers and likes for the Complainant's social media platforms (Annex 15 to the Complaint), the Panel finds that such use of the disputed domain names falls into paragraphs 4(b)(iii) and 4(b)(iv) of the Policy.

Lastly, at the time of the Decision, the Panel notes that the disputed domain name <facebookhesap.com> currently redirects to another domain name <businesshesap.com> with the references the Complainant's FACEBOOK trademark having been removed from the content whereas the other two disputed domain names are inactive. This further implies the bad faith of the Respondent.

The Panel therefore concludes that the disputed domain names were all registered and are being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, 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, <facebookhesap.com>, <instagramhesap.com> and <instatakip.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: July 6, 2023