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Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1706647013687368X
Purchased by	: BHARAT S KUMAR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: BHARAT S KUMAR
Second Party	: Not Applicable
Stamp Duty Paid By	: BHARAT S KUMAR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE BHARAT S KUMAR, SOLE ARBITRATOR

INDRP Case No. 1897

DISPUTED DOMAIN NAME: < INSTAGRAMPRO.NET.IN >

ARBITRATION AWARD



Disclaimer: None

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BEFORE BHARAT S KUMAR, SOLE ARBITRATOR
 .IN REGISTRY
 NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)
 INDRP ARBITRATION
 INDRP Case No. 1897
 DISPUTED DOMAIN NAME: < INSTAGRAMPRO.NET.IN >
 ARBITRATION AWARD DATED MARCH 10, 2025

IN THE MATTER OF:

INSTAGRAM, LLC

1601 Willow Road
 Menlo Park, California 94025
 United States of America

Complainant

VERSUS

GB APPS

Apps.Pk

District DG Khan
 Tehsil Taunsa Sharif
 Taunsa Sharif,
 Punjab 32100
 Pakistan

Respondent

1. The Parties in the proceeding:

The Complainant in this administrative proceeding is Instagram, LLC, an American company with its principal place of business at 1601 Willow Road, Menlo Park, California, 94025, United States of America (United States).

A handwritten signature in blue ink is written over a circular blue stamp. The stamp contains the text "Arbitrator" at the top and bottom, and "Bharat S Kumar" in the center.

The complainant has authorized Mr. David Taylor /Ms. Jane Seager from Hogan Lovells (Paris) LLP, 17 Avenue Matignon, 75008 Paris, France as its authorized representative in the present proceedings. In support of the same, the complainant has placed a Power of Attorney dated April 18th, 2024 from Mr. Scott Minden, Director and Associate General Counsel of the complainant. No resolution affirming the authority of Mr. Minden has been placed on record. A copy of the Power of Attorney has been filed with this present complaint as **Annexure 2**.

The Respondent in the present proceedings is **GB APPS**, having its address at District DG Khan, Tehsil Taunsa Sharif, Punjab, Pakistan – 32100. The complainant has also filed the publicly-available WHOIS record, dated July 31st, 2024, for the domain name <instagrampro.net.in>, as **Annexure 3**.

2. **Domain Name and Registrar:-**

The disputed domain name is <instagrampro.net.in>. The domain name was registered on August 14th, 2023. The registrar with which the domain name is registered is Dynadot LLC: P.O. Box 345, San Mateo CA 94401, United States Telephone: +16502620100. The email address of the registrar is, info@dynadot.com.

3. **Procedural History:**

3.1 This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy") adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules"). The arbitration proceeding is approved in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with a NIXI accredited Registrar, the respondent agreed to the resolution of disputes pursuant to the said Policy and the Rules.



- 3.2 The complaint was filed by the complainant with NIXI against the respondent. On 08.01.2025, to ensure compliance, I had submitted statement of acceptance and declaration of impartiality and independence as required by the Arbitrator's Empanelment Rules (Rule 5). On 13.01.2025, I was appointed as the sole arbitrator to decide the disputes between the parties. NIXI notified both the parties of my appointment as arbitrator *via* email dated 13.01.2025. NIXI had also served by email an electronic copy of the complainant with annexures, on the respondent at the email addresses of the respondent, gbapps.pk@gmail.com , whilst appointing me as an arbitrator.
- 3.3 On 14.01.2025, I had issued notice to the respondent and directed the complainant to serve the complete paperbook on the respondent, i.e. the amended complaint which was filed by the complainant and the complete annexures (annexures 1 to 16). The service was done by the complainant's counsel, Ms. Jane Seager, through email on 14.01.2025, on the email address present through a WHOIS lookup, i.e support@mvinstapro.org and gbapps.pk@gmail.com. Ms. Seager had also shared the email confirmation of the service on the respondent with me on 14.01.2025. It may be noted that I had on 14.01.2024 also granted the respondent a time period of 15 days, to file a response to the complaint, from my email and the delivery of service of the complete paperbook.
- 3.4 That pursuant to no response from the respondent for 15 days after service of the complaint and the documents(annexures), I had on 30.01.2025 sent an email to the respondent apprising it of its rights to file a defence (response) being closed. That in the same email, I had also asked the complainant's counsel whether they wish to seek any personal hearing, to which they declined the same and requested that the complaint further proceed on merits.

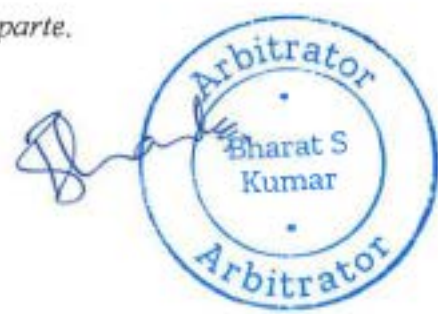


3.5 That, all the communications to the complainant, respondent and NIXI by this tribunal have been through email. None of the emails sent on gbapps.pk@gmail.com have bounced or returned. However, emails sent by me on the other email of the respondent, support@myinstapro.org, had bounced as "address not found". I therefore hold that the service is complete as per the INDRP rules as all correspondences effectively took place on gbapps.pk@gmail.com.

Respondent being proceeded ex-parte:

3.6 I wish to highlight Clause 13(b) of the INDRP Rules of procedure requires that the arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case. Clause 17 of the INDRP Rules of procedure grant the power to an arbitrator to proceed *ex-parte*, in the event any party breaches the provisions of INDRP rules and/or directions of the arbitrator.

3.7 The respondent has been given a fair opportunity to represent itself, respond to the complainant's assertions & contentions and counter the same, if it so wishes to. However, there has been no response by the respondent, despite effective service. It is noteworthy that Clause 18 of the INDRP Rules of procedure mandate that an arbitrator shall decide a complaint on the basis of the pleadings submitted and in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules, Dispute Resolution Policy, the Rules of Procedure and any by-laws, and guidelines and any law that the arbitrator deems to be applicable, as amended from time to time. In these circumstances this tribunal proceeds to decide the complaint on merit in accordance with said act, policy and rules on respondent's failure to submit a response, despite having been given sufficient opportunity and time to do so and represent itself. As a result of the aforementioned, the respondent is proceeded *ex-parte*.

A blue circular stamp with the text "Arbitrator" at the top and "Arbitrator" at the bottom. In the center, the name "Bharat S Kumar" is printed. A handwritten signature in blue ink is written over the stamp.

4. **Legitimate rights under which a complainant can approach NIXI:**

4.1 The complainant has invoked Clause 4 of the INDRP policy to initiate the arbitration proceeding. Clause 4 reads as under:

4. Any Person who considers that a registered domain name conflicts with his/her legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (a) the Registrant's domain name is identical and/or confusingly similar to a Name, Trademark or Service Mark etc. in which the Complainant has rights; and*
- (b) the Registrant has no rights or legitimate interests in respect of the domain name; and*
- (c) the Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose.*

The complainant therefore has to satisfy this arbitral tribunal on all the three aforementioned clauses/conditions, i.e 4 (a), (b) and (c).

5. **Case of the complainant**

5.1 The complainant avers that it is a world-renowned leading online photo and video sharing social-networking application. Since its launch in 2010, Instagram rapidly acquired and developed considerable goodwill and reputation worldwide. It is further stated that, acquired by Facebook, Inc. (now Meta Platforms, Inc.) in 2012, today Instagram is the world's fastest growing photo and video sharing and editing software and online social network, with more than 2.4 billion monthly active accounts worldwide. It is further averred that Instagram has consistently ranked amongst the top applications ("apps") for mobile devices, including for iOS and Android.



operating systems. That, Instagram is currently the most downloaded application worldwide, according to The Financial Times. In support of its contentions, the complainant has attached a screen capture of the homepage of the complainant's website at <https://instagram.com>, as **Annexure 4**. Further, the complainant has also attached copies of Instagram's company information, including its Wikipedia entry, articles about Meta's acquisition of Instagram in 2012 and mobile application rankings, and Interbrand's Best Global Brands 2023, as **Annexure 5**.

5.2 The complainant further avers that Instagram's exponential growth and popularity, including in Pakistan, has been widely reported by specialized technology publications including Tech Crunch as well as major international publications such as The New York Times, The Washington Post (United States) and Datareportal. See, for instance, "Instagram Quickly Passes 1 Million Users", The New York Times (21 December 2010) and "DIGITAL 2023: PAKISTAN", Datareportal (13 February 2023). In support of the same, the complainant has also filed copies of sample press articles about Instagram's launch and rapid growth and international popularity, including in Pakistan, as **Annexure 6**.

5.3 The complainant also avers that reflecting its global reach, it is also the owner of numerous domain names comprising the INSTAGRAM trade mark under generic Top-Level Domains (TLDs), for instance, <instagram.com> and <instagram.net>, as well as under various country code Top-Level Domains, such as <instagram.in> and <instagram.org.in> (India), <instagram.us> (United States), <instagram.co.at> (Austria), <instagram.com.br> and <instagram.net.br> (Brazil), <instagram.org.cn> (China), <instagram.dk> (Denmark), <instagram.ec> (Ecuador), <instagram.ht> (Haiti), <instagram.de> (Germany), <instagram.org.il> (Israel), <instagram.jo> (Jordan), <instagram.mk> (North Macedonia), <instagram.pk> (Pakistan), <instagram.net.ru> (Russian Federation),



<instagram.lk> (Sri Lanka), <instagram.ch> (Switzerland), <instagram.ae> (United Arab Emirates) and <instagram.com.vn> (Viet Nam). In support of the same, the complainant has also filed copies of the WHOIS records for a selection of the its domain names as **Annexure 7**.

5.4 In support of its endeavours to affirm a strong presence online, the Complainant avers that it has also made substantial investments by being active on various social-media platforms, including Facebook, Twitter and LinkedIn. It further avers that, these pages are available at the following URLs:

<https://instagram.com/instagram>

<https://facebook.com/instagram>

<https://twitter.com/instagram>

<http://linkedin.com/company/instagram>



In support of the same, the complainant has also filed screen captures of its social-media pages as **Annexure 8**.

The complainant's statutory claims pertaining to trademark "Instagram":

5.5 The Complainant claims that it has secured ownership of numerous trade mark registrations for INSTAGRAM, as well as figurative trade mark registrations for its celebrated Instagram logo,  in various jurisdictions, including the following:

- International Registration No. 1129314, INSTAGRAM, registered on 15 March 2012;
- United States Trademark Registration No. 4,146,057, INSTAGRAM, registered on 22 May 2012;
- Indian Trade Mark No. 3042394, INSTAGRAM, registered on 27 August 2015;
- European Union Trade Mark No. 14493886, INSTAGRAM, registered on 24 December 2015;
- Pakistani Trade Mark No. 398679, INSTAGRAM, registered on 1 May 2017;



- European Union Trade Mark No. 015442502, , registered on 21 September 2016;
- United States Trademark Registration No. 5,299,116, , registered on 3 October 2017; and
- European Union Trade Mark No. 012111746, *Instagram*, registered on 6 March 2014.

In support of the aforementioned averments, the complainant has also filed trademark registrations at **Annexure 9**.

6. The dispute raised before this tribunal – case of the complainant:

The Domain Name and associated website

6.1 The complainant claims that it was recently made aware of the disputed domain name, comprising its INSTAGRAM trade mark followed by the term "pro", under the domain extension ".net.in", registered on 14 August 2023. It further avers that the domain name redirects to <https://instapro.com.in>, which further redirects to <https://iinstapro.net> and further redirects to <https://myinstapro.org> and a website titled "Insta Pro APK Download (Official) Latest Version v11.15 July 2024" that purports to offer for download an unauthorized modified APK (Android Package Kit) version of the Instagram application called "InstaPro APK" (the respondent's website). It also avers that the respondent's website claims that:

"Instagram is one of the most famous and most used social media applications these days. People love to socialize on this application with pictures and videos of daily deeds artistic content creation. But there are some features about which you want them either to be improved or removed from the application.

[...]

Instagram Pro comes with secret features, themes and new layouts. **There are no ads** shown using Instagram Pro APK.



[...]

Instagram Pro APK is the modified version of Instagram. [...]

[...]

You will not only be able to save any video or post from Instagram but through InstaPro also can download that video or post. This specific feature is not present on real and original Instagram. Enjoy unlimited downloading the videos photos reposting them on your various social media platforms including Instagram, Facebook, Twitter and many others."

In support of the same, it has also filed the screen captures and the proof of redirection as **Annexure 10**.

6.2 The complainant states that the respondent's website features a tab titled "Insta Pro 2", which leads to a web page purporting to offer for download "Insta Pro 2, the latest app for Instagram users for pro socialising". The Insta Pro 2 APK provides Internet users with further features that are not available on the official Instagram application, such as the ability to "block all ads" and "design the app UI accordingly to your preferences". The complainant further avers that respondent's website also features a tab titled "Other Apps" which features a list of web pages that purport to offer for download, inter alia, APK versions of the complainant's Instagram application. The complainant also avers that the respondent's website features a pink/yellow colour scheme that is very similar to the gradient colour scheme used by the complainant for its Instagram platform. It gives a reference to Annexure 4, filed with the complaint. The complainant also avers that the respondent's website also makes prominent reference to the complainant's INSTAGRAM trade mark and features the complainant's Instagram logo and figurative trade mark as well as modified versions of it on the website itself and as a favicon, as under:

A handwritten signature in blue ink is written over a circular blue stamp. The stamp contains the text "Arbitrator" at the top and bottom, and "Bharat S Kumar" in the center.

Complainant's figurative trade mark and logo



Images and favicon on the Respondent's website



6.3 The complainant further mentions in its complaint that the Respondent's website also features graphics that are very similar to the Complainant's Instagram figurative trade mark and logo, as follows:

Complainant's figurative trade mark and logo

Instagram

Images on the Respondent's website



The complainant further mentions that the respondent's website features the following wording in small font at the footer of the page:

*"We are not affiliated with Instagram at all
All rights are reserved Designed by MyInstaPro.Org"*

Complainant's notice to the respondent:

6.4 The complainant states that on 8 April 2024, its lawyers submitted a notice via the Registrar's registrant contact form inviting the respondent to contact the complainant. The complainant's lawyers received no response. In support of its assertions, it has filed screen captures of the Registrar's registrant

Bharat S Kumar
Bharat S
Kumar
Arbitrator

contact form notice as submitted by the its lawyers as **Annexure 11**. To further its case, the complainant has at paragraph 25 also mentioned of similar of its cases against the same respondent. Furthermore, it has also filed a copy of the decision *Instagram LLC v GB APPS*, INDRP Case No. 1890 (<instapro.com.in>) as **Annexure 12** to assert that the respondent seems to be a habitual infringer.

7. Analysis

7.1 It is pertinent to note that Paragraph 4 of the INDRP Domain Name Dispute Resolution Policy, mentions about class of disputes, which grants any person who considers that a registered domain name conflicts with his/her legitimate rights or interests, the right to file a complaint with the .IN Registry. There are 3 conditions which an aggrieved right holder may file the complaint under. The complainant has in the present complaint mentioned that its rights under all the three conditions have been violated:

- i. Condition 4(a) - The Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the complainant has rights;

The complainant has stated in the complaint that the disputed domain name is confusingly similar to a trade mark in which the complainant has rights. The complainant avers that the disputed domain name comprises the complainant's INSTAGRAM trade mark with the addition of the suffix(word) "pro", under the domain extension ".net.in". The complainant submits that the addition of the term "pro" does not prevent a finding of confusing similarity with the complainant's INSTAGRAM trade mark, which remains clearly recognizable in the domain name. The complainant relies upon *Instagram, LLC. v. pinoy tvshows*, WIPO Case No. D2023-3723 (<instagrampro.app>): where it was held that

"While the addition of other terms (here, 'pro') may bear on assessment of the second and third elements, the Panel finds the addition of such term does

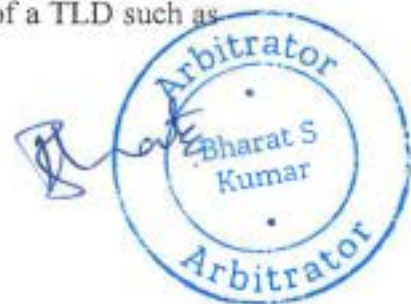


not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy."

The complainant further states that with regard to the ".net.in" domain extension, it is well established under the .IN Policy that such domain extension may be disregarded when assessing whether a domain name is identical or confusingly similar to a complainant's trade mark. The complainant further places reliance on *Google LLC v Hom Kit Bk Picture*, INDRP/1814, (<simsim.net.in>). Basis the aforementioned, the complainant asserts that the disputed domain name is confusingly similar to the complainant's trade mark in accordance with paragraph 4(a) of the .IN Policy.

I have gone through the pleadings and documents filed by the complainant. With regard to the fulfilment of paragraph 4(a) of the INDRP policy, it is evident that the complainant has been continuously and extensively using the registered trademark INSTAGRAM in the course of trade and commerce since its launch in the year 2010. The complainant has also registered its trademark INSTAGRAM across myriad jurisdictions including the home country of the respondent and in India. Its statutory rights thus, in the trademark INSTAGRAM is well established. It is pertinent to note that the disputed domain name instagrampro.net.in was registered on August 14, 2023, much later than the adoption and registration of the complainant's registered trademark, INSTAGRAM.

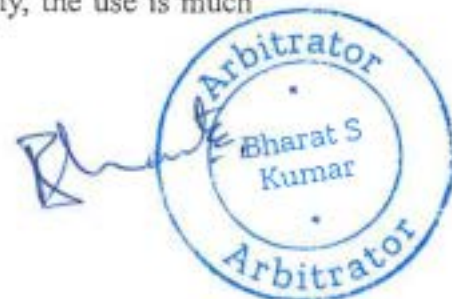
It is noteworthy that a perusal of the disputed domain name 'instagrampro.net.in' of the registrant/respondent shows that the respondent has used the complainant's trademark 'INSTAGRAM' in its entirety and merely added a word "pro", further to it. The disputed domain name 'instagrampro.net.in' is identical to the 'INSTAGRAM' trademark of the complainant. It is well established that the mere addition of a TLD such as



"net.in" and even a suffix, such as 'pro' to a trademark(s), are not significant in distinguishing a domain name. It has been held by prior panels deciding under the INDRP, such as in *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*, that there is confusing/deceptive similarity where the disputed domain name wholly incorporates a complainant's trade mark. It is further noteworthy that, a TLD/ccTLD such as "net.in" is an essential part of domain name. Therefore, it cannot be said to distinguish the respondent's domain name 'instagrampro.net.in' from the complainant's trademark INSTAGRAM. In *Satyam Infoway Ltd vs Siffynet Solutions Pvt. Ltd AIR 2004 SC 3540*, the Hon'ble Supreme Court of India stated that the law pertaining to the Trademark Act, 1999 shall be applicable to domain names in India. The Hon'ble Supreme Court of India also observed that domain names have the same characteristics of a trademark and thus act as a source and business identifier. In *M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705*, wherein on the basis of the complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the complainant much before the date of creation of the disputed domain name <americaneagle.co.in> by the respondent, it was held that:

"The disputed domain name is very much similar to the name - and trademark of the complainant. The Hon'ble Supreme Court of India has recently held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that there is a strong likelihood that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the complainant."

The complainant has rights in the trademark INSTAGRAM by way of trademark registrations across myriad jurisdiction, and by virtue of use in the course of trade, as part of their company. Pertinently, the use is much



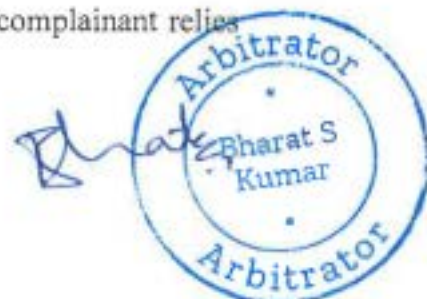
prior to the date on which the respondent created the impugned domain <instagrampro.net.in> incorporating the complainant's trademark and trade name INSTAGRAM in totality and as a whole.

The respondent has not filed any response to the assertions put forth by the complainant. The averments of the complainant thus remain unrebutted.

In view of the above facts and submissions of the complainant, on perusal of the documents filed and annexed with the complaint, I therefore hold that the disputed domain name <instagrampro.net.in> of the registrant (respondent) is identical and/or confusingly similar to the trademark INSTAGRAM of the complainant.

- ii. Condition no.4 (b) the Respondent (Registrant) has no rights or legitimate interest in respect of the domain name:

The complainant asserts that the respondent is unable to invoke any of the circumstances set out in Paragraph 6 of the .IN Policy to demonstrate rights or legitimate interests in the domain name. To further its claims, the complainant states that the respondent cannot assert that, prior to any notice of this dispute, it was using, or had made demonstrable preparations to use, the domain name in connection, instagrampro.net.in, with a bona fide offering of goods or services in accordance with paragraph 6(a) of the .IN Policy. The complainant further states that it has not authorised, licensed or otherwise allowed the respondent to make any use of its INSTAGRAM trade mark, in a domain name or otherwise. It places reliance on the decision of prior panels, averring that the lack of such prior authorisation would be sufficient to establish a prima facie case regarding the respondent's lack of rights or legitimate interests in the disputed domain name. In stating that same, the complainant relies

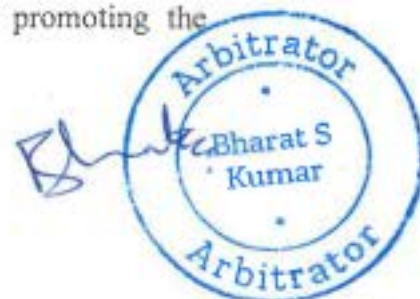


on *Wacom Co. Ltd. v. Liheng*, INDRP/634, wherein it was stated that: "the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name"

The complainant further avers that the respondent cannot be viewed as a bona fide service provider as it does not provide service or sales or repairs in relation to a product provided by the complainant. Rather, the respondent is making unauthorized use of the complainant's trade mark to market its own ancillary services as detailed in the complaint. The complainant states that prior panels have recognized that service providers using a domain name containing a third-party trade mark may be making a bona fide offering of goods or services and thus have a legitimate interest in such domain name, which is not in the present case. The complainant further avers that this case is typically measured against the list of factors set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903 (**the Oki Data criteria**):

- (a) the respondent must actually be offering the goods or services at issue;
- (b) the respondent must use the site to sell only the trade marked goods or services;
- (c) the site must accurately and prominently disclose the registrant's relationship with the trade mark holder; and
- (d) the respondent must not try to "corner the market" in a domain name that reflects the trade mark.

The complainant further states that the respondent's website prominently features the complainant's figurative trademarks and Instagram logos, as well as modified versions of them, both on the website itself and as a favicon, for purposes of promoting the



downloading of third-party modified APK versions of the Instagram application. It further avers that such use cannot be considered as bona fide, as it is clear that the respondent deliberately designed its website to give the false impression to Internet users that they have reached a website affiliated with or endorsed by the complainant and the modified Instagram APK apps offered for download on the site are authorized by or otherwise connected with the complainant, which is not the case.

I agree with the assertions put forth by the complainant. I believe that the complainant has established its rights in the trade mark INSTAGRAM. The mere fact that the disputed domain name is registered does not imply that the respondent has any rights or legitimate interests in them. In *Deutsche Telekom AG v. Phonotic Ltd.* (WIPO Case No. D2005-1 000), it has been held that "*Registration of a domain name in itself does not establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy*". Therefore, any use of the disputed domain name by the respondent is not a legitimate, non-commercial or fair use. The respondent thus has no rights or legitimate interests in, the disputed domain name.

It is noteworthy that the complainant has not placed any evidence of 'INSTAGRAM' being a 'well known mark' in accordance with the (Indian) Trademarks Act, 1999. Yet, there is no quarrel in mentioning that 'INSTAGRAM' is extremely well known, across India and the world over. The adoption of word/mark "INSTAGRAM", therefore in the disputed domain name affirms the malafide intention of the respondent to make use of and ride on the coat tails of the complainant for earning commercial benefits. Such a conduct demonstrates anything, but a legitimate interest in the domain name. In the *Sports Authority Michigan, Inc. v. Internet Hosting*, NAF Case No. 124516.



it was held *'It is neither a bona fide offerings of goods or services, nor an example of a legitimate non-commercial or fair use under Policy 4(c)(i) and (iii), when the holder of a domain name that is confusingly similar to an established mark uses the domain name to earn a profit without approval of the holder of the mark'.*

It is reiterated that the respondent (registrant) has not filed any response to counter the complainant's assertions, despite service. The respondent has thus failed to satisfy the conditions contained in clauses 6(a),(b) and (c) of INDRP Policy. It is pertinent to note that the respondent (registrant) has no rights or legitimate interest in respect of the disputed domain name. Significantly, the respondent has never been identified with the disputed domain name or any variation thereof. The respondent's (Registrant) use of the disputed domain name will inevitably create a false association and/or affiliation with complainant and its extensively known trademark/label marks, INSTAGRAM.

Therefore, in view of the submissions made in the complaint and on perusal of the accompanying documents, I am of the opinion that the respondent has no rights or legitimate interests in respect of the disputed domain name. Accordingly, condition 4(b) of the INDRP policy is decided in the favour of the complainant.

- iii. Condition 4(c): The Registrant's domain name has been registered or is being used in bad faith:

To look into condition 4 (c) of the INDRP policy, clause 7 is to be looked into. Clause 7 of the INDRP policy states as under:

For the purposes of Clause 4(c), the following circumstances, in particular but without limitation, if found by the Arbitrator to be



present, shall be evidence of the Registration and use of a domain name in bad faith:

(a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the Trademark or Service Mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

(b) the Registrant has registered the domain name in order to prevent the owner of the Trademark or Service Mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or

(c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location; or

(d) The Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor.

It is pertinent to reiterate that the complainant is vested with statutory rights across myriad jurisdictions in its INSTAGRAM trademark, including the respondent's host country and in India. The use of the trademark INSTAGRAM has been from year 2010. The respondent's registration of a disputed domain name wholly incorporating the complainant's trademark is most certainly to ride on the coat tails of the complainant's commercial success which its INSTAGRAM trademark has attained over the past 15 years. It is also noteworthy that the actions of the respondent seem to fall squarely within



subclauses (b) and (c) hereinabove. A testament to the same are the cases mentioned by the complainant in paragraph 25 of its complaint wherein the very same respondent has engaged in surreptitiously registering and using the complainant's celebrated trademark, INSTAGRAM, or parts of it thereof.

Given the enormous success of the complainant's business model, its celebrated trademark INSTAGRAM, being known all across the world, there seems to be no reason for the respondent to adopt an identical name/ mark with respect to the impugned domain name. This adoption by the respondent, of course seems to create a deliberate and false impression in the minds of users that the respondent is somehow associated with or endorsed by the complainant. A case by a previous panel, *M/s Merck KGaA v Zeng Wei JNDRP/323*, can be referred wherein it was stated that:

"The choice of the domain name does not appear to be a mere coincidence, hut a deliberate use of a well-recognized mark... such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration."

From a perusal of the averments and documents filed herewith, there is therefore no doubt that the respondent has got the disputed domain name registered in bad faith and to ride on the complainant's INSTAGRAM trademark's goodwill and reputation. The actions of the respondent are this in contravention with paragraph 4(c) of the INDRP policy. I therefore hold that the respondent's domain name has been registered in bad faith.



Arbitrator
Bharat S
Kumar
Arbitrator

Decision

In view of the foregoing, I hold that the disputed domain name, <instagrampro.net.in> is identical and/or confusingly similar to the complainant's 'INSTAGRAM' trademark. I further hold that the respondent has no rights or legitimate interests in respect of the disputed domain name and that the same was registered in bad faith by the respondent.

In accordance with the INDRP Policy and Rules, I direct that the disputed domain name registration be transferred to the complainant. No order as to costs.

Date: 10.03.2025

Place: New Delhi

