

INDRP ARBITRATION CASE NO.1889
THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR: AJAY GUPTA

INSTAGRAM LLC

VERSUS

GB Apps

DISPUTED DOMAIN NAME :“instapro.ind.in”

Ajay

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THE NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

ADMINISTRATIVE PANEL DECISION
SOLE ARBITRATOR : AJAY GUPTA

INSTAGRAM, LLC
1601 Willow Road
Menlo Park, California 94025
[United States of America].

VERSUS

GB Apps
Apps.Pk ,
District DG Khan Tehsil Taunsa Sharif
Punjab-32100 [Pakistan].

...Respondent

Disputed Domain Name: "instapro.ind.in"



1. THE PARTIES

- 1.1 The **Complainant** in this arbitration proceedings is INSTAGRAM LLC, which is online photo and video sharing social-networking application, under brand names INSTAGRAM and INSTA, and its contact address is ; 1601 Willow Road Menlo Park, California-94025 (United States of America).
- 1.2 The Complainant in this administrative proceeding is represented by its **authorized representative**, David Taylor/Jane Seager Address : Hogan Lovells (Paris) LLP 17 Avenue Matignon 75008 Paris (FRANCE).
- 1.3 The **Respondent**, in this arbitration proceeding, is, GB Apps Apps., District DG Khan, Tehsil Taunsa Sharif, Punjab-32100 (Pakistan), as per the details given by the WHOIS database maintained by the National Internet Exchange of India (NIXI).

2 THE DOMAIN NAME AND REGISTRAR

- 2.1 The disputed domain name is "instapro.ind.in". The Registrar with which the disputed domain name is registered is Dynadot LLC and its contact Address is : P.O. Box 345, San Mateo, CA 94401 (UNITED STATES).

3 PROCEDURAL HISTORY [ARBITRATION PROCEEDINGS]

- 3.1 This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP], adopted by the National Internet Exchange of India (NIXI). The INDRP Rules of Procedure [the Rules] were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes

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pursuant to the IN Dispute Resolution Policy and Rules framed there under.

3.2 The history of this proceeding is as follows :

3.2.1 In accordance with the Rules 2(a) and 4(a), NIXI on 07.08.2024 formally notified the Respondent of the complaint, and appointed me as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed there under, .IN Domain Resolution Policy and the Rules framed there under. I submitted the Statement of Acceptance and Declaration of Impartiality and Independence Dated 07.08.2024 vide mail Dated 07.08.2024, as required by NIXI.

3.2.2 That commencing the arbitration proceedings an Arbitration Notice Dated 08.08.2024 was sent to the Respondent by this panel under Rule 5(c) of INDRP Rules of Procedure with direction to file reply of the complaint ,if any, within 10 days. The soft copy of the complaint along with annexures was emailed to Respondent on 09.08.2024 by Complainant. The Complainant via its email dated 09.08.2024, informed and confirmed this panel about the service of the soft copy of the complaint to the Respondent, and also submitted that no bounced back message was received by Complainant.

3.2.3 This panel vide its Arbitration Notice dated 08.08.2024 directed the Respondent to file the reply of complaint ,if any, within 10 days of the from the date of notice i.e. by 17.08.2024, but the Respondent despite the receipt of notice and copy of the complaint, and also having sufficient opportunity failed to file the



reply of the complaint. Hence, on 22.08.2024 the Respondent was proceeded ex parte.

4 THE RESPONDENT'S DEFAULT

- 4.1 The Respondent failed to reply to the notice regarding the complaint. It is a well-established principle that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue; the Respondent must come forward with proof that it has some legitimate interest in the domain name to rebut this presumption. The disputed domain name in question is "instapro.ind.in".
- 4.2 The INDRP Rules of Procedure require under Rule 8(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 8(b) reads as follows :
- "In all cases, the Arbitrator shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case."*
- 4.3 The Respondent was notified of this administrative proceeding as per the Rules. The .IN discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the complaint.
- 4.4 The panel finds that the Respondent has been given a fair opportunity to present his case. The Respondent was given direction to file a reply of the Complaint if any, but the Respondent neither gave any reply to notice nor to the complaint. The INDRP 'Rules' paragraph 12 states, "In the event, any party breaches the provisions of INDRP rules and /or directions of the Arbitrator, the matter can be decided ex parte by the Arbitrator and such arbitral award shall be binding in accordance to the law." In the circumstances, the



panel's decision is based upon the Complainant's assertions, evidence, inferences, and merits only as the Respondent has not replied despite sufficient time and repeated opportunities given in this regard and was proceeded ex parte.

5 BACKGROUND OF THE COMPLAINANT AND ITS STATUTORY AND COMMON LAW RIGHTS ADOPTION :

5.1 The Complainant, in the present arbitration proceedings to support its case, has relied and placed on records documents as Annexes and made the following submissions :

5.1.1 The Complainant submits that, the Complainant is a world-renowned leading online photo and video sharing social-networking application. It is submitted that since its launch in 2010, Instagram rapidly acquired and developed considerable goodwill and renown worldwide. It is further submitted that after 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.

5.1.2 It is submitted that Instagram has consistently ranked amongst the top "apps" for mobile devices, including for iOS and Android operating systems and is currently the most downloaded application worldwide, according to The Financial Times. It is further submitted 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 Data portal.

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5.1.3 It is submitted that reflecting its global reach, the Complainant is also the owner of numerous domain names comprising the INSTAGRAM trade mark under generic Top-Level Domains, 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).

5.1.4 The Complainant submits that, it has also made substantial investments to develop a strong presence online by being active on various social-media platforms, including Facebook, Twitter and LinkedIn. 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>

6 THE COMPLAINANT'S TRADE MARKS

6.1 It is submitted that the Complainant has secured ownership of numerous trade mark registrations for INSTAGRAM and INSTA, as well as figurative trade mark registrations for its Instagram logo, in various jurisdictions, including the following :

- 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;
- United States Trademark Registration No. 5,061,916, INSTA, registered on 18 October 2016;
- Indian Trade Mark No. 3101498, INSTA, registered on 5 December 2017; and
- European Union Trade Mark No. 014810535, INSTA, registered on 23 May 2018.

6.2 The Complainant has also secured ownership of the following figurative trademarks :

- 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, , registered on 6 March 2014.

7 THE COMPLAINANT'S SUBMISSIONS ABOUT THE RESPONDENT AND DISPUTED DOMAIN NAME.

7.1 The Complainant submits that, it was recently made aware of the Domain name, comprising its INSTA trade mark followed by the term "pro", under the domain extension ".ind.in", registered on 6 May 2023.

7.2 It is submitted that the Domain Name redirects to <https://iinstapro.net>, which 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 version of the Instagram application called "InstaPro APK" (the Respondent's website).

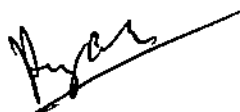
Ames

- 7.3 It is further submitted that the Respondent's website claims that :
- 7.3.1 "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.
- 7.3.2 Instagram Pro comes with secret features, themes and new layouts. There are no ads shown using instagram Pro apk.
- 7.3.3 Instagram Pro APK is the modified version of Instagram.
- 7.4 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 re posting them on your various social media platforms including Instagram, Facebook, Twitter and many others."
- 7.5 It is submitted 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".
- 7.6 It is further submitted that the 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, as follows :



- TopFollow
- Honista
- Insta Lite
- Insta JT
- Insta Dark
- InstaPro Mini
- ZE Insta
- Insta Saver
- Instagram MOD
- Instagram GOLD
- GB Instagram

- 7.7 It is submitted 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.
- 7.8 It is submitted that the Respondent's website also makes prominent reference to the Complainant's INSTAGRAM trademark 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. It is submitted that the Respondent's website also features graphics that are very similar to the Complainant's Instagram figurative trade mark and logo. The Complainant further submits 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".
- 7.9 The Complainant submits that on 08th April 2024, the Complainant's lawyers submitted a notice via the Registrar's registrant contact form inviting the Respondent to contact the Complainant but the Complainant's lawyers received no response.
- 7.10 It is submitted that the Respondent was named as the Respondent in the case WhatsApp LC v GB Apps, .PK Case Number C2024-0004 (<whatsappgb.pk>), in which the Panel



ordered the transfer of the WHATSAPP formative domain name <whatsappgb.pk> to the Complainant.

- 7.11 The Complainant submits the present Complaint has been filed requesting transfer of the Domain Name under the .IN Policy to protect its rights and legitimate business interests.

8 THE ISSUES INVOLVED IN THE DISPUTE

- 8.1 The Complainant in its complaint has invoked paragraph 4 of the INDRP, which reads :

"Types of Disputes

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

The disputed domain name is identical or confusing similar to a trademark in which the Complainant has statutory /common law rights.

The Respondent has no rights or legitimate interests in respect of the disputed domain name.

The disputed domain name has been registered or is/are being used in bad faith."

- 8.2 The above mentioned 3 essential elements of a domain name dispute are being discussed hereunder in the light of the facts and circumstances of this case.

9 PARTIES CONTENTIONS

- 9.1 The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights.

COMPLAINANT

- 9.2 The Complainant submits that the Domain Name is confusingly similar to a trade mark in which the Complainant has rights. It is submitted that the Domain Name comprises the



Complainant's INSTA trade mark with the addition of the term "pro", under the domain extension ".ind.in".

- 9.3 The Complainant submits that the addition of the term "pro" does not prevent a finding of confusing similarity with the Complainant's INSTA trade mark, which remains clearly recognizable in the Domain Name. The Complainant in this regard has relied on the decision in case of Instagram, LLC. Vs. Pinoy TVShows, WIPO Case No.D2023-3723 (<instagrampro.app>) where it was held :

"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."

- 9.4 The Complainant has also relied upon the case of Dubizzle Limited Vs Registration Private, Domains by Proxy, LLC/ Dubizzle Pro, Dubizzlepro, WIPO Case No. D2021-1612 (<dubizzlepro.com>).
- 9.5 It is submitted that with regard to the ".ind.in" domain extension, it is well established under the .IN Policy that such domain extensions may be disregarded when assessing whether a domain name is identical or confusingly similar to a Complainant's trademark and has relied upon the decision in case of Adobe Inc. Vs Seeds Provider, INDRP/1255 <adobe.ind.in>).
- 9.6 The Complainant therefore submits that the Domain Name is confusingly similar to the Complainant's trade mark in accordance with paragraph 4(a) of the .IN Policy.

RESPONDENT

- 9.7 The Respondent has not replied to the above contentions of the Complainant.



PANEL OBSERVATIONS

- 9.8 This Panel on pursuing the documents and records submitted by Complainant observe that the Complainant is world-renowned leading online photo and video sharing social-networking application.
- 9.9 It is observed by this panel that the words INSTAGRAM and INSTA are forming the part of the trade name of the Complainant's company i.e. Instagram LLC and these marks, are popularly known exclusively in relation to the Complainant. It is also observed by this panel that the Complainant has successfully secured registrations for these marks in many countries including Pakistan.
- 9.10 This panel further observed the fact that Disputed domain "instapro.ind.in" comprises the Complaint's trademark "INSTA" in its entirety and has the potential to cause consumer confusion and will cause the user into mistakenly believe that it originates from, is associated with or is sponsored by the Complainant, and further the addition of terms "pro" and " ind" after "insta" mark of the Complainant and suffix ".in" is not sufficient to escape the finding that the domain is confusingly similar to Complainant's trademark.
- 9.11 Therefore, the panel is of opinion that disputed domain name "INSTAPRO.IND.IN" being identical/confusingly similar to the trade mark of Complainant will mislead the public and will cause unfair advantage to the Respondent. The Panel is of the view that there is likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain names associated. The disputed domain name registered by the Respondent is confusingly similar to the trademark "INSTA" of the Complainant.



9.12 It has to be noted that the paragraph No.4 of the INDRP policy starts with following words :

"Any person who considers that a registered domain name conflicts with his legitimate rights or interest may file complaint to the registry on the following premises." This is a positive assertion and sentence. Further pragraph 4(i) also constitutes a positive assertion and sentence. The above clearly indicates that the onus of proving the contents of para 4(i) is upon Complainant. To succeed he must prove them."

9.13 It has been proved by the Complainant that, it has trademark rights and other rights in the marks "INSTAGRAM" and "INSTA" by submitting substantial documents in support of it. This panel while following the rule of law is of the opinion that while considering these trademarks of the Complainant in its entirety, the disputed domain name "instapro.ind.in" is confusingly similar to the trade mark of Complainant.

9.14 Paragraph 3 of the INDRP states that, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

9.15 This Panel therefore, in light of the contentions raised by the Complainant comes to the conclusion that the disputed domain name is confusingly similar to the Complainant marks. Accordingly, the Panel concludes that the Complainant has satisfied the first element required by Paragraph 4(i) of the INDR Policy.

10 THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME.

COMPLAINANT

10.1 The Complainant submits that the Respondent has no rights or legitimate interests in the Domain Name. It is submitted that, the prior panels have found under the .IN Policy that



"where a Complainant makes out a prima facie case that a 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, and if the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element." The Complainant in this regard has relied upon the decision in case of Instagram LLC Vs Ding RiGuo., INDRP/1183 (<instagram.in>).

- 10.2 It is submitted 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.
- 10.3 It is submitted 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 with a bona fide offering of goods or services in accordance with paragraph 6(a) of the .IN Policy.
- 10.4 The Complainant submits that it has not authorized, licensed or otherwise allowed the Respondent to make any use of its INSTA trademark, in a domain name or otherwise. It is further submitted that the prior panels have held that the lack of such prior authorization would be sufficient to establish a prima facie case regarding the Respondent's lack of rights or legitimate interests in the disputed domain name. The Complainant has relied upon the decision in case of Wacom Co. Ltd. Vs Liheng, INDRP/634, <wacom.in>, which states that (finding no legitimate interest where "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").



- 10.5 It is submitted that the Respondent's website purports to offer for download unauthorized modified APK versions of the Instagram application, which purport to provide "all the features of the original Instagram with some extra and premium features", including enabling Internet users to download unlimited Instagram content, remove advertisements, copy Instagram users' captions and "zoom in on [...] profile pictures".
- 10.6 It is submitted that the 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. It is further submitted that whether or not this is the case is typically measured against the list of factors set out in *Oki Data Americas, Inc. Vs ASD, Inc.*, WIPO Case No. D2001-0903 (the Oki Data criteria) :
- (i) the Respondent must actually be offering the goods or services at issue;
 - (ii) the Respondent must use the site to sell only the trade marked goods or services;
 - (iii) the site must accurately and prominently disclose the registrant's relationship with the trade mark holder; and
 - (iv) the Respondent must not try to "corner the market" in a domain name that reflects the trade mark.
- 10.7 The Complainant submits that the Respondent cannot be viewed as a bona fide service provider as it does not provide 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 above.



10.8 It is submitted that nevertheless, even if one is to apply the Oki Data criteria, the Respondent fails to fulfil the first and third criteria, namely that :

(i) The Respondent's website purports to offer for download third-party unauthorized versions of the Instagram app. As such, the Respondent cannot be said to be using the Respondent's website to offer the goods or services at issue, namely the Complainant's Instagram application.

(ii) The Respondent's website fails to accurately and prominently disclose its lack of relationship with the Complainant. The wording "We are not affiliated with Instagram at all" in small font at the footer of the website neither constitutes an accurate nor prominent disclaimer as to a lack of relationship with the Complainant. Rather, the Respondent's website displays repeated references to the Complainant's INSTAGRAM trademark, together with the Complainant's figurative trademarks and logos and modified versions of them, and makes use of the same pink/purple colour scheme used by the Complainant. It is submitted that the Respondent's website is therefore likely to mislead Internet users into believing that it is operated or authorized by the Complainant, which it is not.

10.9 The Complainant submits that the Respondent's use of the Domain Name violates the Meta Developer Policies, which prohibit the use or registration, or otherwise the claiming of rights in any Meta trademark, including as or as part of any trademark, service mark, company name, trade name, username or domain registration. The Meta Developer Policies also provide as follows :

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"3. Encourage proper use

1. *Respect the way Facebook, Instagram, or any of our products looks and functions, and the limits we've placed on product functionality [...]."*

10.9 The Complainant submits that similarly, the Instagram Terms of Use, which apply to the Complainant's Instagram platform, prohibit the modifying, translating, creating derivative works of or reverse engineering of Instagram's products or their components. It is clear that the Respondent's APK version of the Instagram application is derived from the Complainant's Instagram product and that by purporting to offer for download its APK version of the Instagram application, the Respondent breaches and facilitates breach of the Instagram Terms of Use by Instagram users who use the APK version to, inter alia, download Instagram content.

10.10 It is submitted that the Complainant is committed to maintaining the integrity of its Instagram platform and does not support such third-party applications. The Respondent is making unauthorized use of the Complainant's trademark in the Domain Name and on the Respondent's website to offer services that violate the Meta Developer Policies and which facilitate breach of the Instagram Terms of Use by Instagram users. Such use cannot be considered a bona-fide offering of goods or services. The Complainant has relied upon the decision in case of Instagram, LLC v. Fineline Developer, WIPO Case No.D2023-3230 (<instagramproapk.download>).

10.11 The Complainant submits 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 is submitted that



the prior panels have held 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. In this regard the Complainant has relied upon the decision in case of Instagram, LLC Vs Dileep Yadav, which states that :

"this Panel has noticed that Respondent on the website under the disputed domain name not only makes prominent use of Complainant's stylized INSTAGRAM design trademarks and logos (also in modified versions) without any authorization to do so, but also allegedly offers various modified mobile applications of Complainant's INSTAGRAM app."

10.12 It is submitted that the Respondent cannot legitimately claim that it is commonly known by the Domain Name in accordance with paragraph 6(b) of the .IN Policy. It is further submitted that the publicly available Whois record is heavily redacted except for "Apps.Pk" and "Punjab, Pakistan". To the best of the Complainant's knowledge, the Respondent has not secured or sought to secure any trade mark rights in the term "insta" or "instapro".

10.13 It is submitted that the Respondent's use of the Domain Name, to purport to offer for download third-party unauthorized APK applications that seek to trade off the goodwill and reputation associated with the Complainant's INSTA and INSTAGRAM trademarks, in breach of the Instagram Terms of Use and which facilitates breach of the Instagram Terms of Use by Instagram users, does not support any reasonable claim of being commonly known by the Domain Name, nor does it give rise to any reputation in the Domain Name itself, independent of the Complainant's trade mark rights.



10.14 It is submitted that the Respondent's use of the Domain Name, to purport to offer for download unauthorized modified APK versions of the Complainant's Instagram application, does not amount to legitimate non-commercial or fair use. Nor can the provision of services that facilitate breach of the Complainant's Terms of Use give rise to rights or legitimate interests in the Domain Name, and relied upon the case of Lemon Inc. Vs Saleem Abbas, WIPO Case No.D2023 4066 (<ressomodapk.com>) :

"[...] the Respondent uses the Website to offer information and guidance relating to a modified version of the Complainant's Resso app. Said use of the Domain Name further supports the risk of implied affiliation of the Domain Name with the Complainant and thus, cannot be considered to confer rights or legitimate interests of the Respondent".

10.15 It is submitted that in the light of the nature of the Domain Name, comprising the Complainant's INSTA trademark, followed by the term "pro" as detailed above, the Complainant submits that the Domain Name carries with it an implied risk of affiliation with the Complainant, which cannot constitute fair use. The Complainant therefore asserts that the Respondent has no rights or legitimate interests in the Domain Name, in accordance with paragraph 4(b) of the .IN Policy.

10.16 The Complainant submits that it has established a prima facie case that the Respondent lacks rights or legitimate interests in the Domain Name. Accordingly, the burden of production shifts to the Respondent to produce evidence to rebut the Complainant's case, and in the absence of such evidence, the Complainant may be deemed to have satisfied the requirements of paragraph 4(b) of the Policy.

RESPONDENT

10.17 The Respondent has not replied to Complainant's contentions.



PANEL OBSERVATIONS

10.18 This Panel holds that the second element that the Complainant needs to prove and as is required by paragraph 4(ii) of the INDRP is that the Respondent has no legitimate right or interests in the disputed domain name.

10.19 This panel observes that the Complainant by placing documents /records along with complaint has been able to prove that Complainant is using the said trademarks/domain "INSTAGRAM" and "INSTA" since the year 2012, and the Complainant is also the owner of numerous domain names comprising the INSTAGRAM trade mark which are used globally.

10.20 It is observed by this panel that the Respondent has failed to rebut the allegations of the Complainant, 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 with a bona fide offering of goods or services in accordance with paragraph 6(a) of the .IN Policy, and further that the Complainant has not authorized, licensed or otherwise allowed the Respondent to make any use of its INSTA trademark, in a domain name or otherwise.

10.21 It is observed by this panel that the Respondent has failed to rebut the allegations of the Complainant that the Respondent cannot be viewed as a bona fide service provider as it does not provide sales or repairs in relation to a product provided by the Complainant, and rather, the Respondent is making unauthorized use of the Complainant's trade mark to market its own ancillary services.

10.22 It is observed by this panel that the Respondent has failed to rebut the allegations of the Complainant that the



Respondent cannot legitimately claim that it is commonly known by the Domain Name in accordance with paragraph 6(b) of the .IN Policy.

10.23 The Respondent thus, has failed to rebut the allegations of the Complainant that the Respondent does not have rights or legitimate interest in respect of domain name.

10.24 Once the Complainant makes a *prime-facie* case showing that the Respondent does not have any rights or legitimate interest in the domain name, the burden to give evidence shifts to the Respondent to rebut the contention by providing evidence of its rights or interests in the domain name. The Respondent has failed to give any evidence, showing its rights or interests in the domain name.

10.25 For these reasons, the Panel holds that the Complainant has proved that the Respondent does not have any rights or legitimate interests in the disputed domain name.

11 THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED OR IS BEING USED IN BAD FAITH.

COMPLAINANT

11.1 The Complainant submits that, the Complainant's INSTAGRAM trade mark is inherently distinctive and well-known throughout the world, in connection with its online photo sharing social network, including in Pakistan where the Respondent appears to be based. It is submitted that similarly, the Complainant's INSTA trade mark is well known throughout the world as an abbreviation of its INSTAGRAM trade mark. It is further submitted that the leading search results obtained by typing the term "insta" into Google's search engine available at www.google.com and www.google.com.pk refer to the Complainant and its business.



11.2 It is submitted that Prior panels, including under the .IN Policy, have recognized the strength and renown of the Complainant's INSTA and INSTAGRAM trademarks and have ordered the transfer of disputed domain names comprising such trademarks to the Complainant in numerous decisions, and the Complainant in this regard has relied on the decision in case of Instagram LLC Vs Osbil Technology Ltd., INDRP/1130 (<instagrampanel.in>) which states :

"The Complainant's INSTAGRAM trademark is inherently distinctive and has rapidly acquired considerable renown and goodwill worldwide, including in India..."

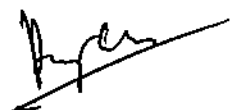
11.3 The Complainant has relied upon the decision upon case of Instagram LLC Vs Ding RiGuo, which states that :

"The Panel is prepared to accept the Complainant's contention that its mark and the corresponding business is famous. [...]"

Based on the submissions and evidence put forth before the Panel, the Panel is of the belief that the Respondent would have definitely known about the Complainant's mark 'Instagram' and its reputation at the time of registering the disputed domain name.

11.4 The Complainant in relation to the INSTA trademark has relied upon the decision in case of Instagram, LLC v. Saint Nicholas, WIPO Case No. D2022-1260 <insta-stories.net> :

"The Panel notes the continuous extensive use of the INSTAGRAM mark and presence over the Internet since its launch in 2010, as well as the well-known character of this trademark worldwide, being the INSTA mark also its notorious abbreviation, as has been recognized by previous decisions under the Policy."



- 11.5 In this regard the Complainant has also relied on the case of Instagram, LLC Vs Privacy Protect, LLC (PrivacyProtect.org)/ Elnur Alizade, WIPO Case No.D2021-1845 <insta-shark.com>.
- 11.6 It is submitted that given the Complainant's renown and goodwill worldwide, including in Pakistan, and its trade mark rights in INSTAGRAM and INSTA established long before the registration of the Domain Name in September 2023, the Respondent could not credibly argue that it did not have knowledge of the Complainant's INSTAGRAM or INSTA trademarks when it registered the Domain Name.
- 11.7 The Complainant in this regard has relied upon the decision in case of Instagram, LLC Vs protection of Private Person/ Yurii Shemetilo / Olha Shostak, WIPO Case No. D2022-2832 (<insta-stories.online et al.) which states :

"As indicated above, the Complainant's rights in the INSTA and INSTAGRAM trademarks predate the registration of the Domain Names. This Panel finds that the Respondents were or should have been aware of the Complainant's trademarks at the time of registration of the Domain Names [in December 2020 and December 2021]."

- 11.8 The Complainant submits that, the Respondent's use of the Domain Name, to redirect Internet users to its website promoting unauthorized APK versions of the Complainant's Instagram application, clearly targets Instagram. It is further submitted that , the Respondent's use of the Domain Name strongly suggests that the Respondent intended to create confusion with the Complainant and its trade marks when registering the Domain Name, and did so to provide unauthorized versions of the Complainant's Instagram application, in breach of the Instagram Terms of Use and which facilitates breach of the Instagram Terms of Use by Instagram users; and has also relied on case of Lemon Inc.



Vs Saleem Abbas (supra) and Instagram, LLC Vs Zeeshan Khan, WIPO Case No.D2023-3228 <instagrampro.pro>.

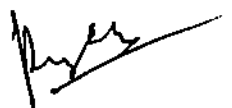
11.9 It is further submitted that the Respondent was named as the Respondent in the case WhatsApp LLC Vs GB Apps, in which the Panel ordered the transfer of the WHATSAPP-formative domain name <whatsappgb.pk> to the Complainant.

11.10 The Complainant submits that this prior case concerning the Complainant's related company, WhatsApp LLC, constitutes additional evidence of the Respondent's bad faith. The Complainant therefore submits that the Respondent registered the Domain Name in bad faith in accordance with paragraph 4(c) of the Policy.

11.11 The Complainant submits that the Respondent is using the Domain Name to purport to offer for download unauthorized modified APK versions of the Complainant's Instagram application, in violation of the Meta Developer Policies, which apply to the Instagram platform, and in breach of the Instagram Terms of Use. It is submitted that the APK versions of the Instagram application also facilitate breach of the Instagram Terms of Use by Instagram users, as they purport to enable Instagram users to download Instagram content, which interferes with the intended operation of the Instagram service as detailed above.

11.12 The Complainant submits that through the Respondent's use of the Domain Name, it has intentionally attempted to attract Internet users to online locations by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the website, in accordance with paragraph 7(c) of the .IN Policy.

11.13 The Complainant in this regard has relied upon the decision in case of Amazon Technologies Inc. Vs Mr. Alex Parker, INDRP/1166 (<amazonemi.in>) :



"The Respondent's registration of the domain name <amazonemi.in> is likely to cause immense confusion and deception and lead the general public into believing that the said domain name enjoys endorsement or authorized by or is in association with and/or originates from the Complainant. The foregoing circumstances lead to the presumption that the domain name in dispute was registered and used by the Respondent in bad faith."

11.14 The Complainant submits that given the confusing similarity between the Domain Name and the Complainant's INSTA trade mark, coupled with the Respondent's use of the Domain Name, in the absence of an accurate or prominent disclaimer regarding the Respondent's (lack of) relationship with the Complainant, Internet users are likely to be misled into believing that the Respondent's website is somehow affiliated with or otherwise endorsed by the Complainant, which it is not. It is submitted that this is particularly the case given that the Respondent's website features the Complainant's logo and figurative trade mark and a similar pink/purple colour scheme to the gradient colour scheme used by the Complainant. In this regard the Complainant has also relied upon the case of WhatsApp Inc. Vs Edwin Izcano Inversiones Capira SAS, WIPO Case No.D2021-1904 <instalkr.com>.

11.15 The Complainant submits that even if an accurate and prominent disclaimer were featured on the Respondent's website, it would not have been sufficient to cure the Respondent's illegitimate use of the Domain Name and relied on the decision in case of Instagram, LLC Vs Protection of Private Person / Yurii Shemetilo/Olha Shostak, WIPO Case No.D2022-2832 <insta-stories.online> et al.

11.16 It is submitted that although commerciality is not expressly required under paragraph 7(c) of the .IN Policy, the Complainant



submits that it is very likely that the Respondent or the owner of the APK applications ultimately derives commercial advantage from the Respondent's unauthorized use of the Complainant's INSTA trademark in the Domain Name, and the Respondent's unauthorized use of the Complainant's INSTA and INSTAGRAM trade marks on the Respondent's website, as well as the use of the Complainant's logos and figurative trade marks for Instagram and modified versions of them on the Respondent's website. It is submitted that prior UDRP panels have held that commercial gain may include the Respondent gaining or seeking reputational and/or bargaining advantage, even where such advantage may not be readily quantified.

11.17 It is further submitted that the unauthorized accessing and collecting of Instagram content may put the security of Instagram users at risk, as content scraped from the Instagram platform may be stored and later used for unauthorized purposes by third-parties. The Complainant is committed to maintaining the integrity of its Instagram service and does not support such third-party applications. In this regard the Complainant relied upon the decision in case of Meta Platforms, Inc. Vs Muhammad Shahbaz, WIPO Case No.D2024-0288 <facebookvideodownloader.live> :

"The tools provided on the Respondent's website, by [...] sidestepping the inability of users to download Facebook or Instagram content directly, may place the privacy and security of Facebook and Instagram users at risk as the downloaded content can be stored and later used for unauthorized purposes by third parties."

11.18 The Complainant submits that the APK versions of the Instagram application are likely to disrupt the Complainant's business by driving users to third-party applications. It is submitted that prior UDRP panels have held that such activities amount to use of a domain name in bad faith.



11.19 It is submitted that finally the Respondent's failure to respond to the Complainant's lawyers' Registrar registrant contact form notice is further evidence of the Respondent's bad faith, and relied upon the decision in case of WhatsApp Inc. Vs Warrick Mulder, INDRP/1233 <whatsapp.in>.

11.20 The Complainant in view of the above, the Complainant asserts that the Domain Name was registered and is being used in bad faith in accordance with Paragraph 4(c) of the .IN Policy.

RESPONDENT

11.21 The Respondent has not replied to Complainant's contentions.

PANEL OBSERVATION

11.22 Paragraph 7 of the INDRP provides that the following circumstances are deemed to be evidence that Respondent has registered and used a domain name in bad faith :

"Circumstances indicating that the Respondent has registered or has 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 Registrar's documented out of pocket costs directly related to the domain name; or

the Respondent 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 Respondent has engaged in a pattern of such conduct; or

by using the domain name, the Respondent has intentionally attempted to attract internet user to its website 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 its website or location or of a product or services on its website or location."



11.23 This panel observes that the Complainant's INSTAGRAM & INSTA trade mark are inherently distinctive and well-known in many countries including in Pakistan, in connection with its online photo sharing social network.

11.24 The Complainant has also successfully secured trademark registrations for marks "INSTAGRAM and "INSTA" in many other countries including Pakistan, where the registrant appeared to be based.

11.25 It is observed by this panel that the Respondent has failed to rebut the allegations of the Complainant that the Respondent's use of the Domain Name, to redirect Internet users to its website promoting unauthorized APK versions of the Complainant's Instagram application, clearly targets Instagram, and the Respondent's use of the Domain Name strongly suggests that the Respondent intended to create confusion with the Complainant and its trade marks when registering the Domain Name, and did so to provide unauthorized versions of the Complainant's Instagram application, in breach of the Instagram Terms of use and which facilitates breach of the Instagram Terms of use by Instagram users.

11.26 It is observed by this panel that the Respondent has failed to rebut the allegations of the Complainant that, the Respondent is using the Domain Name to purport to offer for download unauthorized modified APK versions of the Complainant's Instagram application, in violation of the Meta Developer Policies, which apply to the Instagram platform, and in breach of the Instagram Terms of Use. The Respondent has also failed to rebut the allegation of the Complainant that, the APK versions of the Instagram application also facilitate breach of the Instagram Terms of



Use by Instagram users, as they purport to enable Instagram users to download Instagram content, which interferes with the intended operation of the Instagram service as detailed above.

- 11.27 It is further observed by this panel that the Respondent has failed to rebut the allegations of the Complainant that the Complainant's renown and goodwill worldwide, including in Pakistan, and its trademark rights in INSTAGRAM and INSTA established long before the registration of the Domain Name in September 2023, and the Respondent could not credibly argue that it did not have knowledge of the Complainant's INSTAGRAM or INSTA trademarks when it registered the Domain Name.
- 11.28 It is observed by this panel that by registering the disputed domain name with actual knowledge of the Complainant's trademarks, the Respondent acted in bad faith by breaching its service agreement with the registrar, because the Respondent registered a domain name that infringes upon the intellectual Property rights of another entity, which in the present case is the Complainant Instagram LLC.
- 11.29 The Respondent by using the disputed domain name has intentionally attempted to attract internet users to the disputed domain's website by creating a likelihood of confusion with the Complainant's INSTA & INSTAGRAM marks.
- 11.30 The Respondent's registration of the domain name meets the bad faith elements set forth in the INDRP. Therefore the panel comes to the conclusion that the registration by Respondent is in bad faith. Consequently it is established that the disputed domain name was registered in bad faith or used in bad faith.



12 REMEDIES REQUESTED

- 12.1 The Complainant has prayed to this Administrative Panel that the disputed domain <instapro.ind.in> be transferred to the Complainant and grant of cost.

13 DECISION

- 13.1 The following circumstances are material to the issue in the present case :

13.1.1 The Complainant through its contentions based on documents/ records and evidence has been able to establish, that the Complainant is a world-renowned leading online photo and video sharing social-networking application and its trademarks INSTAGRAM and INSTA are registered in many countries.

13.1.2 The mark INSTAGRAM, which is the Complainant's very trade name, is popularly known exclusively in relation to the Complainant. It is further observed by this panel that the Complainant owns and operates the many domain names, which incorporates the registered "Instagram" mark and prominently feature the same and the website hosted on the domain is accessible all over the world, including in Pakistan.

13.1.3 The Complainant has also been able to establish that, the Complainant has statutory rights in the Marks INSTAGRAM & INSTA through registration in many countries including Pakistan. The Respondent however, has failed to provide any evidence that it has any rights or legitimate interests in respect of the domain name and Respondent is related in any way with the Complainant. The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use of the disputed Domain Name.



13.1.4 Taking into account the nature of the disputed domain name and in particular the addition of terms "pro", ".ind" and the ".in" extension alongside the Complainant's marks and name INSTAGRAM and INSTA in its entirety which is confusingly similar, which would inevitably associate the disputed domain name closely with the Complainant's group of domains in the minds of consumers, all plausible actual or contemplated active use of disputed Domain Name by the Respondent is and would be illegitimate.

13.1.5 The Respondent also failed to comply with Para 3 of the INDRP, which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else rights.

13.1.6 The Complainant has given sufficient evidence to prove extensive trademark rights on the disputed domain name, whereas, the Respondent's adoption and registration of the disputed domain name is dishonest and done in bad faith.

13.1.7 This panel is of the view that it is for the Complainant to make out a prime facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name but the Respondent has miserably failed to do that. Thus, it is clear that the Respondent's registration and use of the domain name [instapro.ind.in] is in bad faith to attract internet users for monetary gains. The Respondent has no rights or legitimate interests in respect of the domain



name and also the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

RELIEF

In accordance with Policy and Rules, the Panel directs that the disputed domain name [instapro.ind.in] be transferred from the Respondent to the Complainant; with a request to NIXI to monitor the transfer.

New Delhi, India
Dated: August 23, 2024


AJAY GUPTA
Sole Arbitrator