



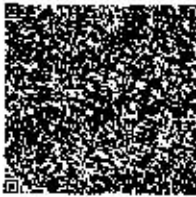
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL48569389918945R
Certificate Issued Date	: 31-Aug-2019 11:50 AM
Account Reference	: IMPACC (IV)/ dl921303/ DELHI/ DL-DLH
Unique Doc. Reference	: SUBIN-OLDL92130303740862332217R
Purchased by	: SANJAY KUMAR SINGH ARBITRATOR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: SANJAY KUMAR SINGH ARBITRATOR
Second Party	: Not Applicable
Stamp Duty Paid By	: SANJAY KUMAR SINGH ARBITRATOR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)



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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR
IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)
IN RE:-

Instagram LLC - - - - - Complainant
vs.

Orbit Technology Ltd. - - - Respondent

Sanjay Kumar Singh
24/09/19

Statutory Alert:

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BEFORE SHRI SANJAY KUMAR SINGH ARBITRATOR

IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

IN RE:

Instagram LLC,
1601 Willow Road,
Menlo Park, California,
94025, United States of America;
E-mail: domaindisputes@hoganlovells.com

Through its authorized representative

David Taylor/Jane Seager,
Hogan Lovells (Paris) LLP, 17,
Avenue Matignon, 75008,
Paris, France.
E-mail: domaindisputes@hoganlovells.com

...Complainant

Versus

Osbil Technology Ltd.
Ammochostos Magusa
Cyprus
E-mail: domaincontact@yoncu.com

...Respondent

1. THE PARTIES:

1. THE COMPLAINANT:

Instagram LLC, 1601 Willow Road, Menlo Park, California, 94025, United States of America; E-mail: domaindisputes@hoganlovells.com through its authorized representative David Taylor/Jane Seager, Hogan Lovells (Paris)

*Sanjay K. Singh
24-09-19*

LLP, 17, avenue Matignon, 75008, Paris, France, Email:
domaindisputes@hoganlovells.com.

II. THE RESPONDENT:

Osbil Technology Ltd.
 Ammochostos Magusa
 Cyprus
 E-mail: domaincontact@yoncu.com

2. Disputed domain name "instagrampanel.in"

3. Contentions of the Complaint

A. The complainant has submitted that Instagram LLC, is a world – renowned leading online photo and video sharing social networking application. The complainant has further submitted that since it was launched on 6 October 2010, Instagram rapidly developed considerable goodwill and renown worldwide, with 100,000 users in only one week, 1 million registered users in only 2 months (by 21 December 2010) and over 10 million registered users by September 2011, less than a year after it was launched. The complainant has submitted that acquired by facebook in April 2012, Instagram reached over 100 million monthly active users by February 2013, 150 million active users by September 2013 and 400 million users by September 2015, 500 million users by June 2016 and 700 million monthly active users by April 2017. The complainant has further submitted that Currently, Instagram has 1 billion monthly active users and 400 million daily active users, with more than 95 million photos and videos shared per day. The

Sanjay K. Singh
 24-09-19

complainant has further submitted that it is one of the fastest growing social media in the world and has consistently ranked amongst the top "apps" for mobile devices. Instagram is the 5th most downloaded app in the world, according to applications information company App Annie. Furthermore, Instagram's website available at www.instagram.com is ranked as the 16th most visited website in the world, 20th in the Cyprus and 28th in India, according to web information company Alexa.

B. The complainant has submitted that Annex 3 is the screen captures of the home page of the website www.instagram.com and of information on Instagram, including company information, instagram's Wikipedia entry, press articles on facebook's acquisition of Instagram in 2012, Instagram's various rankings and its explosive growth and popularity worldwide including in India and in Cyprus (where the Respondent is based).

C. The complainant has submitted that reflecting its global reach the complainant is the owner of numerous domain names consisting of the term INSTAGRAM under generic extension, for instance, <instagram.com> and <instagram.net>, as well as under numerous country code extensions, such as <instagram.org.in> (India), <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> (Israel), <instagram.jo> (Jordan), <instagram.mk> (Macedonia), <instagram.pk> (Pakistan), <instagram.net.ru> (Russia), <instagram.lk> (Sri Lanka), <instagram.ch> (Switzerland), <instagram.ae>

Sanjay K. Singh
24-09-19

(United Arab Emirates) and <instagram.com.vn> (Vietnam). The complainant has annexed the copies of the WHOIS records for some of the Complainant's domain names as Annexure 4.

D. The complainant has submitted that the fame of the complainant trademarks is also evidenced by the number of cyber squatters who have sought to unfairly and illegally exploit the very significant consumer recognition and goodwill attached to its trademarks. The complainant has submitted that prior domain name dispute panels have recognized the strength and renown of the Complainant's trademarks and ordered the respondents to transfer the disputed domain named to the complainant in numerous decisions including but not limited to:

- a) Instagram, LLC v. Abdunmur Rustem, Global Taekwondo Federation, WIPO Case No. D2018-2037 (<instagramdb.com> and <sstagram.com> ("the trademark INSTAGRAM is well-known");
- b) Instagram, LLC v. Omer Ulku, WIPO Case No. D2018-1700 (<supportinsta.com> and <supportinstagram.com>);
- c) Instagram, LLC v. Ellie Walker, WIPO Case No. 2018-0669 (<instagram-helpsupport.com> ("the Trade Marks are famous throughout the world");
- d) Instagram, LLC v. Levent Aslan, Turkicaret.net, WIPO Case No. 2017-1734 (<instagrm-checkpoint.com> and <instagramverify.com>);
- e) Facebook, Inc. and Instagram, LLC v. Xizmen eName Network Co., Ltd/weiwei, WIPO Case No. D2016-0409 (<iinstagram.com> et al.);

Jagbir K. Singh
24-09-19

f) Instagram, LLC v. Sedat Das, Arda Arda, Domain Admin, whoisprotection biz, Domain Admin, whoisprotection biz, WIPO Case No. D2016-2382:

g) Instagram, LLC v. Zhou Murong, WIPO Case No. D2014-1550(<instagram.com> et al.); and

h) Instagram, LLC v. Douglas Tarry/ Statigram, NAF Claim Number FAI403001550202 (<instagramz.com>).

The complainant has submitted the copies of these decisions as Annexure- 5.

The complainant has submitted that in addition to its strong online presence, the complainant has secured ownership of numerous trademark registrations in the term Instagram in many jurisdiction around the world, including in India and in the European Union (where the Respondent is based), as detailed below.

E. The complainant has submitted that the term INSTAGRAM is highly distinctive and exclusively associated with the Complainant. All search results obtained by typing the term INSTAGRAM INTO Google's search engine available at www.google.com and www.google.co.in refer to the complainant (Annex 6).

E. The complainant has submitted that it's valuable reputation offline and online is not only crucial to maintain the value and distinctiveness of its trademarks, but also vital to the success, integrity and protection of its business and consumers. Accordingly, the complainant devotes significant

Sanghy Kim Ligh.
24-09-19

resources to protect its trademark rights and its goodwill in forums such as this administrative proceeding.

F. The complainant has submitted that it was recently alerted to the fact that its INSTAGRAM trade mark and company name had been registered with the addition of the generic term "panel" under the .IN country code Top Level Domain (cc TLD) by the Respondent.

The Domain Name was registered by the Respondent on 3 August 2016. Necessary documents have been annexed by complainant as Annex 2.

G. The complainant has submitted that at the time of the filing, the Domain Name is redirecting to the Instagram page at <https://www.instagram.com/avciokan> of an individual known as Okan Avci, who is described as a "Social Media Expert" and appears to provide Digital Media Marketing and Advertising services. The page also displays, at the top of the screen, a link redirecting to a website to <http://www.okanavci.com.tr/>, which is no longer accessible.

H. The complainant has submitted that according to the complainant's research, it appears that the Domain Name was previously used to point to a website in Turkish, which allowed internet users to purchase Instagram likes/followers/comments, provided that they had created an account with the provision of their personal information.

The screen captures of the redirection check conducted at: <http://www.redirect-checker.org/index.php> for the Domain Name and of the

Sajay K. Ligh.
24-09-19

webpages currently and previously associated with the Domain Name have been provided by complainant as Annex 7.

1. The complainant has submitted that apart from the Domain Name, the respondent also registered a large number of domain names (both under generic and country code extensions) infringing third party trademarks, including the complainant's INSTAGRAM trade mark. Prior to the filing of this complaint, the complainant, along with Facebook Inc. and WhatsApp Inc., filed a complaint against the Respondent under the Uniform Domain Name Dispute Resolution Policy (UDRP) with the World Intellectual Property Organization (WIPO) on 19 December 2018 and successfully obtained the transfer of 37 domain names, 12 of which were used to point to websites purportedly allowing internet users to purchase Instagram and Facebook "followers/likes" or to obtain them for free. The complainant has relied on Facebook, Inc., Instagram, LLC. WhatsApp Inc. v. Osbil Technology, Osbil Technology Ltd, WIPO Case No D2018-2906, annexed by complainant as Annex 20.

J. The complainant has furthermore submitted that the respondent was also involved as the respondent in another UDRP proceeding (Tumblr, Inc.v.Osbil Technology Ltd./Ali Bayram/Bireysel/ Menmet Ahmet/UFUK DEMIRAY /Erdem Mutlu /Erdem MUTLU/Rezam Orhan, NAF Claim Number: Claim Number. FA1704001727583, at Annex 20), in which the panel ordered the transfer of all disputed domain names.

Sanjay K. Singh
24-09-19

K. The complainant has furthermore submitted that given the blatantly abusive registration and use of the Domain Name, and notably the Respondent's pattern of conduct in registering trademark- abusive domain names, the Complainant had no choice but to file the present complaint in order to request the transfer of the Domain Name under the .IN policy to protect its legitimate business interests and rights and to protect the general public from confusion.

4. Legal Analysis:

A. The complainant has furthermore submitted that Pursuant to paragraph 4(a) of the .IN policy, "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.

(i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights:

(ii) the Registrant has no rights or legitimate interests in respect of the domain name: and

(iii) the Registrant's domain name has been registered or is being used in bad faith".

A. That complainant asserts that each of the aforementioned factors are established, as substantiated below.

B. It should be noted that in its legal analysis the complainant relies on decisions rendered by panels under the .IN Policy as well as the UDRP. given

Jangar Ka Singh.
24-09-19

that the .IN policy closely follows the UDRP. The complainant has relied on LEGO Juris A/S v. Robert Martin, INDRP/125, <lego.co.in>, in which the panel relied on prior UDRP decisions annexed as Annex 8.

5. The Domain Name is confusingly similar to the Complainant's trade marks (paragraph 4(i) of the .IN Policy)

A. The complainant has submitted that Instagram owns numerous trade mark registrations in the term INSTAGRAM in many jurisdictions throughout the world, notably in India and in the European Union (where the Respondent is based). Such trade mark registrations include but are not limited to the following.

-Indian Trade mark No. 3042394, for INSTAGRAM, registered on 27 August 2015;

-United States Trade mark No. 4170675, for INSTAGRAM, registered on 10 July 2012 (First use in commerce on 6 October 2010);

-European Union Trade mark No. 012111746, for INSTAGRAM, registered on 6 March 2014; and

International Trade mark No. 1129314, for INSTAGRAM, registered on 15 March 2012.

The complainant has submitted the copies of these trade mark registrations, all of which predate the registration date of the Domain Name, annexed as Annex 9.

Singh K. Singh
24-09-19

B. The complainant has therefore established rights in the term INSTAGRAM.

C. The complainant submits that the Domain Name is confusingly similar to a trade mark in which the complainant has rights.

D. The Domain Name incorporates the Complainant's INSTAGRAM trade mark in its entirety with the addition of the generic term "panel". The complainant has furthermore submitted that Prior panels deciding under the UDRP have held that "when a domain name wholly incorporates a complainant's registered mark that is sufficient to establish identity or confusing similarity for purposes of the Policy." The complainant has submitted the Magnum Piering, Inc.V. The Mudjackers and Garwood's, Wilson, Sr., WIPO Case No. D2000-1525 as Annexure 10.

E. The complainant has furthermore submitted that it is constantly held by UDRP panels that, where the relevant trade mark is recognized within the disputed domain name, the addition of a descriptive or generic term does not prevent a finding of confusing similarity under the first element.

F. The complainant has furthermore submitted that with regard to the .IN ccTLD, it is well established under the .IN policy that such suffix should be disregarded when assessing whether a domain name is identical or confusingly similar to a complainant's trade mark. The complainant has Annexed the decision AB Electrolux v. GaoGou of YERECT, INDRP/630, <zanussi> (finding that "the expressions .in and .com need to be discarded while comparing the marks with the domain names"), as Annex 11.

Supra Kn Wgh
24-09-19

G. The complainant has furthermore submitted that pursuant to paragraph 3 of the .IN policy, "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". The complainant has annexed the PJS International S.A. v. Xiangwang. INDRP/616. <parajumpers.in>m as Annex 12.

H. The complainant has submitted that the Domain Name is confusingly similar to the Complainant's trade mark in accordance with paragraph 4(i) of the .IN Policy.

6. The respondent has no rights or legitimate interest in respect of the Domain Name (Paragraph 4 (ii) and Paragraph 7 of the .IN Policy).

A. The complainant has submitted that the respondent has no rights or legitimate interest in the Domain Name.

13. Numerous previous panels have found that "once the complainant makes a prima facie showing that the registrant does not have rights or legitimate interests in the domain name, the evidentiary burden shifts to the registrant to rebut the showing by providing evidence of its rights or interest in the domain name". The complainant has furthermore relied on Vanguard Group, Inc. v. Lorna Kang, WIPO case No. D2002-1064 and HSNC Holding plc v. Hooman Email Zadeh, INDRP/302, <hsbc.in> ("the Complainant has the burden of proving a prima facie case") annexed by the complainant as Annex

13.

Singh Kr LYL
24-09-19

C. The complainant has furthermore asserted that the respondent is unable to invoke any of the circumstances set out in Paragraph 7 of the .IN Policy in order to demonstrate rights or legitimate interests in the Domain Name.

D. The complainant has furthermore submitted that it has not authorized, licensed or otherwise allowed the Respondent to make any use of its INSTAGRAM trade mark, in a domain name or otherwise. Previous panels deciding under either the UDRP or the .IN policy have already 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 on the Coca-Cola Company v. ICU Agency, WIPO Case N. D2008-1851 ("The Panel finds the Complainant has established such prima facie case inter alia due to the fact that the complainant has not licensed or otherwise permitted the respondent to use the COCA-COLA trademark.") and Wacom Co. Ltd. v. Liheng, INDRP/634, <wacom.in> (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"). It has been annexed by the complainant as Annex 14.

E. The complainant has furthermore 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 7(i) of the .IN Policy. As described above, the Domain Name is currently redirecting

Longway for Liheng
24-09-19

to a personal Instagram page with reference to the account holder's profession ("Social Media Expert") and containing a link to the latter's personal website (Annex 7). Such use of the Domain Name which is confusingly similar to the complainant's distinctive and well known trade mark, to redirect, apparently for marketing purposes, internet users to a promotional website cannot be considered as bonafide use, nor can it be deemed as non -considered as bonafide use., nor can it be deemed as non-commercial or fair use of the Domain Name. The complainant has relied on decision in F.Hoffmann-La Roche AG v. Samir Kumar, WIPO Case No. D2008-0808 ("It appears that Internet users looking for complainant's widely known product and mark XENICAL will inadvertently be connected to Respondent's website, where a search service totally unrelated to complainant produces links to sources for products and services offered by business other than complainant. This is neither a bonafide use, nor a non-commercial or fair use of the domain name". The complainant has annexed it as Annex 15.

F. The complainant has furthermore submitted that the Domain Name was previously used to point to a website in Turkish providing Instagram likes/ followers /comments for sale. The complainant has submitted that the Domain Name was also used in a similar manner to those included in the Complainant's previous complaint against the Respondent, i.e. in connection with potential phishing activities (Facebook, Inc., Instagram, LLC, Whatsapp Inc. V. Osbil Technology, Osbil Technology Ltdd. WIPO Case No.D2018-2906, as Annex 20). Prior panels deciding under the policy have found that such use of a domain name cannot constitute a bona fide offering of goods or services,

Sagun K. Singh
24-09-19

nor can it be considered as legitimate noncommercial or fair use. The complainant has relied on Instagram, LLC v. Omer Ulku, WIPO Case No D2018-1700 (<supportinsta.com> and <supportinstagram.com>) ("users were requested to provide personal information on this page in the context of the supposedly genuine service "verify badges", [...] it follows that Respondent was not using the first Domain Name in connection with a bona fide offering of goods or services"), the complainant has annexed the same as Annex 5, and Inter-Continental Hotels Corporation v. Whois Agent, Whois Privacy Protection Service, Inc/ Fred Adams, WIPO Case No. 2016-0715 ("Fraudulent Commercial use of the disputed domain name in this way qualifies neither as a bona fide offering of goods or services nor as a legitimate non-commercial or fair use"), has been annexed by the complainant at Annex 16.

(1. The complainant has submitted that the Respondent cannot conceivably assert that it is commonly known by the term INSTAGRAM, in accordance with Paragraph 7(ii) of the .IN policy, given the notoriety surrounding the Complainant's trademarks and the fact that this term is exclusively associated with the complainant. Furthermore, to the best of the complainant's knowledge, the Respondent has not secured or even sought to secure any trade mark rights in the term INSTAGRAM. See Shulton Inc. v. Mr. Bhaskar, INDRP/483, <oldspice.in> (finding no rights or legitimate interests in the disputed domain name as the respondent did not have trade mark rights in a word corresponding to the disputed domain name and there was no evidence that the respondent was commonly known by the disputed

Jayar K. Singh
24-09-19

domain name), the complainant has relied on the same and has annexed the decision as Annex 17.

11. The complainant has also submitted that neither can the Respondent assert that it has made or is currently making a legitimate noncommercial or fair use of the Domain Name as per Paragraph 7(iii) of the .IN Policy. The current or previous use of the Domain Name in connection with a promotional website or potential phishing activities will undoubtedly exclude any legitimate noncommercial or fair use under the Policy. See, HYDAC Technology GmbH v. Maison Tropicale S.A., WIPO Case No. D2007-1031 ("taking predatory advantage of the Complainant's reputation and goodwill cannot be the basis for establishing any rights or interest in the domain name or mark") and InterContinental Hotels Corporation V. Whois Agent. Whois Privacy Protection service, Inc. /Fred Adams, WIPO Case No. 2016-0715 ("Fraudulent Commercial use of the disputed domain name in this way qualifies neither as a bona fide offering of goods or services nor as a legitimate non-commercial or fair use"), the complainant has annexed the same as Annex 24. In any event, the fact that the Domain name falsely suggests affiliation with the Complainant by incorporating the complainant's trade mark so as to confuse internet users will generally exclude any possible fair use.

Finally, given the Complainant's renown worldwide, including in India as well as in Cyprus where the Respondent is based, it is simply not possible to conceive of any plausible actual or contemplated active use of the Domain Name by the respondent (or a third party) that would not be illegitimate, as it

Sanyam Kumar Singh
24-09-19

would inevitably result in misleading diversion and taking unfair advantage of the Complainant's rights. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, the complainant has annexed the same as Annex -18.

7. The Complainant therefore asserts that the respondent has no rights or legitimate interest in the Domain Name, in accordance with paragraph 4(ii) of the .IN Policy.

i) The Domain Name was registered or is being used in bad faith (Paragraph 4(iii) and Paragraph 6 of the .IN Policy)

The Complainant has asserted that the Domain Name was registered and is being used in bad faith although the .IN policy only requires that a complainant demonstrate that the disputed domain name was either registered or being used in bad faith.

Paragraph 6 of the .IN Policy lists three circumstances which, in particular but without limitation may be evidence of registration and use of a domain name in bad faith for the purposes of paragraph 4(iii) of the .IN Policy.

The complainant has submitted that paragraphs 6(ii) and 6(iii) are of particular relevance in the present case, although there are other factors not listed in paragraph 6 of the .IN policy that strongly indicate the Respondent's bad faith.

Registration in bad faith:

Soumya K. Singh
24-09-19

The complainant's INSTAGRAM trade mark is inherently distinctive and has rapidly acquired considerable renown and goodwill worldwide, including in India and in Cyprus where the Respondent is based (Annex 3).

The complainant has furthermore submitted that given the Complainant's exponential growth from the day it launched, it would be inconceivable for the Respondent to argue that it did not have knowledge of the complainant's INSTAGRAM trade mark at the time of registration of the Domain Name in 2016. See Instagram, LLC v. Sedat Das, Arda Arda, Domain Admin, whoisprotection biz, Domain Admin Domain Admin, whoisprotection biz, WIPO Case No. D2016-2382, ("At the date of registration of the disputed domain names [between 2014 and 2016], the respondent was obviously well aware of the complainant's well known INSTAGRAM trademarks"), the complainant has annexed the same as Annex 5. The Domain Name's previous use to point to a website providing Instagram likes/followers/comments for sale and its current use to redirect to an Instagram page leaves no doubt as to this assumption.

The complainant has submitted that the respondent registered the Domain Name in full knowledge of the Complainant's rights. Prior panels deciding under the policy have held that actual and constructive knowledge of a complainant's rights at the time of registration of a domain name constitutes strong evidence of bad faith as well. As eBay Inc. V. Sunho Hong, WIPO case No. D2000-1633 ("actual or constructive knowledge of the complainant's rights in the Trademarks is a factor supporting bad faith.") and E.& J. Gallo Winery v. Oak Investment Group WIPO Case No.D2000-1213 (finding bad

Sayyid K. Singh
24-09-19

faith where the respondent "knew or should have known" of the complainant's trade mark), the complainant has annexed the same as Annex 19.

The complainant further submits that the Respondent has engaged in pattern of conduct within the meaning of Paragraph 6(ii) of the .IN policy by registering a large number of domain names infringing upon the complainant's trade mark rights, as evidenced by the Respondent's involvement in previous UDRP proceedings. The complainant the same as Annex 20. UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain names registration".

The complainant has thus submitted that the respondent registered the Domain name in bad faith in accordance with paragraph 4(iii) of the policy.

Use in bad faith:

The complainant has submitted that by using the Domain Name the Respondent is intentionally attempting to attract internet users to its website by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of the website, in accordance with paragraph 6 (iii) of the .IN Policy.

The complainant has submitted that Respondent is currently using the Domain Name to redirect internet users to an Instagram personal page containing references to Digital Media Marketing and Advertising services and a link to a related professional website, the same has been annexed by complainant as Annex 7. Such use of the Domain Name, which is confusingly similar to the Complainant's distinctive and well known INSTAGRAM trade

Sanjay K. Singh
24-09-19

mark, to attract internet users to an unrelated instagram page, obviously for marketing purposes, constitutes strong evidence of the Respondent's bad faith in accordance with paragraph 6 (iii) of the .IN Policy. The complainant has relied on State of Wisconsin v. Pro Life Domains, Inc. WIPO Case No. D2003-0432, (<wisconsindepartmentofrevenue.com>) "using a party's name to redirect Internet users to an unrelated commercial site for profit is recognized under the Policy as evidence of bad faith registration and use." annexed as Annexure 21.

The complainant has submitted that the respondent's previous use of the Domain Name in connection with a potential phishing scam annexed as Annex 7 to harvest, no doubt for commercial gain, personal data for account information from Instagram/Facebook users constitutes strong evidence of the Respondent's bad faith. The complainant has relied on Yahoo! Inc. v. Aman Anand, Ravi Singh, Sunil Singh, Whois Privacy Corp. Domains By Proxy, LLC, WIPO Case No. D2016-0461 ("bad faith registration and use of the disputed domain names is further indicated by the fact that there is strong suspicion of the respondents using the disputed domain names in an elaborate common phishing scam". The same has been annexed by complainant as Annexure-22.

The complainant has furthermore submitted that in any event, given the overwhelming renown and explosive popularity of the Complainant's INSTAGRAM trade mark worldwide, and the nature of the Domain name, which is confusingly similar to the complainant's trade mark, there simply cannot be any actual or contemplated good faith use of the domain name as

Saurav Kumar Singh
24-09-19

this would invariably result in misleading diversion and taking unfair advantage of the complainant's reputation and goodwill.

Arbitral proceedings & AWARD:

1. This arbitral proceeding commenced in accordance with IN Dispute Resolution Policy (INDRP) and rules framed there under.
2. The complainant submitted his complaint in the registry of NIXI against the respondent in respect to the respondent's Domain name **"www. instagrampanel.in"**.
3. I was appointed as Sole Arbitrator in the matter by NIXI.
4. The complainant submitted the said complaint under In Domain Name Dispute Resolution Policy (INDRP).
5. A copy of complaint was sent to me by the NIXI for arbitration in accordance with Dispute Resolution Policy (INDRP). The copy of the complaint along with annexures/exhibits was forwarded to me and to the respondent by .In Registry of NIXI.
6. The complainant has stated in his complaint that the respondent has no legitimate right or interests in the disputed domain name. The complainant further submitted that the respondent's Domain name **"www. instagrampanel.in"** is confusingly similar to complainant's highly successful internet sites www.instagram.com collectively known as **'INSTAGRAM'**.
7. The complainant as such has prayed for an award in the above matter for transfer of the domain name **"www. instagrampanel.in"** in favour of the complainant.
8. On 02-08-2019 I informed the respective parties to the complaint, about my appointment as an arbitrator. Accordingly, I called up on the parties to file their counter/ reply and rejoinder with the supportive document/evidence.

Sanjay K. Singh.
24-09-19

9. On 24-08-2019 I again served notice and informed the respondent to submit his reply and documents in his support.
10. On 02-09-2019 I again served notice and informed the respondent to submit his reply and documents in his support.

However, the respondent has neither submitted his reply nor filed any documents in his support.

11. In the facts and circumstance stated above the award is hereby passed ex parte on the merits of the complaint and as per law of the land.

OPINION & FINDING:

The para no.4 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

TYPES OF DISPUTES

Any person who considers that a domain name conflicts with his legitimate rights or interest may file complaint to .IN Registry on following premises:

- i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the complainant has rights;
- ii) the Registrant has no rights or legitimate interests in respect of the domain name and
- iii) The Registrant's domain name has been registered or is being used in bad faith."

Surya K. Singh.
24-09-19

The para no.6 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:

6. EVIDENCE OF REGISTRATION AND USE OF DOMAIN NAME IN BAD FAITH

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:

- "i) 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
- ii) 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
- ii) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source,

Jagdeep Kaur Singh
24-09-19

sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

The para no.7 of the IN Domain Dispute Resolution Policy (INDRP) is as follows:-

7. REGISTRANT'S RIGHTS TO AND LEGITIMATE INTERESTS IN THE DOMAIN NAME

Any of the following circumstances, in particular but without limitation, if found by the Arbitrator to be proved based on its evaluation of all evidence presented, shall demonstrate the Registrant's rights to or legitimate interests in the domain name for the purpose of paragraph 4 (ii):

- "i) before any notice to the Registrant of the dispute, the Registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bonafide offering of goods or services;
- ii) the Registrants (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no trademark or service mark rights; or
- iii) the Registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

Jayraj K. L. S.
24-09-19

The other fact, which is to be dealt with before going into merit is, that, as to whether, the cases decided by WIPO- Administrative Panel could be considered, while deciding the present controversy. Moreover these cases throw light upon various important aspects of controversy. As such they would be considered, while deciding the present controversy, in so far as they do not conflict with INDRP.

8. OPINION AND FINDINGS ON MERITS

A) Whether the domain name is identical or confusingly similar to a trademark in which complainant has right.

It has been held in Indian decision **M/s Satyam Infoway Ltd. vs. M/s Sifynet Solution (P) Ltd. JT. 2004 (5) SC 541**, that Domain name has all characteristics of trademark. As such principles applicable to trademark are applicable to domain names also. In the said case the words, "Sify" & "Sify" were held to be phonetically similar and addition of word 'net' in one of them would not make them dissimilar.

It is held in the above referred case, that in modern times domain name is accessible by all internet users and thus there is need to maintain it as an exclusive symbol. It is also held that it can lead to confusion of source or it may lead a user to a service, which he is not searching.

Thus conclusion is that domain name and trademark, which may be used in different manner and different business or field, or sphere can still be confusingly similar or identical.

Satyam K. Singh.
24-09-19

Thus the conclusion is that the domain name of the respondent is identical and confusingly similar to the trademark of complainant.

Now the other important aspect that needs consideration is, as to whether the complainant has right in the trademark. It is important to mention here that as per the claim of the complainant the respondent has no trademark right on the said domain name.

This principle is settled in many above Indian case and referred cases **JT 2004(5) SC 541 and 2004(5) SCC 287**. The complainant has made submission that he has legitimate trademark in India, he is using trademark for many years.

Thus the conclusion is that the domain name "**www.instagrampanel.in**" is identical and confusingly similar to the trademark of complainant '**INSTAGRAM**' and the complainant has established that he has right in the trademark.

B) Whether the respondent has no right or legitimate interest in the domain name got registered by him:

It is pertinent to mention here that paragraph 4 (ii) of INDRP is to be read with paragraph no.7.

As already stated that paragraph 4 (ii) and 7 of INDRP are to be read together. Their combined effect is that, onus to prove the ingredients of these paras is prima facie on complainant. The onus is not very weak and prima facie, but it heavily shifts on respondent. Respondent can discharge the onus by direct congest and positive evidence which are in

Singh K. Singh
24-09-19

his special knowledge and power. The complainant has made positive assertions that respondent has no legitimate right in domain name and the respondent has no trademark on the domain name. The complainant has made positive assertions regarding the fact that respondent has got registered the disputed domain name in the .IN Registry for which the respondent has no right or trademark. As such in above circumstance it is clear that the complainant has prima facie discharged the initial onus cast upon him by virtue of paragraph 4(ii) and 7 of INDRP.

The respondent on other hand has not come forward in spite of repeated notices to file any reply / counter or to provide any positive, cogent and specific evidence that it is known or recognized by domain name. The respondent has neither filed / submitted any reply nor provided any evidence.

Thus the conclusion is that respondent has no right or legitimate interest in the domain name.

Whether the respondent's domain name has been registered or is being used in bad faith:

It is to be seen as to whether the domain name has been got registered in bad faith. The paragraph no.4 (iii) and 6 are relevant and as already stated, the onus is primarily upon complainant.

Keeping in view above facts and circumstances and the case laws relied upon by the complainant it is thus clear that the respondent has

Jayant K. Singh
24-09-19

registered the disputed domain name and in spite of notices, he has neither come forward to submit any response to the complaint of the complainant nor has provided any evidence in its support.

Thus the conclusion is that the respondent has got registered his domain name "**www. instagrampanel.in**" in bad faith.

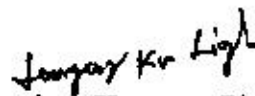
RELIEF

The domain name of the respondent is identical and confusingly similar to trademark of complainant. The respondent also does not have right or legitimate interest in the domain name. He has got it registered in bad faith; as such he is not entitled to retain the domain name. The complainant is entitled to transfer of domain name "**www. instagrampanel.in**" to him, as complainant has established bonafide rights in trademark as per law discussed above. Hence I direct that the Domain name be transferred to the complainant by registry.

No order as to costs.

Delhi

Date: 24-09-2019.


(Sanjay Kumar Singh)
Arbitrator