



सत्यमेव जयते

INDIA NON JUDICIAL
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e-Stamp

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Certificate Issued Date : 28-Apr-2025 03:17 PM
Account Reference : SHCIL (FI)/ tnshcil01/ Saidapet-SRO/ TN-CS
Unique Doc. Reference : SUBIN-TNTNSHCIL0123029457513401X
Purchased by : SAISUNDER NV
Description of Document : Article 12 Award
Property Description : NA
Consideration Price (Rs.) : 0
(Zero)
First Party : SAISUNDER NV
Second Party : SAISUNDER NV
Stamp Duty Paid By : SAISUNDER NV
Stamp Duty Amount(Rs.) : 200
(Two Hundred only)



Please write or type below this line

NV SAISUNDER

SOLE ARBITRATOR

.IN REGISTRY- INTERNET EXCHANGE OF INDIA

INDRP CASE NUMBER: 1975

DISPUTED DOMAIN NAME: <apkinstapro.in>

IN THE MATTER OF ARBITRATION BETWEEN:



N V SAISUNDER

PF 0006333585

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IN THE MATTER OF ARBITRATION BETWEEN:

Instagram, LLC

1601 Willow Road

Menlo Park, California 94025

United States of America

..... Complainant

Versus

Muhmmmad Asif

Asif Lashari

Mohala Shumali Eid Gah Road Taunsa Sharif Tehsil

Taunsa Sharif District DG Khan

Taunsa Sharif Punjab, 32100

Pakistan

..... Respondent

ARBITRATION AWARD

DATED: 22/05/2025

1. PARTIES:

The Complainant in this proceeding Instagram, LLC, is an American Company having principal place of business at 1601 Willow Road Menlo Park, California 94025, United States of America. The Complainant is represented by David Taylor / Jane Seager of Hogan Lovells (Paris) LLP, 17 avenue Matignon 75008 Paris France.

The Respondent in this proceeding is Muhmmmad Asif, Asif Lashari, Mohala Shumali Eid Gah Road Taunsa Sharif Tehsil Taunsa Sharif District DG Khan Taunsa Sharif Punjab, 32100 Pakistan, as per the WHOIS details disclosed by NIXI.

2. DOMAIN NAME AND REGISTRAR:

The disputed domain name <apkinstapro.in> is registered with Name.com, Inc.

3. PROCEDURAL HISTORY:



N V SAISUNDER


The Statement of Acceptance and Declaration of Impartiality was submitted by me on 26th March, 2025, as required by NIXI. Further, in accordance with Rules 3 and 5(b), NIXI appointed me as the sole arbitrator for deciding on the complaint filed in respect of the disputed domain name on 09th April 2025 to arbitrate the dispute between the Parties in accordance with the Arbitration and Conciliation Act, 1996 and accordingly notified the Parties of the same on the same date. Thereafter, the Complainant was directed on 09th April 2025 to serve the hard and soft copy of the complaint on the Respondent and furnish proof of such despatch as required under the INDRP. The Complainant complied with the directions and also sent proof of service of both hard copy and soft copy of the complaint, with intimation that email to support@instapro.live had bounced back. In accordance with Rule 5(c), a notice to the Respondent was issued on 11th April 2025 by the Arbitrator whereby the Respondent was called upon to submit his response, if any, within 10 (ten) days from the date of issuance of the notice. The Arbitrator did not receive any formal response from the Respondent except for a reply email as detailed in the Factual Background and nor did it receive any substantiation through documentary evidence. Therefore, the complaint is decided based on the submissions, materials and evidence placed before the Arbitrator.

4. FACTUAL BACKGROUND:

The Complainant is a leading online photo and video sharing social-networking application launched in 2010. Complainant was acquired by Facebook, Inc. (now Meta Platforms, Inc.) in 2012, and presently having 2.4 billion monthly active accounts worldwide. The Complainant has shown its popularity across the globe and also specifically in Pakistan.

The Complainant has secured ownership of numerous trade mark registrations for the mark "INSTAGRAM" and "INSTA" in various jurisdictions including:

- a. INSTAGRAM- International Trademark Registration No. 1129314, registered on 15 March 2012.
- b. INSTAGRAM- Indian Trade Mark No. 3042394, registered on 27 August 2015.
- c. INSTAGRAM -Pakistani Trade Mark No. 398679, registered on 1 May 2017.
- d. INSTA- Indian Trade Mark No. 3101498, registered on 5 December 2017.

The Complainant has also secured ownership of the logo mark  in the European Union and United States of America.



The aforementioned rights have been supported through evidences submitted by the Complainant.

The Complainant is also the owner of the domain name <instagram.com>, which provides access to the Complainant's Instagram service, amongst various numerous other domain names consisting of or including its "INSTAGRAM" trade mark under a wide range of generic Top-Level Domains as well as under numerous country code Top-Level Domain.

The disputed domain name was registered on 02nd June 2024. The Complainant's trademark registrations predate the registration of the disputed domain name.

The disputed domain redirects to <instaproapk.su> and a website purporting to offer for download, an APK version of the Complainant's application. At the time of filing of the Complaint, the disputed domain name resolved to a website that featured a modified version of the Complainant's figurative trademark and offered for download of "InstaPro – Download InstaPro APK Latest v11.90 Android 2024" and the disputed domain at the time of filing of the complaint stated that "Insta Pro APK is a modified version of Instagram that allows users to download photos, videos from Instagram Pro and brings advanced features."

Upon service of the complaint by the Complainant to the Respondent, the Complainant has evidenced the receipt of following as response from Respondent email id <sabirhoor@gmail.com> :

"Brother you only target my domain. Why you not take action against https://insta.com.in ? This site also provides Instagram mod. Check it I provide you a screenshot"

Furthermore, upon arbitrator's notification to Respondent to file the response, the following was received from the Respondent:

"only targets may websites insta.com.in same works"

5. PARTIES CONTENTIONS:

A. Complainant:

The Complainant has contended that all three elements of the INDRP are applicable to the present case.



The Complainant submits that it has established rights in the trade mark "INSTAGRAM" and "INSTA" for purposes of paragraph 4(a) of the .IN Policy and the disputed domain name is confusingly similar to the Complainant's registered mark. The Complainant submits that the addition of the terms "apk" and "pro" does not prevent a finding of confusing similarity with the Complainant's "INSTA" trade mark and in this regard has relied on the WIPO UDRP panel's decision on *Instagram, LLC v. Aina Jannat Aina Jannat*, WIPO Case No. D2024-1424 (<instagramproapk.org>). The Complainant therefore submits that the disputed domain name is confusingly similar to the Complainant's trade mark in accordance with paragraph 4(a) of the .IN Policy

The Complainant claims that the Respondent cannot assert that it was using, or had made demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services in accordance with paragraph 6(a) of the .IN Policy, but rather, the Respondent is making unauthorized use of the Complainant's trade mark to market its own ancillary services. Further, the Complainant has not authorised, licensed or otherwise allowed the Respondent to make any use of its "INSTA" trade mark, in a domain name or otherwise. In light of the nature of the disputed domain name, comprising the Complainant's "INSTA" trade mark, preceded by the term "apk" and followed by the term "pro" as detailed above, the Complainant submits that the disputed domain name carries with it an implied risk of affiliation with the Complainant which is not fair use. Also, the Respondent is not commonly known by the disputed domain name or the term "Instagram" or "Insta". The Complainant therefore asserts that the Respondent has no rights or legitimate interests in the disputed domain name, in accordance with paragraph 4(b) of the .IN Policy.

That the Complainant's renown and goodwill worldwide including in Pakistan and its trade mark rights established long before the registration of the disputed domain name, it would be inconceivable for the Respondent to argue that it did not have knowledge of the Complainant's "INSTA" trade mark when it registered the disputed domain name in 2024. The Complainant submits that through the Respondent's use of the disputed domain name, it has intentionally attempted to attract Internet users to online locations 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 7(c) of the .IN Policy and relies on *Amazon Technologies Inc. v Mr. Alex Parker*, INDRP/1166 (<amazonemi.in>). The Complainant also point at



the unauthorised use of the complainant's application being offered in APK version for download, which itself indicates bad faith. In view of the above, the Complainant asserts that the disputed domain name was registered and is being used in bad faith in accordance with Paragraph 4(c) of the .IN Policy.

B. Respondent:

The Respondent did not file any response to the submissions of the Complainant except for the following email received by the arbitrator:

"only targets may websites insta.com.in same works"

6. DISCUSSION AND FINDINGS:

Under the INDRP, the following three elements are required to be established by the complainant in order to obtain the remedy of transfer of the disputed domain name to the complainant:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and,
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

A. Identical or confusingly similar:

It is a well-accepted principle that the first element functions primarily as a standing requirement. The threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. The Complainant has submitted evidence of its trademark registrations that establish that the Complainant has statutory rights in the mark for the purpose of policy and specifically also holds registration in Pakistan for the mark "INSTAGRAM", the country where the Respondent is operating out of. The well-known trademark of the Complainant has been reproduced within the disputed domain name along with the letters "apk" and "pro" as prefix and suffix. This addition and the ccTLD extension ".in" do not diminish the confusing similarity with the Complainant's trademark.



The Complainant's "INSTAGRAM" trade mark is very well known internationally and commonly known as "INSTA" and is also clear from the evidence before the Panel and as repeatedly recognised in previous decisions under the Policy. Although the addition of other terms (here, "pro" and "apk") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the "INSTA" trademark for the purposes of the Policy. Reference is made to WIPO Overview 3.0, section 1.8. The Panel therefore finds the first element of the Policy has been established.

B. Rights or Legitimate interest

Paragraph 6 of the Policy provides a list of circumstances in which the registrant of a domain name may demonstrate rights or legitimate interests in a disputed domain name. While the overall burden of proof in the proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Panel finds the following from the records before it:

- a. The Respondent does not appear to engage in any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services. In fact the Panel has reasonable grounds to believe that the Respondent has made a commercial use of the disputed domain name, with the intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.
- b. the Respondent has not been commonly known by the disputed domain name.
- c. the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.



Having reviewed the record, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the domain name except for his email which does not demonstrate anything to the contrary to support the legitimacy of registration of the disputed domain name by the Respondent.

The evidence in the case shows that the disputed domain name has been used for a website that featured a modified version of the Complainant's figurative trademark, contained numerous references to the Complainant's Instagram service, and offered for download a software product named Insta Pro, described as "latest version".

In the light of the facts and circumstances discussed, it is accordingly found that the Complainant has made out a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. The second element under paragraph 4(b) of the Policy has been met by the Complainant.

C. Registered and/or used in bad faith:

The Panel notes that, for the purposes of paragraph 4(c) of the Policy, paragraph 7 of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and/or use of a domain name in bad faith.

Based on the evidence put forward by the Complainant, the Panel is of the opinion that the Respondent ought to have been aware of the Complainant's trademark registrations and rights to the "INSTA" mark when it registered the disputed domain name. Accordingly, in Panel's view the bad faith is evidently established and hence its very use by the Respondent with no connection to the trademarks suggests opportunistic bad faith.

The content of the website at the disputed domain name at the time of filing of the Complaint shows that the Respondent was well aware of the famous "INSTAGRAM" and "INSTA" trademark when it registered the disputed domain name. As discussed in the section on rights and legitimate interests, the evidence shows that the Respondent's intent in registering and using the disputed domain name was to attract



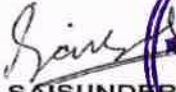
Internet users to its website for commercial gain by creating a likelihood of confusion with the "INSTA" trademark as to the source or endorsement of the software product featured on the Respondent's website. It is accepted by the Panel that the APK version of the Instagram application may disrupt the Complainant's business by driving users to third-party applications and such activities amount to use of a domain name in bad faith. The current use of the disputed domain name to redirect to another website that also allegedly offers for download a product targeting the Complainant's services and misleads Internet users as to the website's association with the Complainant supports the same conclusion.

For reasons stated above, it is established that the disputed domain name was registered and used in bad faith and the second element under paragraph 4(c) of the Policy has been met by the Complainant

7. DECISION:

In view of the above findings, it is ordered that:

- a. The disputed domain name <apkinstapro.in> be transferred to the Complainant.
- b. The Respondent pay the Complainant a sum of INR 1,50,000/- (Indian Rupees One Lakh and Fifty Thousand only) towards costs of these proceedings.


N V SAISUNDER
Arbitrator
Date: 22nd May 2025

