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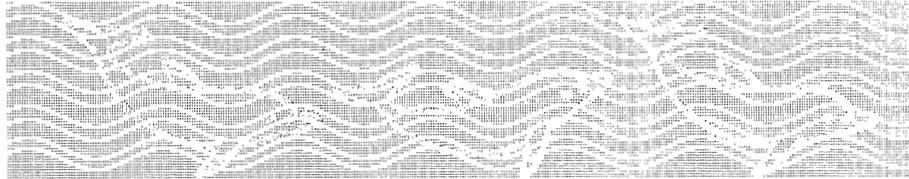
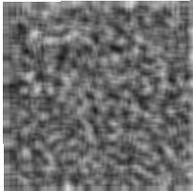
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 Unique Doc. Reference : SUBIN-DLDSLHIMP1740949603933755W  
 Purchased by : ALOK KUMAR JAIN  
 Description of Document : Article 12 Award  
 Property Description : Not Applicable  
 Consideration Price (Rs.) : 0  
 (Zero)  
 First Party : ALOK KUMAR JAIN  
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 Stamp Duty Paid By : ALOK KUMAR JAIN  
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IN-DL44152608717976W

**BEFORE ALOK KUMAR JAIN, SOLE ARBITRATOR**

**INDRP Case No. 1890**

**Disputed Domain Name: <INSTAPRO.COM.IN>**

**ARBITRATION AWARD**

**INSTAGRAM, LLC Complainant**

**versus**

**GB APPS**

**Respondent**

*Alok Kumar Jain*

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**BEFORE ALOK KUMAR JAIN, SOLE ARBITRATOR  
.IN REGISTRY  
NATIONAL INTERNET EXCHANGE OF INDIA(NIXI)  
INDRP ARBITRATION  
INDRP Case No. 1890**

**Disputed Domain Name: < INSTAPRO.COM.IN >**

**ARBITRATION AWARD**

**Dated 30.8.2024**

**IN THE MATTER OF:**

INSTAGRAM ,LLC  
1601 Willow Road

Menlo Park, California 94025

United States of America

(Complainant)

**VERSUS**

GB APPS

Apps.Pk

District DG Khan

Tehsil Taunsa Sharif Taunsa

Sharif,

Punjab 32100 Pakistan

(Respondent)

**1. The Parties**

The Complainant in this administrative proceeding is Instagram,LLC at the above address. The Complainant's authorized representative in this administrative proceeding is: David Taylor / Jane Seager, Hogan Lovells

*Alok Kumar Jain*

(Paris) LLP, 17 avenue Matignon 75008 Paris France Telephone +33 1 53 67 47 47 Fax: +33 1 53 67 47 48 E

Respondent in these proceedings is **GB APPS at the above address.**

**Domain Name and Registrar:-**

The disputed domain name is <instapro.com.in>, is registered with Dynadot LLC: P.O. Box 345 ,San Mateo CA 94401 United States Telephone: +1 6502620100 Email: info@dynadot.com

**1 Procedure History**

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

As per the information received from NIXI, the history of the proceedings is as follows:

3.2. The Complaint was filed by the Complainant with NIXI against the Respondent . On 8.8.2024 I was appointed as Sole Arbitrator to decide the disputes between the parties. I submitted statement of Acceptance and Declaration of Impartiality and Independence as required by rules to ensure compliance with Paragraph 6 of the Rules. NIXI notified the

Parties of my appointment as Arbitrator *via* email dated 8.8.2024 and served by email an electronic Copy of the Complainant with Annexures on the Respondent at the email addresses of the Respondent.

3.3. Amended Complaint was filed on 12.8.24. Therefore I issued notice to the parties vide email dated 12.8.2024 directing the Complainant to serve complete set of Complaint on the Respondent in soft copies as well as in physical via courier /Post. The Respondent was directed to file its response within 10 days from the date of notice. No response was received from the Respondent within 10 days or thereafter till 24.8.2028. On 24.8.24 I intimated the parties that now the matter will be decided on its own merit. Accordingly now the complaint is being decided on merit. No personal hearing was requested by any parties.

3.4 A Complete set of Complaint was served by NIXI in electronic form by email to the Respondent at the email provided by the Respondent with WHOIS vide email dated 8.8.24, while informing the parties about my appointment as Arbitrator. Thereafter notice was sent vide same trailing email. All communications were sent to Complainant, Respondent and NIXI by the Tribunal vide emails. None of the emails so sent have been returned so far. Therefore I hold that there is sufficient service on the Respondent through

email as per INDRP rules. The Respondent has not filed any response to the Complaint.

3.5. Clause 8(b) of the INDRP Rules requires that the Arbitrator shall at all times treat the Parties with equality and provide each one of them with a fair opportunity to present their case.

3.6. Clause 12 of INDRP Rules provides that in 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 law.

3.7 As stated above, the Respondent failed to file any Response to the Complaint despite opportunity given and chose not to answer the Complainant's assertions or controvert the Complaint and the contentions raised. As a result, I find that the Respondent has been given a fair opportunity to present his case but has chosen not to come forward and defend itself.

3.8 Further Clause 13(a) of the Rules provides that an Arbitrator shall decide a Complaint on the basis of the pleadings submitted and in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules, Dispute Resolution Policy, the Rules of Procedure and any by-laws, and guidelines and

any law that the Arbitrator deems to be applicable, as amended from time to time.

In these circumstances the Tribunal proceeds to decide the complaint on merit in accordance with said Act, Policy and Rules on Respondent's failure to submit a response despite having been given sufficient opportunity and time to do so.

**Discussions and findings:**

The Complainant has invoked Clause 4 of the Policy to initiate the Arbitration Proceeding.

Clause 4 of the INDRP Policy provides as under:

**4. Class of disputes:**

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

- (a) the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and
- (b) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (c) the Registrant's domain name has been registered or is being used in bad faith.

Therefore in order to succeed in the Complaint, the Complainant has to satisfy inter alia all the three conditions provided in clauses 4(a), 4(b) and 4(c) quoted above.

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4. **CASE OF THE COMPLAINANT**

It is averred in the Complaint that the Complainant is a world-renowned leading online photo and video sharing social-networking application. Since its launch in 2010, Instagram rapidly acquired and developed considerable goodwill and renown worldwide. Acquired by Facebook, Inc. (now Meta Platforms, Inc.) in 2012, - 4 - \\1092247 4156-4919-8160 v12 Hogan Lovells

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. A screen capture of the homepage of the Complainant's website at <https://instagram.com> is provided as **Annex 4**. Instagram has consistently ranked amongst the top "apps" for mobile devices, including for iOS and Android operating systems. Instagram is currently the most downloaded application worldwide, according to The Financial Times.

Copies of Instagram's company information, including its Wikipedia entry, articles about Meta's acquisition of Instagram in 2012 and mobile application rankings, and Interbrand's Best Global Brands 2023 are provided as **Annex 5**. Instagram's exponential growth and popularity, including in Pakistan, has been widely reported by specialized

technology publications including Tech Crunch as well as major international publications such as The New York Times, The Washington Post (United States) and Datareportal. See, for instance, "Instagram Quickly Passes 1 Million Users", The New York Times (21 December 2010)<sup>1</sup> and "DIGITAL 2023: PAKISTAN", Datareportal (13 February 2023).<sup>2</sup>

Copies of sample press articles about Instagram's launch and rapid growth and international popularity, including in Pakistan, are provided as **Annex 6**

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),

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<instagram.ch> (Switzerland), <instagram.ae> (United Arab Emirates) and <instagram.com.vn> (Viet Nam).

Copies of the WhoIs records for a selection of the Complainant's domain names are provided at **Annex 7**.

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

#### **The Complainant's trade marks**

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;

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- 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.

The Complainant has also secured ownership of the following figurative trade marks:

- 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.

Copies of these trade mark registrations are provided as **Annex 9**.

#### **The Domain Name and associated website**

Complainant was recently made aware of the Disputed Domain Name, comprising its INSTA trade mark followed by the term "pro", under the domain extension ".com.in", registered on 21 March 2023. The Domain Name redirects to <https://instapro.com.in>, which further redirects to

<https://iinstapro.net> and further redirects to <https://myinstapro.org> and a website titled "Insta Pro APK Download (Official) Latest Version v11.15 July 2024" that purports to offer for download an - 6 - \\1092247 4156-4919-8160 v12 Hogan Lovells unauthorized modified APK3 version of the Instagram application called "InstaPro APK" (the Respondent's website). The Respondent's website claims that: "Instagram is one of the most famous and most used social media applications these days. People love to socialize on this application with pictures and videos of daily deeds artistic content creation. But there are some features about which you want them either to be improved or removed from the application.

The Respondent's website features a tab titled "Insta Pro 2", which leads to a web page purporting to offer for download "Insta Pro 2, the Latest app for Instagram users for pro socialising". The Insta Pro 2 APK provides Internet users with further features that are not available on the official Instagram application, such as the ability to "block all ads" and "design the app UI accordingly to your preferences".

The 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 detailed in the Complaint.

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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<sup>4</sup> (see Annex 4).

Respondent's website also makes prominent reference to the Complainant's INSTAGRAM trade mark and features the Complainant's Instagram logo and figurative trade mark as well as modified versions of it on the website itself and as a favicon, as shown in the Complaint. Hence the present complaint.

**4.1 Condition 4(a): ) the Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights;**

The Complainant stated in the Complaint that the Domain Name is confusingly similar to a trade mark in which the Complainant has rights. The disputed Domain Name comprises the Complainant's INSTA trade mark with the addition of the term "pro", under the domain extension ".com.in". 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. Complainant relies upon *Instagram, LLC. v. pinoy tvshows*, WIPO Case No. D2023-3723 (<instagrampro.app>): where it was held that :

"While the addition of other terms (here, 'pro') may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy."

Complainant further submits that with regard to the ".com.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 trade mark. See in this regard M/s Safran v Ding Ri Guo, INDRP/1354 (<sagemcom.co.in>) and Google LLC v Hom Kit Bk Picture, INDRP/1814 (<simsim.net.in>). The Complainant submits that the ".com.in" domain extension should be similarly disregarded for purposes of comparison under the first element.

I have gone through the complaint and perused all the documents annexed with the Complaint.

It is evident that the Complainant has been continuously and extensively using the registered trademark **INSTA** in commerce since its launch in 2010 – and thus its rights in the **INSTA** Marks are well established. Moreover, since the Disputed Domain Name has only been registered in the year 2023, it is much later to the Complainant's statutory rights in the **INSTA** Marks.

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It is evident from above and documents annexed with the complaint that the complainant has sufficiently established its rights in and to the ownership of the INSTA Trademarks.

A mere perusal of the disputed domain name 'INSTAPRO.COM.IN' of the Registrant/Respondent shows that the Respondent has used the Complainant's trading mark 'INSTA' in its entirety. The disputed domain name 'INSTAPRO.COM.IN' is identical to the 'INSTA' trade marks of the Complainant. It is well established that the addition of a TLD such as ".in" is not significant in determining whether the disputed domain name is identical or confusingly similar to the mark.

It has been held by prior panels deciding under the INDRP that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trade mark such as *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*. Further, a TLD/ccTLD such as ".in" is an essential part of domain name. Therefore, it cannot be said to distinguish the Respondent's domain name <INSTAPRO.COM.IN> from the Complainant's trademark INSTA. This has been held by prior panels in numerous cases, for instance in *Dell Inc. v. Mani, Soniya INDRP/753*. In *M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705* wherein on the basis of the Complainant's

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registered trademark and domain names for “**AMERICAN EAGLE**”, having been created by the Complainant much before the date of creation of the disputed domain name **<americaneagle.co.in>** by the Respondent, it was held that,

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

The Complainant has acquired rights in the trade mark **INSTA** by way of trademark registrations, and by virtue of use as part of their company since much prior to the date on which the Respondent created the impugned domain **<INSTAPRO.COM.IN>** incorporating the Complainant's trade mark and trade name **INSTA** in toto.

The Respondent has not filed any response to the complaint as such all the averments of the complainant has remained un rebutted.

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In view of the above facts and submissions of the complainant, and on perusal of the documents annexed with the Complaint, I hold that the Disputed Domain Name <INSTAPRO.COM.IN> of the Registrant is identical and or confusingly similar to the trademark INSTA of the Complainant.

6.2 **Condition no.4 (b) the Registrant has no rights or legitimate Interest**

The Complainant stated in the Complaint that the Respondent is not having any rights or legitimate interests in respect of the disputed domain name as the Respondent is not commonly known by the disputed domain name, The Respondent cannot claim to have been legitimately known under the name INSTA. Further the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services. It is further stated that the Respondent has never been granted authorization, license or any right whatsoever to use the trademark of the Complainant. The Respondent is not commercially linked to the Complainant. The adoption and extensive use by the Complainant of the trademarks INSTA predate the registration of the disputed domain name by the Respondent, the burden is on the Respondent to establish rights or legitimate interests it may have or have had in the domain name. And the Respondent has failed to prove the circumstances referred to in Clause 6 .

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The Complainant has established its rights in the trade mark INSTA .The mere fact that the Disputed Domain Name is registered does not imply that the Respondent has any rights or legitimate interests in them. In Deutsche Telekom AG v. Phonotic Ltd. (WIPO Case No. D2005-1000), it has been held that "*Registration of a domain name in itself does not establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy*". Therefore, any use of the Disputed Domain Name by the Respondent is not a legitimate non commercial or fair use of, and it has no rights or legitimate interests in, the Disputed Domain Name.

The inclusion of the well-known mark 'INSTA' in the Disputed Domain Name reflects the malafide intention of the Respondent to use the Dispute Domain Name for earning profits. Such a conduct demonstrates anything but a legitimate interest in the domain name. **The Sports Authority Michigan, Inc. v. Internet Hosting, NAF Case No. 124516** wherein it was held "*It is neither a bona fide offerings of goods or services, nor an example of a legitimate non-commercial or fair use under Policy 4(c)(i) and (iii) when the holder of a domain name that is confusingly similar to an established mark uses the domain name to earn a profit without approval of the holder of the mark*".

The Respondent has not filed any response as such the facts stated in the complaint had remained un rebutted. Further the

Respondent has failed to satisfy the conditions contained in clause 6(a),(b) and 6(c) of INDRP Policy.

On the contrary it is evident that the Registrant has no rights or legitimate interest in respect of the Disputed Domain Name and has never been identified with the Disputed Domain Name or any variation thereof. The Registrant's use of the Disputed Domain Name will inevitably create a false association and affiliation with Complainant and its well-known trade mark INSTA.

Therefore, in view of the submissions made in the complaint and on perusal of the accompanying documents, I am of the opinion that the Respondent has no rights or legitimate interests in respect of the domain name;

Accordingly I hold that the Registrant has no rights or legitimate interests in respect of the Disputed Domain Name.

6.3

**Condition 4(C): the Registrant's domain name has been registered or is being used in bad faith**

Clause 7 of INDRP Policy provides as under:

Clause 7. Evidence of Registration and use of Domain Name in Bad Faith

For the purposes of Clause 4(c), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the registration and use of a domain name in bad faith:

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- (a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or
- (b) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- (c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location.

The Complainant is vested with worldwide statutory rights in its INSTA Marks earliest registration being in the year 2010. The Respondent's registration of a Disputed Domain Name wholly incorporating the Complainant's well-known house mark is of

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concern due to the grave likelihood of creating confusion in the minds of the public.

36.

From perusal of documents annexed with the complaint and the averments made in the complaint it is clear that the Respondent got the Disputed Domain Name registered in bad faith and in contravention of Paragraph 4(iii) of the Policy.

In this regard the decision of prior Panel in *M/s Merck KGaA v Zeng Wei INDRP/323* can be referred wherein it was stated that:

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

The Respondent had no reason to adopt an identical name/ mark with respect to the impugned domain name except to create a deliberate and false impression in the minds of consumers that the Respondent is somehow associated with or endorsed by the Complainant, with the sole intention to ride on the massive goodwill and reputation associated with the Complainant and to unjustly gain enrichment from the same.

In view of above facts, submissions of the Complainant and on perusal of the documents annexed with the Complaint , I find that the Complaint has proved the circumstances referred in Clause 7(a)(b) and (c) of INDRP policy and has established that the registration of disputed domain name is in bad faith.

Accordingly I hold that the Registrant's Domain Name has been registered in bad faith.

**Decision**

In view of the foregoing, I hold that the Disputed Domain Name is identical and or confusingly similar to the Complainant's well-known 'INSTA' Trademarks and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered in bad faith.

In accordance with the INDRP Policy and Rules, I direct that the Disputed Domain Name registration be transferred to the Complainant.

Delhi  
Dated 30.8.2024

*Alok Kumar Jain*  
Alok Kumar Jain  
Sole Arbitrator