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**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY**  
(Appointed by the National Internet Exchange of India)

#### ARBITRATION AWARD

Disputed Domain Name: <INSTAQRAM.IN>

#### IN THE MATTER OF

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

... Complainant

-----versus-----

**Sahil Mittal**  
Ho no.22 Shyonal,   
Didauli, Uttar Pradesh 244222  
India

... Respondent

*Vikrant Rana*

#### Statutory Alert:

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### **1. The Parties**

The **Complainant** in this arbitration proceeding is **Instagram, LLC**, of the address: *1601 Willow Road, Menlo Park, California, 94025, United States of America.*

The **Respondent** in this arbitration proceeding is **Sahil Mittal** of the address: *Ho no.22 Shyonali, Didauli, Uttar Pradesh 244222, India.*

### **2. The Domain Name, Registrar and Registrant**

The present arbitration proceeding pertains to a dispute concerning the registration of domain name **<INSTAQRAM.IN>** with the .IN Registry. The Registrant in the present matter is **Sahil Mittal**, and the Registrar is **GoDaddy LLC**.

### **3. Procedural History**

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI).

NIXI vide its email dated June 10, 2021, had sought consent of Mr. Vikrant Rana to act as the Sole Arbitrator in the matter. The Arbitrator informed of his availability and gave his consent vide Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure vide email on the same day, i.e. June 10, 2021. Thereafter the Arbitrator received soft copies of the Amended Domain Complaint and the annexures thereto from NIXI on June 14, 2021. Consequently, on June 16, 2021, the Arbitrator received an email from the Complainant providing snapshots of the emails (as sent to the Respondent) serving the Complaint and Annexures on the Respondent. The Arbitrator, vide email dated June 18, 2021, directed the Complainant to submit proof of service of both soft copy and hard copy on the Respondent within a stipulated time period.

On June 18, 2021, the Complainant provided the Arbitrator with copies of delivery receipts in lieu of proof of service of soft copy of the complaint and annexures on the Respondent and further requested the Arbitrator to waive the requirement of service of hard copy owing to the on-going pandemic situation. Vide email dated June 21, 2021, the Arbitrator confirmed receipt of the proof of service of soft copy and further waived the requirement of service by hard copy. The Respondent was deemed to have been sufficiently served with the Complaint and Annexures thereto and was granted a period of **fourteen (14) days** from the date of receipt of the email, i.e. till July 05, 2021, within which to file a response to the Complaint and forward copies of the same to the Complainant, the Arbitrator and the .IN Registry, failing which, the matter would be decided on the basis of material already available on record and on the basis of applicable law. The arbitration proceedings were therefore deemed to have commenced from June 21, 2021.

On July 06, 2021, the Arbitrator, vide email addressed to the Respondent, brought it on record that despite the prescribed deadline for the Respondent to respond in the matter having elapsed on July 05, 2021, in the interests of justice the Respondent was being granted an additional but final and non-extendable period of **seven (7) days** i.e. till July 13, 2021, within which to submit a response (if any) in the matter.

*Vikrant Rana*

As no response to the Complaint was preferred by the Respondent in the matter even after expiration of the aforementioned final time period of **seven (7) days**, the Arbitrator, vide email dated July 14, 2021, reserved the award to be passed on the basis of facts and documents available on the record.

#### **4. Factual Background**

The Complainant has submitted that it is a world-renowned leading online photo and video sharing social networking application. Complainant has further submitted that since it was launched on 6 October, 2010, Instagram has rapidly developed considerable goodwill and renown worldwide. Acquired by Facebook in 2012, Instagram currently has over 1 billion monthly active users and 500 million daily active users. Complainant has claimed that it is one of the fastest growing social media apps in the world and has consistently ranked amongst the top apps for mobile devices. Further, as per the Complainant, Instagram is the 3rd most downloaded app both in the world and in India (where the Respondent is based).

Complainant has submitted that their website available at [www.instagram.com](http://www.instagram.com) is ranked as the 25th most visited website in the world and 14th in India, according to the leading web analytics provider, **Alexa**. In this regard, the Complainant has submitted screen captures of the home page of the website, [www.instagram.com](http://www.instagram.com), and of information on Instagram, including Instagram's Wikipedia entry, press articles on Facebook's acquisition of Instagram in 2012, and Instagram's various rankings as **Annex 4**.

Complainant has further stated that they are the owner and registered proprietor of the trademark **INSTAGRAM** which is registered in many jurisdictions throughout the world including in India. In this regard, Complainant has attached copies of registration certificates of the mark **INSTAGRAM** in India (filing date August 27, 2015) and the United States (filing date September 19, 2011) as **Annex 5**.

Complainant has submitted that they are the owner of numerous domain names consisting of the term **INSTAGRAM** under generic extensions as well as under various country code extensions including the India-specific domains **<Instagram.in>** and **<Instagram.org.in>** and has attached copies of WHOIS records for some of their domains as **Annex 6** in this regard. It is pertinent to mention that the domain **<Instagram.com>** was created on June 04, 2004.

Complainant has further stated that the term **INSTAGRAM** is highly distinctive and exclusively associated with the Complainant and has submitted search results available at [www.google.com](http://www.google.com) and [www.google.co.in](http://www.google.co.in) obtained by typing the term **INSTAGRAM** which refer only to the Complainant as **Annex 7**.

Further, Complainant has submitted copies of decisions of prior panels under the INDRP and UDRP that have recognized the strength of the Complainant's **INSTAGRAM** mark and ordered the respondents to transfer the disputed domain names to the Complainant as **Annex 8**.

#### **5. Complainant's Contentions and Arguments**

Complainant has submitted that they came across the typographical variant of their mark **INSTAGRAM** registered by the Respondent, namely **<INSTAQRAM.IN>** on **July 07, 2020**.

As per **Annex 9** submitted by the Complainant, the said domain does not resolve to an active website.

*Abirant Kana*

Further, as per **Annex 10**, the Complainant even attempted to contact the Registrant by filling in the registrar's online form on 28 March 2021, however did not hear from the Respondent in this regard.

Accordingly, given the failure to settle with the Respondent amicably, the Complainant has claimed that they had no choice but to file the present Complaint in order to request the transfer of the impugned domain name under the .IN Policy to protect its legitimate business interests and rights and to protect the general public from confusion.

Complainant has stated that each of the factors mentioned in Paragraph 4 of the INDRP are satisfied in the present dispute, as below:

- i. *The Domain Name is confusingly similar to the Complainant's trade marks (Paragraph 4(a) of the .IN Policy)*

Given the Complainant's trade mark registrations as mentioned in **Annex 5**, the Complainant has established its trade mark rights in the term **INSTAGRAM**.

The Complainant has claimed that the impugned domain name **INSTAQRAM.IN** consists of a typographical variation of the Complainant's **INSTAGRAM** trade mark (wherein the letter "g" has been replaced by the visually similar letter "q"), which is deceptively similar to the Complainant's trade mark particularly in lower case letters.

The Complainant has referred to a UDRP decision *The Swatch Group AG / Swatch AG v. packy phim, WIPO Case No. D2018-0851* (<swatchgroup.com>) wherein it was held that disputed domain name is identical/ confusingly similar to the Complainants' trademark **SWATCH GROUP** and the substitution of the letter "q" for the letter "g" fails to distinguish the impugned domain name from the said mark.

- ii. *The Respondent has no rights or legitimate interests in respect of the Domain Name (Paragraph 4 (b) and Paragraph 6 of the .IN Policy)*

Complainant has submitted that numerous prior panels have found either under the UDRP or under the INDRP that "where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production of 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 has claimed that they will be deemed to have satisfied the second element.

The Complainant has claimed that they have not licensed or authorized the Respondent to use the said domain name and neither is the Respondent commonly known by the said domain name (as the name '**Sahil Mittal**' bears no resemblance to the impugned domain). Further, since the impugned domain does not resolve to a website and there is no evidence that the Respondent has ever used the impugned domain to host an active website, the Complainant has claimed that it is being **passively held** and cannot be considered as a bona fide offering of goods or services.

*Murant Kana*

Further, in the absence of any active use of the impugned domain, the Complainant has stated that the Respondent cannot assert that he has made or is currently making a legitimate non-commercial or fair use of the impugned domain.

iii. *The Domain Name was registered or is being used in bad faith (Paragraph 4(c) and Paragraph 7 of the .IN Policy)*

The Complainant has claimed that given the distinctive and well-known nature of the mark **INSTAGRAM** (as demonstrated in **Annex 4** and **Annex 7**), the Respondent had prior knowledge of the Complainant's mark.

The Complainant has relied on a decision of this Panel in *Instagram LLC v. Ding RiGuo.*, INDRP/1183 (<instagram.in>) wherein it was held that on the basis of the submission and evidence on record, the respondent would have definitely known about the Complainant's mark '**Instagram**' and its reputation at the time of registering the disputed domain name.

Further, Complainant has submitted the fact that the Respondent, when composing the impugned domain name, selected the term **INSTAGRAM** by simply replacing the letter "g" with the visually similar letter "q" is clearly indicative of its knowledge of the Complainant's trade mark at the time of registration. Reliance has been placed on *Jones Lang LaSalle IP, Inc. v. Registration Private, Domains By Proxy, LLC / Name Redacted*, WIPO Case No. D2019-2198 (<joneslanglasalle.com>) wherein it was held that replacing a single letter "g" in the mark with the visually similar character "q" demonstrates knowledge on part of the respondent as well as an intention to create confusion.

Additionally, Complainant has submitted that the Respondent has deliberately chosen a typographical variation of the mark **INSTAGRAM**, thereby constituting registration (of the disputed domain name) in bad faith per se. Further, owing to the distinctive and well-known nature of the name/mark **INSTAGRAM**, the Complainant has claimed that users are likely to be confused and may wrongly assume that the impugned domain is connected to the Complainant.

**Other Legal Proceedings**

The Complainant has submitted that they have not initiated any other legal proceedings against the impugned domain name <**INSTAQRAM.IN**>.

**Reliefs claimed by the Complainant (Paragraph 10 of the INDRP read with Paragraph 4(b)(vii) of the INDRP Rules of Procedure)**

The Complainant has claimed that the domain name <**INSTAQRAM.IN**> be transferred to them and cost be awarded, as the Arbitrator may deem fit.

**6. Respondent's Contentions**

As already mentioned in the Procedural History of the matter, despite having been duly served with a copy of the Domain Complaint as filed, and thereafter granted adequate time to respond to the same, the Respondent had not submitted any response thereto, or in fact any communication of any kind to either the Complainant, NIXI or the Arbitrator in respect of the matter.



## 7. Discussion and Findings

In a domain complaint, the Complainant is required to satisfy three conditions as outlined in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, i.e.:-

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

i. **The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights**  
(Paragraph 4(a) of the .IN Domain Name Dispute Resolution Policy)

The Complainant has established its rights in the mark **INSTAGRAM** in India (vide Registration No. 3042394 dated August 27, 2015) and based on the evidence placed on record, Complainant has demonstrated that it is the owner and registered proprietor of the trademark **INSTAGRAM** which is registered in many jurisdictions throughout the world including in India.

Additionally, Complainant has submitted that they are the owner of numerous domain names consisting of the term **INSTAGRAM** under generic extensions as well as under various country code specific extensions including the India-specific domains **<Instagram.in>** and **<Instagram.org.in>**. It is pertinent to mention that the domain **<Instagram.com>** was created on June 04, 2004. These rights significantly pre-date the registration of the domain name **<INSTAQRAM.IN>** by the Respondent, which was only registered on **July 07, 2020**.

Complainant has further submitted evidence of the distinctive and well-known nature of the term **INSTAGRAM** as well as provided copies of decisions of prior panels under the INDRP and UDRP that have recognized the strength of the Complainant's **INSTAGRAM** mark.

It is observed that the disputed domain name **<INSTAQRAM.IN>** consists of a typographical variation of the Complainant's **INSTAGRAM** trade mark, wherein the letter "g" has been replaced by the visually similar letter "q", thereby leading to a case of "typo-squatting". The deceptive similarity is aggravated when the Complainant's trade mark and the domain name are depicted side-by-side in lower case letters, i.e. **instagram v. instaqram**.

Accordingly, it is held that the replacement of the letter "g" with "q" is insufficient to distinguish the domain name or differentiate it from the Complainant's trademarks and domain names under the name/ mark **INSTAGRAM**.

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(a) of the .IN Domain Name Dispute Resolution Policy, and that the Respondent's domain **<INSTAQRAM.IN>** is confusingly identical/similar to the Complainant's trade mark(s).

*Murant Lane*

ii. The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(b) and Paragraph 6 of the .IN Domain Name Dispute Resolution Policy)

The Complainant has contended that the Respondent has no right or legitimate interest in respect of the domain <INSTAQRAM.IN>.

In the present dispute, Complainant has established that it has rights over the name/mark **INSTAGRAM** and that the domain <INSTAQRAM.IN> is confusingly identical/similar to the Complainant's trade mark.

The element under Paragraph 4(b) and Paragraph 6 of the .IN Domain Name Dispute Resolution Policy necessitates that Complainant has to establish a prima facie case that Respondent has no rights or legitimate interests in the disputed domain in question. The burden thereafter lies on the Respondent to rebut the showing by providing evidence of its rights or legitimate interests in the domain name. It has been held in numerous cases, including in *Huolala Global Investment Limited v Li Chenggong (INDRP /1027)* that the onus of proving rights or legitimate interest in the disputed domain name lies on the Respondent. If the Respondent fails to come forward with relevant evidence to prove rights and legitimate interest in the disputed domain name, and if the Complainant is found to have put forward a prima facie case, then the Complainant prevails.

In this case, the Respondent has not submitted any response and/or any evidence of its rights and interests even though extended time period and ample opportunities were granted to the Respondent in this regard. The Respondent has not been able to establish any of the conditions pre-requisite for considering a registrant's rights and legitimate interests in a domain name as set out under Paragraph 6 of the INDRP.

Further, it has been contended by the Complainant that they have not licensed or authorized the Respondent to use the said domain name and neither is the Respondent commonly known by the said domain name. The name of the registrant is **Sahil Mittal** which bears no resemblance to the impugned domain name <INSTAQRAM.IN>. Further, the Arbitrator has observed that the impugned domain indeed does not resolve to a website and there is no evidence that the Respondent has ever used the impugned domain to host an active website.

Accordingly, the Complainant's claim that the impugned domain is being passively held and cannot be considered as a bona fide offering of goods or services holds merit. In view of the above, it can be stated that prima facie the Respondent cannot be said to be making legitimate or fair use of the domain name.

The Complainant has established a prima facie case of its rights in the name/mark **INSTAGRAM**, and in view of the Respondent's non-response, despite ample opportunities having been provided to them, the Arbitrator finds that Respondent has not established any rights or legitimate interests in the disputed domain name and that the Respondent is not using the disputed domain name for a bonafide offering of services and is not making legitimate non-commercial or fair use of the Complainant's trade mark.

In view of the aforesaid, the Arbitrator finds that the Complainant has successfully established the requirements as under Paragraph 4(b) of the .IN Domain Name Dispute Resolution Policy.

*Morant Lane*

iii. The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(c) and Paragraph 7 of the INDRP)

Paragraph 7 of the INDRP stipulates the below circumstances which show registration and use of a domain name in bad faith - (a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or (b) the Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or (c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other online 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.

Complainant has submitted that given the distinctive and well-known nature of the mark **INSTAGRAM** (as demonstrated in **Annex 4** and **Annex 7**), the Respondent had prior knowledge of the Complainant's mark. The Complainant has also relied on a decision of this Panel in *Instagram LLC v. Ding RiGuo*, INDRP/1183 (<instagram.in>) wherein it was held that the respondent had knowledge about the Complainant's mark **INSTAGRAM** and its reputation at the time of registering the disputed domain name.

Further, Complainant has submitted that the Respondent has deliberately chosen a typographical variation of their well-known mark **INSTAGRAM** which demonstrates the Respondent's bad faith and intention to create a likelihood of association/ confusion with the Complainant.

Based on the above, it appears that by registering and using the domain <**INSTAQRAM.IN**>, the Respondent has engaged in conduct as enumerated in paragraph 7 (c) of the INDRP, namely that *it 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.*

It is evident that the Respondent has engaged in **typo-squatting** by adopting the deceptively/ confusingly similar domain name <**INSTAQRAM.IN**> and has replaced the letter "g" with the visually similar "q" in a deliberate attempt to create a likelihood of confusion/ association with the Complainant.

Further, the Respondent's use of the disputed domain name has not been defended as having been bona fide and the Respondent has not submitted any reply nor rebuttal to the Complainant's contentions, or evidence in support of its bona fide use and/ or adoption of the disputed domain name.

In light of the above and in the absence of any defense by the Respondent, the Arbitrator finds that the disputed domain name was registered and is being used in bad faith.

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved the requirements of Paragraph 4(c) and Paragraph 7 of the INDRP.



## **8. Decision**

Based upon the facts and circumstances and further relying on the materials as available on the record, the Arbitrator is of the view that the Complainant has established rights over the name/mark **INSTAGRAM**. In light of the non-response by the Respondent, the Complainant has been able to prove conclusively that:

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

The Arbitrator therefore allows the prayer of the Complainant and directs the .IN Registry to transfer the domain <**INSTAQRAM.IN**> to the Complainant.

The Award is accordingly passed and the parties are directed to bear their own costs.

  
**Vikrant Rana, Sole Arbitrator**

**Date: July 20, 2021.**

**Place: New Delhi, India.**