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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91217238
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10 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
11 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

12
13 INSTAGRAM, LLC, a Delaware limited
liability company,

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15 Opposer/Registrant

16 v.

17 FLIPAGRAM, INC., a California corporation,

18 Applicant/Petitioner
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**FLIPAGRAM'S REPLY MEMORANDUM
IN FURTHER SUPPORT OF MOTION TO
TEST SUFFICIENCY OF OPPOSER
INSTAGRAM'S RESPONSES TO
FLIPAGRAM'S FIRST AND SECOND SETS
OF REQUESTS FOR ADMISSION**

Opposition No. 91217238

Application No. 86042264

1 **INTRODUCTION**

2 Opposer’s brief spills much ink attempting to obscure its refusal to produce meaningful discovery on
3 topics fundamental to Flipagram’s defenses. Opposer’s discovery responses have routinely defined away the
4 primary purpose of Flipagram’s request, or simply stonewalled with boilerplate objections. After months of
5 conferring, Opposer has not complied with its obligations. Even now – having supplemented other discovery
6 answers in the face of Flipagram’s motion – Opposer has declined to supplement its RFA responses.

7 Opposer’s boilerplate objections lack merit. For example, Opposer objected to *every one* of the
8 requests at issue as “vague and ambiguous” or “overbroad and unduly burdensome” (or both), but has not
9 provided any facts to satisfy its burden of establishing that claim. (Gray Decl. Exhs. A-B.) Opposer did not
10 “pause and consider” its objections, as required by the Code. *Mancia v. Mayflower Textile Serv. Co.*, 253
11 F.R.D 354, 357 (D.Md. 2008) (quoting Fed. R. Civ. P. 26(g) Advisory Committee notes to the 1983
12 amendments). Instead, it objected “reflexively—but not reflectively—and without a factual basis.” *Id.* at 358.

13 The Board should order Opposer to answer fully, so that the parties can proceed with the merits.

14 **ARGUMENT**

15 **I. Legal Standard**

16 Opposer incorrectly suggests that the December 1, 2015 amendment to Rule 26 alters the burden of proof
17 by imposing a new “proportionality” requirement. In fact, proportionality has always been embedded in the
18 federal discovery rules. Fed R. Civ. Proc. 26 (2015 Advisory Committee Notes).¹ *Carr v. State Farm Mut. Auto.*
19 *Ins. Co.*, 93 Fed.R.Serv.3d 483 (N.D. Tex. Dec. 7, 2015) (The amendments “do not alter the basic allocation of the
20 burden on the party resisting discovery to ... specifically object and show that the requested discovery does not fall
21 within Rule 26(b)(1)'s scope ... [or that it] would impose an undue burden or expense”). An objecting party
22 “cannot rely on some generalized objections, but must show *specifically how each request is burdensome ... by*
23 *submitting affidavits or some detailed explanation* as to the nature of the claimed burden.” *Id.* (emphasis added);

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27 ¹ The Committee Notes expressly provide that amendment “does not place on the party seeking discovery the
28 burden of addressing all proportionality considerations,” and explains that “[a] party claiming undue burden or
expense ordinarily has far better information—perhaps the only information—with respect to that part of the
determination.”

1 | *McLeod, Alexander Powel & Apffel P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990); *Heller v. City of Dallas*,
2 | 303 F.R.D. 466, 490-91 (N.D. Tex. 2014) 490-91 (awarding sanctions for failure to do so).

3 | Opposer also argues that the motion should be denied because “the Board will generally not find a
4 | response insufficient ‘if there is an admission or a denial,’” citing TBMP § 524.01. (*See, e.g.*, Opp. p. 9.) Here,
5 | Opposer has failed either to admit or deny the requests at issue, or to “state in detail why [it] cannot either admit or
6 | deny” them. Fed. R. Civ. P. 36(a)(4); TBMP § 524.01. TBMP § 524.01 does not preclude a motion to test
7 | sufficiency where there has been neither an admission nor a denial; the rote recitation of boilerplate objections is
8 | insufficient. Nor may a respondent qualify its responses based on “disingenuous, hair-splitting distinctions.”
9 | *Thalheim v. Eberheim*, 124 F.R.D. 34, 35-36 (D. Conn. 1988).

10 | **II. The Board Should Rule on Flipagram’s Motion.**

11 | Opposer’s request that the Board delay ruling on Flipagram’s motion pending its filing of a motion for
12 | judgment on the pleadings is improper and should be denied. A party cannot refuse to produce requested
13 | information simply because it is relevant to a defense on which the party believes it will eventually prevail. *Heller*,
14 | 303 F.R.D. at 489. Moreover, the filing of a motion to compel suspends all matters not germane to the motion. 37
15 | C.F.R. § 2.120(e)(2); TBMP §523.01. The Board issued its suspension order on February 1, 2016. (D.N. 33.)
16 | The action is now suspended, and the parties may not file any papers not relating to the pending motions.

17 | **III. Opposer Must Respond to Flipagram’s Request for Admission No. 28.**

18 | This request seeks an admission regarding Opposer’s longstanding awareness of the existence of
19 | Flipagram through Flipagram’s use of the Instagram API. Opposer does not seriously dispute the relevance of
20 | this request. Opposer’s inaction despite its longstanding awareness of Flipagram supports the conclusion that:
21 | (1) there is no likelihood of confusion;² (2) Opposer expressly consented to Flipagram’s adoption of its mark;³
22 | and (3) Opposer’s current about-face offends equitable principles. *Cf. Elec. Information Pubs., Inc. v. C-M*

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25 | ² *In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973) (delay of prior mark owner
indicated lack of confusion).

26 | ³ *Richdel, Inc. v. Mathews Co.*, 190 USPQ 37, 41 (TTAB 1976) (expressly consenting to a party’s trademark
27 | use precludes objecting to the party’s subsequent trademark application). Opposer argues that *Richdel* did not
28 | suggest that “knowledge, standing alone, constitutes consent.” (Opp. 8.) This argument is a straw man.
Whether knowledge *alone* constitutes consent is irrelevant to whether such information is discoverable in
support of this defense. FRCP 26(b)(1).

1 *Periodicals, Inc.*, 163 U.S.P.Q. 624 (N.D. Ill. 1969) (attempt to monopolize admittedly generic term through
2 false registration held unclean hands).

3 Opposer’s boilerplate objections lack merit. Opposer fails to establish why the requests are overly
4 broad or unduly burdensome,⁴ or to provide detail why the commonplace terms “aware” (which Opposer uses
5 in its own requests) and “knew of”⁵ are vague and ambiguous. *Heller, supra*, 303 FRD at 488-491; *see also*
6 Gray Decl. C p. 2; Exh. D p. 1. Moreover, such objections, if valid, would only allow Opposer to provide a
7 narrower “common sense” answer; they would not support a refusal to respond entirely, as Opposer has done here.
8 *Id.* (“[T]o clarify its answers, the responding party may include any reasonable definition.”); *McCoo v. Denny’s,*
9 *Inc.*, 192 F.R.D. 675, 697 (D. Kan. 2000); *United States ex rel. Englund v. Los Angeles*, 235 F.R.D. 675, 684 (E.D.
10 Cal. 2006) (“A party may not avoid responding based on technicalities”).

11 **IV. Opposer Must Respond to Flipagram’s Requests for Admission Nos. 43-55.**

12 These requests seek admissions regarding Opposer’s affirmative efforts to promote, and encourage the
13 development of, the GRAM- and INSTA-formative trademarks of third-party software makers. Opposer’s
14 promotion of a field of such marks undermines the strength of Opposer’s mark and hems in its scope of protection.
15 *See, e.g., Miss World (UK) Ltd. v. Mrs. America Pageants, Inc.*, 8 U.S.P.Q.2d 1237, 1241 (9th Cir. 1988) (“In such
16 a crowd, customers will not likely be confused”). It also constitutes an admission that such marks are not
17 confusingly similar. *Richdel, supra*, 190 USPQ at 41 (explaining “acquiescence and consent to use is, in essence,
18 an admission that the subsequent party’s use ... is not likely to cause confusion”).⁶ Accordingly, these requests are

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21 ⁴ The closest Opposer comes is suggesting that the requests would require Opposer to “survey all past and
22 present employees.” (Opp. p. 5.) But as the parties have discussed at length, a corporate party need only
23 search sources within its possession, custody or control, where information is reasonably likely to be located.
24 Fed. R. Civ. P. 34(a)(1); *see also* Mot. p. 6; Gray Decl. Exh. C p. 1; Exh. D p. 1.

25 ⁵ Contrary to Opposer’s assertion, Flipagram has challenged its objection as to the term “knew of.” (*See, e.g.,*
26 Gray Decl. Exh. C p. 2; Exh. D. p. 1.)

27 ⁶ *CBS, Inc. v. Morrow*, 708 F.2d 1579 (Fed. Cir. 1983) supports Flipagram. The court found likely confusion
28 notwithstanding the opposer’s entry into a single agreement with a third party allowing use of the mark
THINKER TOYS (and design) on a retail store. However, it did not state that the agreement could not
constitute evidence of consent because it was a third-party agreement rather than an agreement between the
parties to the dispute. To the contrary, the court considered the existence of the agreement and its impact on
the issues in dispute. Accordingly, *Morrow* indicates the opposite of what Opposer contends: a trademark
owner’s agreements relating to third-party trademark use are relevant to registrability.

1 directly relevant to Opposer’s claim that its mark enjoys strong protection, and that consumers will be confused if
2 Flipagram’s mark registers.

3 Opposer has not established that the term “Promote” is fatally vague and ambiguous.⁷ *Heller, supra*, at
4 491-92. Flipagram *defined* this term; Opposer’s assertion to the contrary is incorrect.⁸ *Id.* (sanctions awarded
5 because requests were not utterly “incapable of reasonable interpretation”). The definition makes clear that the
6 requests do not seek an admission that Opposer was using the third-party marks, as Opposer now claims for the
7 first time.⁹

8 **V. Opposer Must Respond to Flipagram’s Requests for Admission No. 1.**

9 Opposer argues that the Board will not find a response insufficient “if there is an admission or a denial,”
10 citing TBMP § 524.01. (Opp. p. 9.) Here, Opposer’s response constitutes neither an admission nor a denial, nor
11 yet “an explanation” of an admission or denial. TMBP § 524.01. Opposer answered a question that that it
12 preferred to answer rather than the one asked. Whether that answer is relevant to some issue in the proceeding is
13 not the issue here. Opposer makes no argument that Flipagram’s request does not seek relevant information. It
14 merely asserts that the “response is adequate in view of the wording of the RFA.” (Opp. p. 8.) A plain reading of
15 both the request and response demonstrate that the response does not meet the substance of the request. Opposer
16 should be required to respond to this very simple request for admission.

17 **VI. Opposer Must Respond to Flipagram’s Requests for Admission Nos. 3, 4.**

18 Opposer claims that it “does not know what Flipagram means” by language asking whether Opposer has
19 “claimed exclusive ownership” or “exclusive trademark rights” in GRAM or -GRAM. (Opp. p. 9.)¹⁰ This

21 ⁷ Contrary to Opposer’s assertion, Flipagram challenged these objections. (*See, e.g.*, Gray Decl. Exh. C p. 3.)

22 ⁸ “Promote” means to draw positive attention to something in a public medium, or to publicly encourage its
23 growth, progress, adoption or sales. *To ‘Promote’ specifically includes featuring Third Parties on Your blog,*
24 *as described in paragraph 14 of your Counterclaim Answer.*” (Peterson Decl. Exh. 1 p. 3 ¶ 17 (emphasis
25 added); Reply Declaration of Naomi Jane Gray in Further Support of Flipagram’s Motion to Compel Further
Responses to Its First and Second Sets of Requests for Production and Interrogatories, and Motion to Test
Sufficiency of Responses to Flipagram’s First and Second Sets of Requests For Admission (“Gray Reply
Decl.”) Exh. B p. 2 ¶ 1 (incorporating definitions from first set of interrogatories).)

26 ⁹ Peterson Decl. Exh. 1 p. 3 ¶ 17; Gray Reply Decl. Exh. B p. 2 ¶ 1; *see also* Gray Decl. Exh. F p. 3 (Opposer
did not raise argument regarding use of third-party marks).

27 ¹⁰ Opposer erroneously states that Flipagram does not address Instagram’s objections that the phrases “claimed
28 exclusive ownership of” and “claimed exclusive trademark rights in.” Flipagram has consistently challenged
those objections. *See, e.g.*, Gray Decl. Exh. C pp. 4-5.)

1 | assertion is spurious; the request uses the plainest possible language. (Gray Decl. Exh. C pp. 4-5.) The request
2 | does not call for a legal conclusion. To the contrary, it seeks an admission regarding the fact whether Opposer ever
3 | made certain claims.

4 | Because GRAM constitutes the only similarity between the parties' marks, this request is directly relevant
5 | to Opposer's claim of rights to INSTAGRAM and the alleged likelihood of consumer confusion. *See, e.g.*, 4
6 | McCarthy on Trademarks and Unfair Competition (4th ed.) ("McCarthy"), § 23.41-42 (Board may compare
7 | component parts of conflicting composite marks); *see also In re Oppedahl & Larson LLP*, U.S.P.Q.2d 1370 (Fed.
8 | Cir. 2004) (same).

9 | **VII. Opposer Must Respond to Flipagram's Requests for Admission Nos. 5, 6, 11, 13-15.**¹¹

10 | These requests seek admissions as to the meaning of the components of Opposer's asserted marks.
11 | Opposer's objections lack merit. Opposer objects that the requests "call for speculation as to whether those
12 | terms 'connote' anything to third parties or consumers." (Opp. p. 10.) Tellingly, however, Opposer provided
13 | the nonresponsive answer to request Nos. 5 and 6 that INSTA- and -GRAM are "recognized by consumers as a
14 | reference to Instagram." (Gray Decl. Exh. A pp. 5-6.)

15 | Opposer also claims that the requests are ambiguous because it does not know whose understanding
16 | Flipagram is seeking, and employ "the terms in the abstract." (Opp. pp. 10-11.) These objections are belied
17 | by the parties' meet and confer correspondence. In Flipagram's first meet and confer communication to
18 | Opposer, Flipagram explicitly stated, "These requests seek *Instagram's* understanding of the meaning of the
19 | *components of its asserted marks.*" (Gray Decl. Exh. C p. 5) (emphases added).

20 | The Opposition provides no explanation for why these requests are supposedly irrelevant. The
21 | meaning Opposer intended to convey by the mark, and therefore its understanding of the components of the mark,
22 | is directly relevant to the similarity of the parties' marks, which is one of the *du Pont* factors. *In re E.I. du Pont de*
23 | *Nemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973).

24 |
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26 |
27 | _____
28 | ¹¹ Opposer incorrectly asserts that it responded to Requests for Admission Nos. 13-15. In fact, it did not.
(Gray Decl. Exh. A pp. 9-10.)

1 **VIII. Opposer Must Respond to Flipagram’s Requests for Admission No. 12.**

2 Flipagram seeks an admission regarding the fact that the USPTO assigned a pseudo mark in
3 connection with the application that is the subject of this proceeding. This is precisely the type of admission
4 contemplated by Rule 36. It seeks to establish a fact regarding the prosecution history of Opposer’s asserted
5 mark. The fact is not reasonably subject to dispute, and should not be subject to formal proof at trial.

6 Opposer objects on relevance grounds, asserting that a notice of pseudo mark states that it has no
7 “legal significance” for the registration. (Opp. p. 11.) This is not the test of relevance. RFA No. 12 seeks an
8 admission of fact regarding the prosecution of the very mark upon which Opposer bases its claims in this
9 proceeding. Accordingly, it is highly relevant and certainly falls within the broad scope of discovery.

10 **IX. Opposer Must Respond to Flipagram’s Requests for Admission Nos. 16-17.**

11 Opposer does not contest the relevance of these requests. Nor does it cite case law in support of its
12 objections to these requests.

13 A request to admit the genuineness of a document is a request for an admission that the document is a
14 true and correct copy – that it is what it purports to be. Opposer objects that the requests ask Opposer to
15 “authenticate hearsay on top of authenticating third-party website printouts.” (Opp. p. 12.) Opposer conflates
16 authentication with admissibility. *Varian Assocs. V. Fairfield-Noble Corp.*, 188 U.S.P.Q. 581, at *2 (TTAB
17 1975) (“it is not ground for objection that the information sought will be inadmissible at the trial ...”). These
18 requests present only the question whether the referenced documents are genuine – facts which are readily
19 ascertainable and not reasonably subject to dispute. The requests do not ask Opposer to admit the truth of the
20 matters asserted in the documents.

21 **X. Opposer Must Respond to Flipagram’s Requests for Admission Nos. 20-22.**

22 Flipagram seeks admissions regarding the fact that Opposer has no evidence of consumer confusion
23 between the parties’ marks and services. Likely confusion is a central issue in this case. *du Pont*, 476 F.2d
24 1357, 1362. Opposer has neither admitted nor denied these requests, nor stated in detail why it cannot
25 truthfully admit or deny them. Fed. R. Civ. P. 36(a).

26 Opposer claims the requests are ambiguous as to the word “contemplating” and the phrase “actual
27 consumer confusion arising as between.” This objection is baseless. The requests asked about instances of
28 consumer confusion between the marks and parties involved in this action – the only potential consumer

1 confusion relevant to the dispute. *Heller, supra*, 303 F.R.D. at 491 (responding party must exercise “common
2 sense”).

3 These requests are simple. Either Opposer is aware of instances of actual confusion, or it is not.
4 Opposer’s contention that its investigation is “ongoing” does not relieve it of the obligation to answer the
5 requests on the basis of its current knowledge. If it is currently unaware of any instances of consumer
6 confusion, it must so state.

7 **XI. Opposer Must Respond to Flipagram’s Requests for Admission Nos. 29-31.**

8 Requests for Admission Nos. 29-31 seek admissions regarding the timing of (1) Opposer’s first complaint
9 to Flipagram regarding the FLIPAGRAM mark; and (2) Opposer’s assertion of a legal challenge to Flipagram
10 regarding the mark. Opposer’s failure to act despite longstanding awareness of Flipagram demonstrates that (1)
11 Opposer does not actually believe there is a likelihood of confusion; (2) Opposer expressly consented to
12 Flipagram’s adoption of its mark; and (3) Opposer’s current about-face offends equitable principles. *See Richdel,*
13 *supra*, 190 U.S.P.Q. 37 at *6 (“Consent to use is ... an admission that the subsequent party’s use of the mark for its
14 goods is not likely to cause confusion.”).

15 Opposer’s argument that these facts, if proved, would not support Flipagram’s arguments goes to the
16 merits of the dispute and not the discoverability of the information sought. Opposer’s current answers are non-
17 responsive. (Gray Decl. Exh. A pp. 14-16.)

18 **XII. Opposer Opposer Must Respond to Flipagram’s Requests for Admission Nos. 35-42.**

19 Flipagram seeks admissions regarding Opposer’s enforcement efforts with respect to its marks.

20 Opposer argues that the failure to assert a legal challenge against the subject marks is not relevant
21 because a trademark owner need not challenge every potential infringement. (Opp. p. 15.) This argument
22 addresses the merits and not discoverability of the information sought. The failure to enforce a mark can lead
23 to the weakening of a mark, or the loss of rights in the mark. *See, e.g., McCarthy*, § 17.17. Opposer’s failure
24 to challenge the subject INSTA-formative marks is also inconsistent with its position regarding the overall
25 impression and descriptiveness of its INSTAGRAM mark. *See In re Oppedahl & Larson LLP*, U.S.P.Q.2d 1370
26 (Fed. Cir. 2004) (“In considering the mark as a whole, the [Trademark] Board may weigh the individual
27 components of the mark to determine the overall impression or the descriptiveness of the mark and its various
28 components.”) Finally, several of these marks appear to use the Instagram API, suggesting that Opposer has not

1 engaged in even token quality control efforts concerning its purported licensees. (Declaration of Berenice Avila in
2 Support of Flipagram’s Motion to Compel Further Responses to Its First and Second Sets of Requests for
3 Production and Interrogatories, and Motion to Test Sufficiency of Responses to Flipagram’s First and Second Sets
4 of Requests for Admission (“Avila Decl.”) Exhs. C-E.)

5 **XIII. Opposer Must Respond to Flipagram’s Requests for Admission Nos. 56, 58-61.**

6 Flipagram seeks admissions regarding the derivative nature of the INSTAGRAM marks that it seeks to
7 enforce, a fact that limits Opposer’s trademark rights. These requests are relevant because they help establish
8 that Opposer’s derivative trademarks are entitled to a limited scope of protection at best. Opposer’s Notice of
9 Opposition defines its marks as any mark containing the word “Instagram,” yet components of Instagram’s
10 design marks copy, or are derivative of, pre-existing third party trademarks. Flipagram is entitled to
11 investigate weaknesses in these marks, as well as potential counterclaims. *The Phillies v. v. Philadelphia*
12 *Consolidated Holding Corp.*, 107 U.S.P.Q.2d 2149, at *6 (TTAB 2013).

13 Opposer also disputes that it suggested in discovery that a version of Flipagram’s logo is similar to
14 Opposer’s Trademark Reg. No. 4,531,881. (Opp. p. 17.) If Opposer did not believe the two marks were
15 similar, then Opposer’s Request for Production No. 21 would not be seeking relevant information.

16 **XIV. Opposer Must Respond to Flipagram’s Requests for Admission Nos. 63-65.**

17 Flipagram seeks admissions regarding the provisions of Instagram’s API Terms of Use, which applied at
18 the time Flipagram adopted the FLIPAGRAM mark. Opposer cites no case law in support of the proposition that
19 whether a document constitutes a license is a conclusion of law. “A request for admission that relates to the
20 interpretation of a contract at issue in a case involves the application of law to the unique facts of that case and,
21 therefore, would be permissible under the amended Rule 36.” *Sigmund v. Starwood Urban Retail VI, LLC*, 236
22 F.R.D. 43, 46 (D.D.C. 2006).

23 Request No. 63 is not vague and ambiguous. Flipagram need not specify a particular provision of the
24 document as to which it seeks an admission, or to “what sort of ‘license’” it is referring. (Opp. p. 18.)

25 Whether the API Terms of Use “purported” to license GRAM and INSTA is relevant to Flipagram’s
26 defenses of estoppel by consent and unclean hands. If Opposer contends that the API Terms of Use is a
27 license, that would support Flipagram’s assertion that Opposer consented to its use of its mark, and that
28 Opposer has engaged in naked licensing to effect an abandonment of its mark.

1 **XV. Opposer Must Respond to Flipagram’s Requests for Admission Nos. 67-69.**

2 Flipagram seeks admissions regarding Opposer’s goods and services. These requests are not vague and
3 ambiguous.¹² Indeed, it is laughable for Opposer to assert that it does not understand the terms “give users the
4 ability to upload photographs” and “mobile device” since Opposer’s primary function is to enable users to upload
5 photographs to an app that users run on their mobile devices. (Avila Decl. Exh. B.)¹³ Indeed, Opposer’s
6 trademark registrations, which provide the basis for its claims in this proceeding, use language that is identical or
7 very similar to these terms. For example, Trademark Registration No. 85,866,573 covers, *inter alia*, “Providing a
8 web site that gives users the ability to upload photographs. . . .” Opposer has not explained how the phrases “only
9 available for use” and “video support” – terms that are plain on their face – are vague and ambiguous. Conclusory
10 objections do not suffice. *Phillies, supra*, 107 U.S.P.Q.2d, at *6.

11 Opposer cites no authority for the proposition that discovery requests such as these, which seek
12 information regarding the goods and services in use with the marks that form the basis of this proceeding, are not
13 relevant. *Id.*

14 **XVI. Opposer Must Respond to Flipagram’s Requests for Admission No. 70.**¹⁴

15 Flipagram seeks admissions regarding the timing of Opposer’s release of its product and the channels of
16 trade through which Opposer released it. Opposer makes no showing why Request No. 70 is vague and
17 ambiguous as to the phrase “Instagram service . . . on the Android platform.”¹⁵ (Opp. p. 20.) Opposer knows that
18 Android is Google’s open operating system, and Opposer knows what a “platform” is in the context of software for
19 a mobile device. Indeed, Opposer itself uses the term “platform” throughout its own website. (Avila Decl. Exh.
20 A.) These objections are not plausible coming from the producer of a photo-sharing app for mobile phones.
21
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24 ¹² Contrary to Opposer’s assertion, Flipagram contested these objections. (*See, e.g.*, Gray Decl. Exh. C. p. 6.)

25 ¹³ “What is Instagram? Instagram is a fun and quirky way to share your life with friends through a series of
pictures . . . Most uploading experiences are clumsy and take forever – we’ve optimized the experience to be
fast and efficient.”

26 ¹⁴ Flipagram withdraws its motion with respect to Request for Admission No. 71.

27 ¹⁵ Contrary to Opposer’s assertion, Flipagram has challenged these objections. (*See, e.g.*, Gray Decl. Exh. E
pp. 2-3.) Indeed, during the meet and confer process, Flipagram made a specific clarification to address
28 Opposer’s vagueness objection. (*Id.*)

1 **CERTIFICATE OF TRANSMISSION**

2 I hereby certify that a true and correct copy of the FLIPAGRAM’S REPLY MEMORANDUM IN
3 SUPPORT OF MOTION TO TEST SUFFICIENCY OF OPPOSER INSTAGRAM’S RESPONSES TO
4 FLIPAGRAM’S FIRST AND SECOND SETS OF REQUESTS FOR ADMISSION; REPLY
5 DECLARATION OF NAOMI JANE GRAY IN FURTHER SUPPORT OF FLIPAGRAM’S MOTION TO
6 COMPEL FURTHER RESPONSES TO ITS FIRST AND SECOND SETS OF REQUESTS FOR
7 PRODUCTION AND INTERROGATORIES, AND MOTION TO TEST SUFFICIENCY OF RESPONSES
8 TO FLIPAGRAM’S FIRST AND SECOND SETS OF REQUESTS FOR ADMISSION; AND
9 DECLARATION OF BERENICE AVILA IN SUPPORT OF FLIPAGRAM’S MOTION TO COMPEL
10 FURTHER RESPONSES TO ITS FIRST AND SECOND SETS OF REQUESTS FOR PRODUCTION AND
11 INTERROGATORIES, AND MOTION TO TEST SUFFICIENCY OF RESPONSES TO FLIPAGRAM’S
12 FIRST AND SECOND SETS OF REQUESTS FOR ADMISSION (Opposition No. 91217238) is being
13 electronically transmitted to the Trademark Trial and Appeal Board on February 29, 2016.

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9

10 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
11 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**
12

13 INSTAGRAM, LLC, a Delaware limited
14 liability company,

15 Opposer/Registrant
16

17 v.

18 FLIPAGRAM, INC., a California
corporation,

19 Applicant/Petitioner
20

**REPLY DECLARATION OF NAOMI
JANE GRAY IN FURTHER SUPPORT
OF FLIPAGRAM'S MOTION TO
COMPEL FURTHER RESPONSES TO
ITS FIRST AND SECOND SETS OF
REQUESTS FOR PRODUCTION AND
INTERROGATORIES, AND MOTION
TO TEST SUFFICIENCY OF
RESPONSES TO FLIPAGRAM'S
FIRST AND SECOND SETS OF
REQUESTS FOR ADMISSION
[TBMP 524]**

21 Opposition No. 91217238

22 Application No. 86042264
23
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1 I, Naomi Jane Gray, declare as follows:

2 1. I am a partner of Harvey Siskind LLP, counsel for Applicant Flipagram, Inc. I make
3 this declaration freely and of my own personal knowledge. If called as a witness, I could and would
4 competently testify to the matters set forth.

5 2. My office, under my supervision, has reviewed Opposer's November 17, 2015
6 document production and its January 28, 2016 supplemental document production.

7 3. The vast bulk of Opposer's production is composed of screenshots of publicly
8 available news articles or websites. Apparently, these screenshots are intended to respond to
9 numerous Flipagram discovery requests. For example, they are apparently intended to respond to an
10 interrogatory seeking Opposer's basis for refusing to admit that INSTA connotes "Instant" (RFA No.
11 5) and an interrogatory seeking Opposer's basis for refusing to admit that "Gram" connotes
12 "message" or "recording" (RFA No. 6).

13 4. As an example of one of these screenshots, Opposer produced a September 10, 2015
14 article from a blog called "Lonny." The article does not even mention Instagram [IG000304-
15 000311]. Some articles appear repeatedly.

16 5. Opposer appears to have produced only four documents internal to Instagram.
17 Opposer apparently produced these four documents in response to Flipagram's discovery requests
18 seeking information about how and when Opposer became aware of Flipagram and its use of the
19 Instagram API. One of the four documents is a message from an officer at Facebook to other
20 Facebook personnel. Opposer did not produce any responses to this message.

21 6. Many of Flipagram's discovery requests targeted Opposer's prior inconsistent position
22 regarding its rights in the prefix INSTA- and the suffix -GRAM. In response, Opposer appears to
23 have produced a total of 34 documents, composed of only the following "samples": (a) 18 cease-and-
24 desist emails; and (b) 16 publicly available Notices of Opposition, both limited to GRAM-formative
25 marks. In these documents, Opposer simply states its current trademark position repeatedly. It does
26 not produce material related to its prior position.

Exhibit A
to Reply Declaration of Naomi Jane Gray
in Further Support of
Flipagram’s Motion to Compel Further
Responses to Its First and Second Sets of
Requests for Production and Interrogatories, and
Motion to Test Sufficiency of Responses to
Flipagram’s First and Second Sets
of Requests for Admission

Offered by Applicant Flipagram, Inc.

Instagram, LLC v. Flipagram, Inc.

Opposition No. 91217238

Reference Guide: Opposer’s Mootness Claims

Requests Opposer Claims Are Now Moot ¹	What Opposer Provided ²	Why Is It Not Moot?
<ul style="list-style-type: none"> • <u>Interrogatory No. 1</u>: Describe how and when (by date) You became aware of the trademark FLIPAGRAM.³ • <u>Interrogatory No. 2</u>: State the date on which You became aware that Flipagram used Instagram’s API.⁴ • <u>Request for Production No. 3</u>: All Documents relating or referring to Your first awareness of Flipagram’s marks.⁵ 	<ul style="list-style-type: none"> • Only 4 messages “evidencing” awareness of Flipagram, but not its use of Instagram API 	<ul style="list-style-type: none"> • Provided no response regarding Opposer’s first awareness that Flipagram used Instagram’s API. • Four “evidencing” emails appear to be cherry-picked to avoid producing more compelling material.
<ul style="list-style-type: none"> • <u>Request for Production No. 11</u>: All Documents relating to any Legal Challenge relating to Opposer’s Marks.⁶ • <u>Request for Production No. 49</u>: Documents that relate to Your communications or agreements with Third Parties concerning the trademark SHOWMEGRAM.⁷ 	<ul style="list-style-type: none"> • The following “sample”: (a) 18 cease-and-desist emails; and (b) 16 publicly available Notices of Opposition, both limited to GRAM-formative marks. 	<ul style="list-style-type: none"> • Opposer defines away the material most likely to reveal an admission, providing only self-serving documents. <ul style="list-style-type: none"> ○ <i>E.g.</i>, Opposer’s response excludes trademark settlement agreements with SHOWMEGRAM or anyone else, any responses provided by enforcement targets, and Opposer’s internal communications regarding the marks. • Opposer produces only a “sample,” and excludes entirely any documents concerning INSTA-formative marks.

¹ Opposer’s substantive supplemental responses to these requests are provided in the following footnotes. Peterson Decl. Exh. 7 (supplemental responses).

² The documents that Opposer actually provided in response to these requests are described in the Gray Reply Declaration at ¶¶ 2-8.

³ Substantive response: “Instagram has produced documents located after a reasonable search that are sufficient to provide the information requested. See documents Bates numbered IG001616-IG001618.”

⁴ Substantive response: “Instagram has produced documents located after a reasonable search that are sufficient to provide the information requested. See documents Bates numbered IG001616-IG001618.”

⁵ Substantive response: “Instagram will produce non-privileged documents evidencing Instagram’s first awareness of Flipagram.”

⁶ Substantive response: “Instagram will produce representative samples of Notices of Brand Violation it sent to third parties using names that include “gram” in connections with goods and services that are similar or related to Instagram’s goods and services. Further, though additional information relating to Instagram’s opposition against third party applications in the United States is in the public record and easily accessible by Applicant, Instagram will produce Notices of Opposition it has filed against third parties in the United States.”

⁷ Substantive response: “Instagram will produce communications with the owner of the SHOWMEGRAM trademark relating to Opposition No. 9122298.”

Requests Opposer Claims Are Now Moot ¹	What Opposer Provided ²	Why Is It Not Moot?
<ul style="list-style-type: none"> • <u>Request for Production No. 31</u>: Documents that reflect, refer to, or relate to Your Promotion of any INSTA-Formative Mark or GRAM-Formative mark, including but not limited to the marks identified in Flipagram’s First Set of Requests for Admission Nos. 43 through 55, served concurrently herewith.⁸ <p>[“Promote” defined as: “[T]o draw positive attention to something in an public medium, or to publicly encourage its growth, progress, adoption or sales. To ‘Promote’ specifically includes featuring Third Parties on Your blog, as described in paragraph 14 of your Counterclaim Answer.”]</p>	<ul style="list-style-type: none"> • Claims it has no documents because it has not “Promoted” anything (false based on definition of Promoted). • Claims it will produce documents referenced in its responses to RFAs 43-55, but Opposer did not answer these RFAs.⁹ 	<ul style="list-style-type: none"> • Opposer provided no materials regarding its promotion of these marks. <ul style="list-style-type: none"> ○ <i>E.g.</i>, Opposer’s response excludes correspondence with these companies telling them they will be featured or any documents showing Opposer’s collaboration with these companies.
<ul style="list-style-type: none"> • <u>Interrogatory No. 7 (as limited)</u>: For the following RFA responses that are not an unqualified admission, state all facts upon which you base Your response: <ul style="list-style-type: none"> ○ <u>RFA No. 5</u>: Admit that the INSTA- prefix in Your Instagram Mark connotes “Instant.”¹⁰ ○ <u>RFA No. 6</u>: Admit that the -GRAM suffix in Your Instagram Mark connotes “message” or “recording.”¹¹ ○ <u>RFA No. 24</u>: Admit that by July 10,2012, the INSTAGRAM mark shown in Your Registration No. 4,170,675 had not acquired secondary meaning for each of the following goods and services: “Providing a web site that gives users the ability to upload photographs; technical support services, namely, providing help desk services in the field of computer software, namely, providing users with instructions and advice on the use of downloadable computer software, provided online and via e-mail; computer services, namely, providing an interactive website featuring technology that allows users to manage their online photograph and social networking accounts.”¹² 	<ul style="list-style-type: none"> • Screenshots of public news articles allegedly mentioning Opposer (<i>e.g.</i>, a 9/10/15 article from a blog called “Lonny”). 	<ul style="list-style-type: none"> • For RFA Nos. 5-6, Opposer provides no response regarding Opposer’s understanding of the connotation of the phrases. Because these responses are insufficient, its corresponding interrogatory responses are improper (<i>see</i> Mot. to Test Sufficiency, p 5). • In support of its denial of RFA No. 24, Opposer agreed only to produce documents evidencing general “consumer recognition” of the INSTAGRAM trademark. Opposer does not agree to provide information available, if any, regarding INSTAGRAM’s secondary meaning for each claimed good or service.

⁸ Substantive response: “As Instagram denies that it “promoted” third-party goods or services that were offered under INSTA- or GRAM-formative trademarks, Instagram has no documents in its possession, control, or custody that are responsive to this Request. Instagram will produce documents referenced in its responses to Request for Admission Nos. 43-55.”

⁹ For example, Opposer’s response to RFA No. 43 (and all RFAs in this series) provides only objections: “Instagram objects to the Request on the following grounds: 1) the Request is vague and ambiguous as to the phrase “using the mark” as it suggests that Instagram used the mark PRINTSTAGRAM to promote third-party goods or services; 2) the Request is not reasonably calculated to lead to the discovery of admissible evidence because the mark cited in the request is irrelevant and is distinguishable from the mark and goods/services at issue in this proceeding.” (Gray Decl. ISO Mot. Test Sufficiency Exh. A p. 19-23.)

¹⁰ Opposer’s corresponding interrogatory response: “Instagram will produce documents evidencing consumers and third parties using the term “Insta” to reference Instagram and its goods and services. For example, consumers mention posting something on ‘Insta’ and writers give tips on being ‘Insta-famous.’”

Requests Opposer Claims Are Now Moot ¹	What Opposer Provided ²	Why Is It Not Moot?
<ul style="list-style-type: none"> • <u>Request for Production No. 38</u>: Documents relating to any past or present Legal Challenge You have asserted based on Opposer’s Marks against the mark of a Third Party.¹³ 	<ul style="list-style-type: none"> • The following “sample”: (a) 18 cease-and-desist emails; and (b) 16 publicly available Notices of Opposition, both limited to GRAM-formative marks. 	<ul style="list-style-type: none"> • Opposer defines away the material most likely to reveal an admission. Provides only self-serving documents. <ul style="list-style-type: none"> ○ <i>E.g.</i>, Opposer’s response excludes trademark settlement agreements with SHOWMEGRAM or anyone else, any responses provided by enforcement targets, Opposer’s internal communications regarding the marks.
<ul style="list-style-type: none"> • <u>Interrogatory No. 12</u>: Identify all measures You have employed to control the quality goods and services of licensees of Opposer’s Marks. • <u>Request for Production No. 29</u>: Documents reflecting all measures You have employed to control the quality of goods and services that use the Instagram API.¹⁴ 	<ul style="list-style-type: none"> • <u>Interrogatory</u>: Claims it can’t respond because it is “unclear as to what licensees” it is directed. • <u>RFP</u>: The following “sample”: (a) 18 cease-and-desist emails; and (b) 16 publicly available Notices of Opposition, both limited to GRAM-formative marks. 	<ul style="list-style-type: none"> • Interrogatory answer is non-responsive. • RFP response defines away the very material most likely to reveal an admission. Quality control measures are not limited to trademark enforcement letters. • Neither response confirms it is complete (<i>i.e.</i>, identifying all measures Opposer employed to control the quality of licensees goods).
<ul style="list-style-type: none"> • <u>Request for Production No. 1</u>: All Documents that relate to Flipagram or Flipagram’s Marks.¹⁵ 	<ul style="list-style-type: none"> • Only 4 messages “evidencing” first awareness of Flipagram; Opposer’s enforcement correspondence with Flipagram. 	<ul style="list-style-type: none"> • Opposer defines away the material most likely to reveal an admission and offers only self-serving documents. <ul style="list-style-type: none"> ○ <i>E.g.</i>, Opposer excludes the likely responses received to the 3 emails, likely pre-litigation correspondence mulling what to do about Flipagram.

¹¹ Opposer’s corresponding interrogatory response: “Instagram will produce documents evidencing consumers and third parties using the term “Gram” to reference Instagram and its goods and services. For example, consumers use the phrase ‘Gram it’ to refer to posting something on Instagram and others use the terms ‘Grammers’ to refer to consumers who use Instagram’s services.”

¹² Substantive Response: “Instagram will produce documents evidencing widespread consumer recognition of the INSTAGRAM trademark as of July 12, 2012, including but not limited to unsolicited press coverage, number of users of Instagram’s services, references to Instagram in popular culture.”

¹³ Substantive response: “Instagram will produce its public TTAB oppositions and/or cancellations based on its rights in the INSTAGRAM mark and will produce representative samples of Notices of Brand Violation that have been sent to third party users of the Instagram API whose names include the term ‘gram.’”

¹⁴ Substantive Response: “Instagram will produce representative example [sic] of Notices of Brand Violation that Instagram has sent to users of the Instagram API whose names include the term “gram” in violation of Instagram’s API Terms of Use.”

¹⁵ Substantive Response: “Instagram will produce non-privileged documents evidencing Instagram’s first awareness of Flipagram and communications with Flipagram relating to Instagram’s objection to the FLIPAGRAM trademark that can be located after a reasonable search.

Requests Opposer Claims Are Now Moot ¹	What Opposer Provided ²	Why Is It Not Moot?
<ul style="list-style-type: none"> • <u>Request for Production No. 15</u>: All Documents which refer to, relate to, or support the allegations in ¶ 4 of the Notice of Opposition.¹⁶ • <u>Request for Production No. 16</u>: All Documents which refer to, relate to, or support the allegations in ¶ 10 of the Notice of Opposition.¹⁷ • <u>Request for Production No. 17</u>: All Documents which refer to, relate to, or support the allegations in ¶ 18 of the Notice of Opposition.¹⁸ • <u>Request for Production No. 18</u>: All Documents which refer to, relate to, or support the allegations in ¶ 19 of the Notice of Opposition.¹⁹ • <u>Request for Production No. 19</u>: All Documents which refer to, relate to, or support the allegations in ¶ 20 of the Notice of Opposition.²⁰ • <u>Request for Production No. 20</u>: All Documents which refer to, relate to, or support Your Second Affirmative Defense of “Estoppel” in Your Counterclaim Answer.²¹ 	<ul style="list-style-type: none"> • Opposer states it is “unaware” of any documents; it does not indicate that it conducted a reasonable search. 	<ul style="list-style-type: none"> • “In responding to [Rule 34] discovery requests, a reasonable inquiry must be made, and if no responsive documents or tangible things exist, responding party should so state with sufficient specificity to allow the court to determine whether the party made a reasonable inquiry and exercised due diligence.” <i>Heller v. City of Dallas</i>, 303 FRD 466, 487 (N.D. Tex. 2014). • RFP No. 19 sought evidence of Opposer’s alleged fame as of <u>certain dates</u> (including the date of Flipagram’s first use), not as of today’s date (which is irrelevant).

¹⁶ Substantive Response: “Instagram will produce responsive, non-privileged documents that it locates after a reasonable search that relate to its use of the INSTAGRAM mark on various goods and services in the United States and documents on which it will rely to support the position that its INSTAGRAM mark is famous and highly recognized. Instagram is not aware of any documents in its possession, custody, or control that would establish that the INSTAGRAM mark is not famous or highly recognized.”

¹⁷ Substantive Response: “Instagram will produce responsive, non-privileged documents that it locates after a reasonable search on which it intends to rely to support the allegations in the Opposition. Instagram is not aware of any documents in its possession, custody, or control that would establish that Applicant’s Mark is unlikely to cause confusion, or is unlikely to suggest an association between Applicant and Instagram, where none exists. Instagram expects that if Applicant believes such documents exist, it will request them with more specificity.”

¹⁸ Substantive Response: “Instagram will produce responsive, non-privileged documents that it locates after a reasonable search that relate to its use of the INSTAGRAM mark on various goods and services in the United States and documents on which it will rely to support the position that its INSTAGRAM mark is famous and highly recognized. Instagram is not aware of any documents in its possession, custody, or control that would establish that the INSTAGRAM mark is not famous or highly recognized.”

¹⁹ Substantive Response: “Instagram will produce responsive, non-privileged documents that it locates after a reasonable search that relate to its use of the INSTAGRAM mark on various goods and services in the United States and documents on which it will rely to support the position that its INSTAGRAM mark is famous and highly recognized. Instagram is not aware of any documents in its possession, custody, or control that would establish that the INSTAGRAM mark is not famous or highly recognized.”

²⁰ Substantive Response: “Instagram will produce responsive, non-privileged documents that it locates after a reasonable search on which it intends to rely to support the allegations in the Opposition. Instagram is not aware of any documents in its possession, custody, or control that would establish that Applicant’s Mark is unlikely to cause an association between Applicant’s mark and the INSTAGRAM marks. Instagram expects that if Applicant believes such documents exist, it will request them with more specificity.”

²¹ Substantive Response: “Instagram will produce responsive, non-privileged documents that it locates after a reasonable search on which it intends to rely to support the allegations in its Affirmative Defenses. Instagram is not aware of any documents in its possession, custody, or control that would establish that Applicant is not estopped from seeking cancellation of Instagram’s trademark registrations. Instagram expects that if Applicant believes such documents exist, it will request them with more specificity.”

Exhibit B
to Reply Declaration of Naomi Jane Gray
in Further Support of
Flipagram's Motion to Compel Further
Responses to Its First and Second Sets of
Requests for Production and Interrogatories, and
Motion to Test Sufficiency of Responses to
Flipagram's First and Second Sets
of Requests for Admission

Offered by Applicant Flipagram, Inc.

Instagram, LLC v. Flipagram, Inc.

Opposition No. 91217238

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7 Attorneys for Applicant/Petitioner
FLIPAGRAM, INC.

8 Mark: FLIPAGRAM
9

10 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
11 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**
12

13 INSTAGRAM, LLC, a Delaware limited
14 liability company,

15 Opposer/Registrant
16

17 v.

18 FLIPAGRAM, INC., a California
corporation,

19 Applicant/Petitioner
20

**APPLICANT FLIPAGRAM, INC.'S
FIRST SET OF REQUESTS FOR
ADMISSION**

Opposition No. 91217238

Application No. 86042264

21
22 Pursuant to Rule 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Applicant
23 Flipagram, Inc. requests that Opposer Instagram, LLC furnish responses to the following first set of
24 requests for admission within thirty (30) days from service hereof.

25 ///

1 **REQUEST NO. 8:** Admit that You chose the mark INSTAGRAM in part to convey the
2 meaning “instant message.”

3 **REQUEST NO. 9:** Admit that You chose the mark INSTAGRAM in part to convey the
4 meaning “instant recording.”

5 **REQUEST NO. 10:** Admit that You chose the mark INSTAGRAM in part to convey the
6 meaning “instant communication.”

7 **REQUEST NO. 11:** Admit that the prefix INSTA- connotes a thing, action or feature which
8 occurs instantly.

9 **REQUEST NO. 12:** Admit that in the application for Your INSTAGRAM mark Reg. No.
10 4,146,057, the USPTO assigned the pseudo mark “INSTANT GRAM.”

11 **REQUEST NO. 13:** Admit that the suffix -GRAM connotes a message.

12 **REQUEST NO. 14:** Admit that the suffix -GRAM connotes a recording.

13 **REQUEST NO. 15:** Admit that the suffix -GRAM connotes a communication.

14 **REQUEST NO. 16:** Admit that a Random House Dictionary definition of the suffix -
15 GRAM, attached hereto in **Exhibit A**, is “a combining form extracted from telegram, used in the
16 formation of compound words that have the general sense ‘message, bulletin.’”

17 **REQUEST NO. 17:** Admit that the Online Etymology Dictionary definition of the
18 etymology of -GRAM, attached hereto in **Exhibit A**, is a “suffix from telegram (1852), first
19 abstracted 1979 (in Gorillagram, a proprietary name in U.S.), and put to wide use in forming new
20 words, such as stripagram (1981).”

21 **REQUEST NO. 18:** Admit that Your INSTAGRAM Marks are not arbitrary.

22 **REQUEST NO. 19:** Admit that Your INSTAGRAM Marks are not inherently distinctive.

23 **REQUEST NO. 20:** Admit that You have not received any Third Party communications
24 contemplating, or inquiring about, any association or affiliation between You and Flipagram.

25 **REQUEST NO. 21:** Admit that You are unaware of any actual consumer confusion arising
26 as between You and Flipagram.

27 **REQUEST NO. 22:** Admit that You are unaware of any actual consumer confusion arising
28

1 as between Opposer's Marks and the mark FLIPAGRAM.

2 **REQUEST NO. 23:** Admit that by May 22, 2012, the INSTAGRAM mark shown in Your
3 Registration No. 4,146,057 had not acquired secondary meaning for each of the following goods and
4 services: "Downloadable computer software for modifying the appearance and enabling transmission
5 of photographs."

6 **REQUEST NO. 24:** Admit that by July 10, 2012, the INSTAGRAM mark shown in Your
7 Registration No. 4,170,675 had not acquired secondary meaning for each of the following goods and
8 services: "Providing a web site that gives users the ability to upload photographs; technical support
9 services, namely, providing help desk services in the field of computer software, namely, providing
10 users with instructions and advice on the use of downloadable computer software, provided online
11 and via e-mail; computer services, namely, providing an interactive website featuring technology that
12 allows users to manage their online photograph and social networking accounts."

13 **REQUEST NO. 25:** Admit that by March 3, 2012, Opposer's Marks were not widely
14 recognized by the general consuming public of the United States as a designation of source of
15 Opposer's Goods or Services, as defined by 15 USC 1125(c)(2)(a).

16 **REQUEST NO. 26:** Admit that by June 7, 2012, Opposer's Marks were not widely
17 recognized by the general consuming public of the United States as a designation of source of
18 Opposer's Goods or Services, as defined by 15 USC 1125(c)(2)(a).

19 **REQUEST NO. 27:** Admit that Opposer's Marks are not currently widely recognized by the
20 general consuming public of the United States as a designation of source of Opposer's Goods or
21 Services, as defined by 15 USC 1125(c)(2)(a).

22 **REQUEST NO. 28:** Admit that You knew of Flipagram's use of the trademark
23 FLIPAGRAM by no later than March 3, 2012.

24 **REQUEST NO. 29:** Admit that the first time you contacted Flipagram to complain
25 regarding the trademark FLIPAGRAM was November 20, 2013.

26 **REQUEST NO. 30:** Admit that You did not assert a Legal Challenge to Flipagram's right to
27 use the trademark FLIPAGRAM until November 20, 2013.

28

1 **REQUEST NO. 31:** Admit that You did not assert a Legal Challenge to Flipagram's right to
2 register the trademark FLIPAGRAM until January 9, 2014.

3 **REQUEST NO. 32:** Admit that You consented to Flipagram's use of the trademark
4 FLIPAGRAM.

5 **REQUEST NO. 33:** Admit that You have never asserted a Legal Challenge to the mark
6 CINEMAGRAM, reflected in Reg. No. 4211631.

7 **REQUEST NO. 34:** Admit that You have never asserted a Legal Challenge to the mark
8 ANIGRAM, reflected in Reg. No. 4398866.

9 **REQUEST NO. 35:** Admit that You have never asserted a Legal Challenge to the mark
10 INSTAPLACE, reflected in Reg. No. 4457101.

11 **REQUEST NO. 36:** Admit that You have never asserted a Legal Challenge to the mark
12 INSTAFOOD, reflected in Reg. No. 4457116.

13 **REQUEST NO. 37:** Admit that You have never asserted a Legal Challenge to the mark
14 INSTAWEATHER, reflected in Reg. No. 4457096.

15 **REQUEST NO. 38:** Admit that You have never asserted a Legal Challenge to the mark
16 INSTACART, reflected in Serial No. 86323403.

17 **REQUEST NO. 39:** Admit that You have never asserted a Legal Challenge to the mark
18 INSTAPLY, reflected in Reg. No. 4530667.

19 **REQUEST NO. 40:** Admit that You have never asserted a Legal Challenge to the mark
20 INSTACURITY, reflected in Reg. No. 4520291.

21 **REQUEST NO. 41:** Admit that You have never asserted a Legal Challenge to the mark
22 HIPSTAMATIC, reflected in Reg. No. 4012304.

23 **REQUEST NO. 42:** Admit that You have never asserted a Legal Challenge to the mark
24 INSTAMATIC, reflected in Serial No. 79164380.

25 **REQUEST NO. 43:** Admit that You Promoted Third Party goods or services using the mark
26 PRINTSTAGRAM.

27 **REQUEST NO. 44:** Admit that You Promoted Third Party goods or services using the mark
28

1 ANAGRAM.

2 **REQUEST NO. 45:** Admit that You Promoted Third Party goods or services using the mark
3 STITCHSTAGRAM.

4 **REQUEST NO. 46:** Admit that You Promoted Third Party goods or services using the mark
5 WEBSTAGRAM.

6 **REQUEST NO. 47:** Admit that You Promoted Third Party goods or services using the mark
7 STICKYGRAM.

8 **REQUEST NO. 48:** Admit that You Promoted Third Party goods or services using the mark
9 CASETAGRAM.

10 **REQUEST NO. 49:** Admit that You Promoted Third Party goods or services using the mark
11 FOLLOWGRAM.

12 **REQUEST NO. 50:** Admit that You Promoted Third Party goods or services using the mark
13 INSTACANE.

14 **REQUEST NO. 51:** Admit that You Promoted Third Party goods or services using the mark
15 INSTAGOODIES.

16 **REQUEST NO. 52:** Admit that You Promoted Third Party goods or services using the mark
17 INSTAPRINT.

18 **REQUEST NO. 53:** Admit that You Promoted Third Party goods or services using the mark
19 INSTAGRE.AT.

20 **REQUEST NO. 54:** Admit that You Promoted Third Party goods or services using the mark
21 INSTAGRAMMERS.COM.

22 **REQUEST NO. 55:** Admit that You Promoted Third Party goods or services using the mark
23 INSTACHALLENGE.

24 **REQUEST NO. 56:** Admit that when selecting Opposer's Marks, You were aware of the
25 mobile application HIPSTAMATIC.

26 **REQUEST NO. 57:** Admit that Your INSTAGRAM word mark is Derived from the
27 Eastman Kodak Company's line of "Instamatic" cameras.

28

1 Dated: July 16, 2015

Respectfully submitted,

2 HARVEY SISKIND LLP

3
4 /s/ Thomas A. Harvey

5 By: Thomas A. Harvey

6 Attorneys for Applicant/Petitioner
7 FLIPAGRAM, INC.

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1 **CERTIFICATE OF MAILING**

2 I hereby certify that a true and correct copy of the attached APPLICANT FILIPAGRAM,
3 INC.'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND TANGIBLE
4 THINGS (Opposition No. 91217238) was served on Opposer on July 16, 2015 via hand service
5 addressed to:

6 Bobby Ghajar, Esq.
7 Pillsbury Winthrop Shaw Pittman LLP
8 725 S Figueroa St, Suite 2800
9 Los Angeles, CA 90017

10 
11 Sharan Devoto

EXHIBIT A

-gram¹

Word Origin

1. a combining form occurring in loanwords from Greek, where it meant "something written," "drawing" (*epigram*; *diagram*); on this model, used in the formation of compound words (*oscillogram*).

Compare [-graph](#).

Origin of [-gram](#)¹



< Greek *-gramma*, combining form of *gramma* something written or drawn; akin to *carve*

-gram²

1. a combining form of [gram¹](#):
kilogram.

-gram³

1. a combining form extracted from **telegram**, used in the formation of compound words that have the general sense "message, bulletin":
culturegram; *electiongram*; *prophecy-gram*.

Dictionary.com Unabridged

Based on the Random House Dictionary, © Random House, Inc. 2015.

[Cite This Source](#)



British Dictionary definitions for -gram

-gram

combining form

1. indicating a drawing or something written or recorded: *hexagram*, *telegram*

Word Origin

from Latin *-gramma*, from Greek, from *gramma* letter and *grammē* line

Collins English Dictionary - Complete & Unabridged 2012 Digital Edition
© William Collins Sons & Co. Ltd. 1979, 1986 © HarperCollins
Publishers 1998, 2000, 2003, 2005, 2006, 2007, 2009, 2012
[Cite This Source](#)

Word Origin and History for -gram

suffix from telegram (1852), first abstracted 1979 (in *Gorillagram*, a proprietary name in U.S.), and put to wide use in forming new words, such as *stripagram* (1981). The construction violates Greek grammar, as an adverb could not properly form part of a compound noun.

Online Etymology Dictionary, © 2010 Douglas Harper
[Cite This Source](#)

-gram in Medicine

-gram *suff.*

Something written or drawn; a record: *cardiogram*.

EXHIBIT B

Exhibit B



instagram

Exhibit C
to Reply Declaration of Naomi Jane Gray
in Further Support of
Flipagram's Motion to Compel Further
Responses to Its First and Second Sets of
Requests for Production and Interrogatories, and
Motion to Test Sufficiency of Responses to
Flipagram's First and Second Sets
of Requests for Admission

Offered by Applicant Flipagram, Inc.

Instagram, LLC v. Flipagram, Inc.

Opposition No. 91217238

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:15-cv-03610-VC**

Pixels.com, LLC v. Instagram, LLC
Assigned to: Hon. Vince Chhabria
Cause: 15:44 Trademark Infringement

Date Filed: 08/06/2015
Jury Demand: Plaintiff
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Date Filed	#	Docket Text
08/06/2015	<u>1</u>	COMPLAINT <i>FOR DECLARATORY JUDGMENT</i> against Instagram, LLC. Filed by Pixels.com, LLC. (Filing fee \$ 400 receipt number 0971-9738875) (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Toke, Vijay) (Filed on 8/6/2015) Modified on 8/6/2015 (sv, COURT STAFF). (Entered: 08/06/2015)
08/06/2015	<u>2</u>	Proposed Summons. (Toke, Vijay) (Filed on 8/6/2015) (Entered: 08/06/2015)
08/06/2015	<u>3</u>	Civil Cover Sheet by Pixels.com, LLC . (Toke, Vijay) (Filed on 8/6/2015) (Entered: 08/06/2015)
08/06/2015	<u>4</u>	Certificate of Interested Entities by Pixels.com, LLC (Toke, Vijay) (Filed on 8/6/2015) (Entered: 08/06/2015)
08/06/2015	<u>5</u>	FRCP 7.1 CORPORATE DISCLOSURE by Pixels.com, LLC (Toke, Vijay) (Filed on 8/6/2015) Modified on 8/7/2015 (slhS, COURT STAFF). (Entered: 08/06/2015)
08/06/2015	<u>6</u>	MOTION for leave to appear in Pro Hac Vice <i>FOR AMY CAHILL</i> (Filing fee \$ 305, receipt number 0971-9739257.) filed by Pixels.com, LLC. (Attachments: # <u>1</u> Certificate/Proof of Service CERTIFICATE OF GOOD STANDING – KENTUCKY)(Toke, Vijay) (Filed on 8/6/2015) (Entered: 08/06/2015)
08/06/2015	<u>7</u>	MOTION for leave to appear in Pro Hac Vice <i>FOR MARI-ELISE TAUBE</i> (Filing fee \$ 305, receipt number 0971-9739282.) filed by Pixels.com, LLC. (Attachments: # <u>1</u> Certificate/Proof of Service CERTIFICATE OF GOOD STANDING – VIRGINIA)(Toke, Vijay) (Filed on 8/6/2015) (Entered: 08/06/2015)
08/06/2015	8	Case assigned to Magistrate Judge Jacqueline Scott Corley. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. Counsel is required to send chambers a copy of the initiating documents pursuant to L.R. 5-1(e)(7). A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. (sv, COURT STAFF) (Filed on 8/6/2015) (Entered: 08/06/2015)
08/07/2015	<u>9</u>	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 10/29/2015. Case Management Conference set for 11/5/2015 01:30 PM in Courtroom F, 15th Floor, San Francisco. (slhS, COURT STAFF) (Filed on 8/7/2015) (Entered: 08/07/2015)
08/07/2015	<u>10</u>	Summons Issued as to Instagram, LLC. (slhS, COURT STAFF) (Filed on 8/7/2015) (Entered: 08/07/2015)
08/07/2015	<u>11</u>	REPORT on the filing of an action regarding trademark infringement (cc: form mailed to register). (slhS, COURT STAFF) (Filed on 8/7/2015) (Entered: 08/07/2015)

08/11/2015	<u>12</u>	ORDER by Magistrate Judge Jacqueline Scott Corley granting <u>6</u> Motion for Pro Hac Vice as to Amy Sullivan Cahill (ahm, COURT STAFF) (Filed on 8/11/2015) (Entered: 08/11/2015)
08/11/2015	<u>13</u>	ORDER by Magistrate Judge Jacqueline Scott Corley granting <u>7</u> Motion for Pro Hac Vice as to MARI-ELISE TAUBE (ahm, COURT STAFF) (Filed on 8/11/2015) (Entered: 08/11/2015)
08/19/2015	<u>14</u>	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Pixels.com, LLC.. (Toke, Vijay) (Filed on 8/19/2015) (Entered: 08/19/2015)
08/20/2015	15	CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned. ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED. <i>This is a text only docket entry; there is no document associated with this notice.</i> (ahm, COURT STAFF) (Filed on 8/20/2015) (Entered: 08/20/2015)
08/20/2015	<u>16</u>	ORDER, Case reassigned to Hon. Vince Chhabria. Magistrate Judge Jacqueline Scott Corley no longer assigned to the case.. Signed by Executive Committee on 8/20/15. (ha, COURT STAFF) (Filed on 8/20/2015) (Entered: 08/20/2015)
08/21/2015	<u>17</u>	Initial Case Management Scheduling Order: Case Management Statement due by 11/3/2015. Case Management Conference set for 11/10/2015 10:00 AM in Courtroom 4, 17th Floor, San Francisco. Signed by Judge Vince Chhabria on 8/21/2015. (knm, COURT STAFF) (Filed on 8/21/2015) (Entered: 08/21/2015)
08/26/2015	<u>18</u>	STIPULATION WITH PROPOSED ORDER <i>TO EXTEND TIME TO RESPOND TO COMPLAINT AND SET MODIFIED BRIEFING SCHEDULE</i> filed by Pixels.com, LLC. (Attachments: # <u>1</u> Certificate/Proof of Service)(Toke, Vijay) (Filed on 8/26/2015) (Entered: 08/26/2015)
08/27/2015	<u>19</u>	SUMMONS Returned Executed by Pixels.com, LLC. Instagram, LLC served on 8/11/2015, answer due 9/1/2015. (Toke, Vijay) (Filed on 8/27/2015) (Entered: 08/27/2015)
08/28/2015	<u>20</u>	Order by Hon. Vince Chhabria granting <u>18</u> Stipulation to Extend Time to Respond to Complaint and Set Modified Briefing Schedule.(knm, COURT STAFF) (Filed on 8/28/2015) (Entered: 08/28/2015)
09/04/2015	<u>21</u>	CERTIFICATE OF SERVICE by Pixels.com, LLC (Toke, Vijay) (Filed on 9/4/2015) (Entered: 09/04/2015)
09/21/2015	<u>22</u>	NOTICE of Appearance by Dennis LeRoy Wilson <i>on behalf of Defendant Instagram, LLC</i> (Wilson, Dennis) (Filed on 9/21/2015) (Entered: 09/21/2015)
09/21/2015	<u>23</u>	MOTION to Dismiss <i>for Failure to State a Claim on Which Relief May Be Granted and/or to Strike Portions of the Complaint (FRCP 12(b)(6), 12(f))</i> filed by Instagram, LLC. Motion Hearing set for 11/12/2015 10:00 AM in Courtroom 4, 17th Floor, San Francisco before Hon. Vince Chhabria. Responses due by 10/12/2015. Replies due by 10/19/2015. (Wilson, Dennis) (Filed on 9/21/2015) (Entered: 09/21/2015)
09/21/2015	<u>24</u>	Request for Judicial Notice re <u>23</u> MOTION to Dismiss <i>for Failure to State a Claim on Which Relief May Be Granted and/or to Strike Portions of the Complaint (FRCP 12(b)(6), 12(f))</i> filed by Instagram, LLC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Related document(s) <u>23</u>) (Wilson, Dennis) (Filed on 9/21/2015) (Entered: 09/21/2015)
09/24/2015	<u>25</u>	Certificate of Interested Entities by Instagram, LLC (Wilson, Dennis) (Filed on 9/24/2015) (Entered: 09/24/2015)

10/05/2015	<u>26</u>	MOTION for leave to appear in Pro Hac Vice <i>for PETER M. BOYLE</i> (Filing fee \$ 305, receipt number 0971-9890597.) filed by Instagram, LLC. (Attachments: # <u>1</u> Certificate/Proof of Service CERTIFICATE OF GOOD STANDING)(Boyle, Peter) (Filed on 10/5/2015) (Entered: 10/05/2015)
10/09/2015	<u>27</u>	Order by Hon. Vince Chhabria granting <u>26</u> Motion for Pro Hac Vice–Boyle.(knm, COURT STAFF) (Filed on 10/9/2015) (Entered: 10/09/2015)
10/09/2015	<u>28</u>	AMENDED COMPLAINT against Instagram, LLC. Filed byPixels.com, LLC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Taube, Mari-Elise) (Filed on 10/9/2015) (Entered: 10/09/2015)
10/12/2015	<u>29</u>	RESPONSE to <i>DEFENDANT'S REQUEST FOR JUDICIAL NOTICE</i> by Pixels.com, LLC. (Toke, Vijay) (Filed on 10/12/2015) (Entered: 10/12/2015)
10/12/2015	<u>30</u>	NOTICE by Pixels.com, LLC <i>NOTICE OF FILING OF FIRST AMENDED COMPLAINT AS A MATTER OF COURSE [FRCP 15(a)(1)(B)]</i> (Toke, Vijay) (Filed on 10/12/2015) (Entered: 10/12/2015)
10/13/2015	<u>31</u>	Notice of Withdrawal of Motion <i>to Dismiss</i> (Gilliland, James) (Filed on 10/13/2015) (Entered: 10/13/2015)
10/20/2015	<u>32</u>	STIPULATION WITH PROPOSED ORDER <i>to Extend Time to Respond to First Amended Complaint And Set Modified Briefing Schedule</i> filed by Instagram, LLC. (Gilliland, James) (Filed on 10/20/2015) (Entered: 10/20/2015)
10/21/2015	<u>33</u>	NOTICE of need for ADR Phone Conference (ADR L.R. 3-5 d) (Attachments: # <u>1</u> Attestation of Concurrence)(Toke, Vijay) (Filed on 10/21/2015) (Entered: 10/21/2015)
10/22/2015	<u>34</u>	ADR Clerk's Notice Setting ADR Phone Conference on November 3, 2015 at 11:00 AM Pacific time. Please note that you must be logged into an ECF account of counsel of record in order to view this document. (cmf, COURT STAFF) (Filed on 10/22/2015) (Entered: 10/22/2015)
10/22/2015	<u>35</u>	ADR Certification (ADR L.R. 3-5 b) of discussion of ADR options (Toke, Vijay) (Filed on 10/22/2015) (Entered: 10/22/2015)
10/23/2015	<u>36</u>	Order as Modified by Hon. Vince Chhabria granting <u>32</u> Stipulation to Extend Time to Response to First Amended Complaint and set Modified Briefing Schedule.(knm, COURT STAFF) (Filed on 10/23/2015) (Entered: 10/23/2015)
10/29/2015		ADR Remark: ADR Phone Conference scheduled on November 3, 2015 at 11:00 AM Pacific time is postponed to 3:00 PM Pacific time on November 3, 2015. The call-in information remains the same. (cmf, COURT STAFF) (Filed on 10/29/2015) (Entered: 10/29/2015)
11/03/2015		ADR Remark: ADR Phone Conference held on 11/3/2015 with Tamara Lange. A further ADR Phone Conference is scheduled for 1/8/2016 at 11:00 AM. The call-in information remains the same. (cmf, COURT STAFF) (Filed on 11/3/2015) (Entered: 11/03/2015)
11/09/2015	<u>37</u>	MOTION to Dismiss <i>For Failure to State a Claim on Which Relief May Be Granted</i> filed by Instagram, LLC. Motion Hearing set for 12/17/2015 10:00 AM in Courtroom 4, 17th Floor, San Francisco before Hon. Vince Chhabria. Responses due by 11/30/2015. Replies due by 12/7/2015. (Wilson, Dennis) (Filed on 11/9/2015) (Entered: 11/09/2015)
11/09/2015	<u>38</u>	Request for Judicial Notice re <u>37</u> MOTION to Dismiss <i>For Failure to State a Claim on Which Relief May Be Granted</i> filed byInstagram, LLC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Related document(s) <u>37</u>) (Wilson, Dennis) (Filed on 11/9/2015) (Entered: 11/09/2015)
11/30/2015	<u>39</u>	RESPONSE (re <u>37</u> MOTION to Dismiss <i>For Failure to State a Claim on Which Relief May Be Granted</i>) filed byPixels.com, LLC. (Toke, Vijay) (Filed on 11/30/2015) (Entered: 11/30/2015)
11/30/2015	<u>40</u>	Request for Judicial Notice re <u>39</u> Opposition/Response to Motion <i>To Dismiss For Failure To State A Claim</i> filed byPixels.com, LLC. (Attachments: # <u>1</u> Exhibit A, # <u>2</u>

		Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L, # <u>13</u> Exhibit M, # <u>14</u> Exhibit N, # <u>15</u> Exhibit O, # <u>16</u> Exhibit P, # <u>17</u> Exhibit Q, # <u>18</u> Exhibit R, # <u>19</u> Exhibit S, # <u>20</u> Exhibit T, # <u>21</u> Exhibit U, # <u>22</u> Exhibit V)(Related document(s) <u>39</u>) (Toke, Vijay) (Filed on 11/30/2015) (Entered: 11/30/2015)
12/01/2015	<u>41</u>	NOTICE of Appearance by Vijay K. Toke <i>for David B.Owsley</i> (Toke, Vijay) (Filed on 12/1/2015) (Entered: 12/01/2015)
12/01/2015	<u>42</u>	NOTICE of Appearance by Vijay K. Toke <i>for Bruce B. Paul</i> (Toke, Vijay) (Filed on 12/1/2015) (Entered: 12/01/2015)
12/01/2015	<u>43</u>	MOTION for leave to appear in Pro Hac Vice <i>for Bruce B. Paul</i> (Filing fee \$ 305, receipt number 0971-10030218.) filed by Pixels.com, LLC. (Attachments: # <u>1</u> Certificates of Good Standing, # <u>2</u> Attestation of Concurrence)(Toke, Vijay) (Filed on 12/1/2015) (Entered: 12/01/2015)
12/01/2015	<u>44</u>	MOTION for leave to appear in Pro Hac Vice <i>for David B.Owsley</i> (Filing fee \$ 305, receipt number 0971-10030262.) filed by Pixels.com, LLC. (Attachments: # <u>1</u> Certificate of Good Standing, # <u>2</u> Attestation of Concurrence)(Toke, Vijay) (Filed on 12/1/2015) (Entered: 12/01/2015)
12/01/2015	<u>45</u>	NOTICE by Pixels.com, LLC <i>NOTICE OF WITHDRAWAL OF CERTAIN COUNSEL; [PROPOSED] ORDER GRANTING WITHDRAWAL OF CERTAIN COUNSEL</i> (Toke, Vijay) (Filed on 12/1/2015) (Entered: 12/01/2015)
12/03/2015	<u>46</u>	ORDER RE WITHDRAWAL OF COUNSEL. Signed by Judge Vince Chhabria on 12/3/2015. (knm, COURT STAFF) (Filed on 12/3/2015) (Entered: 12/03/2015)
12/06/2015	<u>47</u>	REPLY (re <u>37</u> MOTION to Dismiss <i>For Failure to State a Claim on Which Relief May Be Granted</i>) filed by Instagram, LLC. (Wilson, Dennis) (Filed on 12/6/2015) (Entered: 12/06/2015)
12/06/2015	<u>48</u>	OBJECTIONS to re <u>40</u> Request for Judicial Notice,, by Instagram, LLC. (Wilson, Dennis) (Filed on 12/6/2015) (Entered: 12/06/2015)
12/07/2015	<u>49</u>	Order by Hon. Vince Chhabria granting <u>43</u> Motion for Pro Hac Vice– Paul.(knm, COURT STAFF) (Filed on 12/7/2015) (Entered: 12/07/2015)
12/17/2015	50	Minute Entry for proceedings held before Hon. Vince Chhabria: Motion Hearing held on 12/17/2015 re <u>37</u> MOTION to Dismiss <i>For Failure to State a Claim on Which Relief May Be Granted</i> filed by Instagram, LLC. The Court takes the matter under submission with argument by the parties. The Court will issue a written ruling. Discovery as to trademark infringement is open. The time for the CMC has changed: Case Management Conference set for 1/12/2016 01:30 PM in Courtroom 4, 17th Floor, San Francisco. FTR Time 10:16– 10:42. Plaintiff Attorney Vijay Toke and Bruce Paul. Defendant Attorney Dennise Wilson and Peter Boyle. This is a text only Minute Entry (knm, COURT STAFF) (Date Filed: 12/17/2015) (Entered: 12/18/2015)
12/21/2015	51	AUDIO RECORDINGS ORDER (re: 50 Motion Hearing,,, Set Hearings,,) by Instagram, LLC. Court will send to Sarah Kim at sakim@kilpatricktownsend.com a link to the files requested in this order. (Wilson, Dennis) (Filed on 12/21/2015) (Entered: 12/21/2015)
12/21/2015	<u>52</u>	Order by Hon. Vince Chhabria granting in part and denying in part <u>37</u> Motion to Dismiss.(knm, COURT STAFF) (Filed on 12/21/2015) (Entered: 12/21/2015)
12/23/2015	<u>53</u>	ADR Clerk's Notice providing new call-in information for the ADR Phone Conference scheduled on January 8, 2016 at 11:00 AM Pacific time. (cmf, COURT STAFF) (Filed on 12/23/2015) (Entered: 12/23/2015)
12/29/2015	<u>54</u>	Order by Hon. Vince Chhabria granting <u>44</u> Motion for Pro Hac Vice– Owsley.(knm, COURT STAFF) (Filed on 12/29/2015) (Entered: 12/29/2015)
01/04/2016	<u>55</u>	STIPULATION <i>to Extend Time to Respond to First Amended Complaint</i> filed by Instagram, LLC. (Gilliland, James) (Filed on 1/4/2016) (Entered: 01/04/2016)

01/05/2016	<u>56</u>	NOTICE of Appearance by Vijay K. Toke <i>for Thad M. Barnes</i> (Toke, Vijay) (Filed on 1/5/2016) (Entered: 01/05/2016)
01/05/2016	<u>57</u>	MOTION to Appear by Telephone <i>for Mari-Elise Taube and Thad M. Barnes</i> filed by Pixels.com, LLC. (Toke, Vijay) (Filed on 1/5/2016) (Entered: 01/05/2016)
01/05/2016	<u>58</u>	CASE MANAGEMENT STATEMENT filed by Pixels.com, LLC. (Toke, Vijay) (Filed on 1/5/2016) (Entered: 01/05/2016)
01/06/2016	59	CLERK'S NOTICE RESCHEDULING THE TIME FOR THE CASE MANAGEMENT CONFERENCE AND CONVERTING THE HEARING TO A TELEPHONIC CASE MANAGEMENT CONFERENCE: The matter is rescheduled to the following time due to one or more parties requesting to appear telephonically at the hearing. Plaintiff shall provide the Court and all other parties a conference line and applicable access code to use during the hearing no later than three court days prior to the case management conference. Initial Case Management Conference set for 1/12/2016 02:30 PM in Courtroom 4, 17th Floor, San Francisco. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (knm, COURT STAFF) (Filed on 1/6/2016) (Entered: 01/06/2016)
01/06/2016	<u>60</u>	NOTICE of Appearance by Ryan T. Bricker <i>on Behalf of Defendant Instagram, LLC</i> (Bricker, Ryan) (Filed on 1/6/2016) (Entered: 01/06/2016)
01/08/2016		ADR Remark: ADR Phone Conference held on 1/8/2016 with Tamara Lange. (cmf, COURT STAFF) (Filed on 1/8/2016) (Entered: 01/08/2016)
01/11/2016	<u>61</u>	Answer to Amended Complaint <u>28</u> Amended Complaint , COUNTERCLAIM against Pixels.com, LLC by Instagram, LLC. (Attachments: # <u>1</u> Exhibit A)(Wilson, Dennis) (Filed on 1/11/2016) (Entered: 01/11/2016)
01/12/2016	<u>62</u>	MOTION for leave to appear in Pro Hac Vice <i>for Thad M. Barnes</i> (Filing fee \$ 305, receipt number 0971-10126400.) filed by Pixels.com, LLC. (Attachments: # <u>1</u> Certificate of Good Standing, # <u>2</u> Attestation of Concurrence)(Toke, Vijay) (Filed on 1/12/2016) (Entered: 01/12/2016)
01/12/2016	63	Minute Entry for proceedings held before Hon. Vince Chhabria: Telephonic Initial Case Management Conference held on 1/12/2016. There is no discovery stay in this case with respect to counter-claims. Discovery due by 10/3/2016. Initial expert discovery due by 10/14/2016. Rebuttal expert discovery due by 11/4/2016. Close of expert discovery 12/16/2016. Dispositive Motion Hearing set for 2/16/2017 10:00 AM in Courtroom 4, 17th Floor, San Francisco before Hon. Vince Chhabria. Final Pretrial Conference set for 4/17/2017 01:30 PM in Courtroom 4, 17th Floor, San Francisco. Jury Trial set for 5/1/2017 08:30 AM in Courtroom 4, 17th Floor, San Francisco before Hon. Vince Chhabria. Hearing not reported or recorded. Plaintiff Attorney Vijay Toke, Thad Barnes, and Mari-Elise Gates. Defendant Attorney Dennis LeRoy and Ryan Bricker. This is a text only Minute Entry (knm, COURT STAFF) (Date Filed: 1/12/2016) (Entered: 01/13/2016)
01/13/2016	<u>64</u>	Order by Hon. Vince Chhabria granting <u>62</u> Motion for Pro Hac Vice-Barnes.(knm, COURT STAFF) (Filed on 1/13/2016) (Entered: 01/13/2016)
01/22/2016	<u>65</u>	STIPULATION WITH PROPOSED ORDER <i>TO EXTEND TIME TO RESPOND TO COUNTERCLAIM AND SET MODIFIED BRIEFING SCHEDULE</i> filed by Pixels.com, LLC. (Toke, Vijay) (Filed on 1/22/2016) (Entered: 01/22/2016)
01/27/2016	<u>66</u>	Order by Hon. Vince Chhabria granting <u>65</u> Stipulation to Extend Time to Respond to Counterclaim and Modify Briefing Schedule.(knm, COURT STAFF) (Filed on 1/27/2016) (Entered: 01/27/2016)
01/27/2016		Reset Deadlines: Responses due by 2/22/2016. Replies due by 2/29/2016. Motion Hearing set for 3/17/2016 10:00 AM in Courtroom 4, 17th Floor, San Francisco before Hon. Vince Chhabria. (knm, COURT STAFF) (Filed on 1/27/2016) (Entered: 01/27/2016)
02/08/2016	<u>67</u>	ANSWER TO COUNTERCLAIM AND <i>AFFIRMATIVE DEFENSES</i> by Pixels.com, LLC. (Toke, Vijay) (Filed on 2/8/2016) (Entered: 02/08/2016)

Exhibit D
to Reply Declaration of Naomi Jane Gray
in Further Support of
Flipagram's Motion to Compel Further
Responses to Its First and Second Sets of
Requests for Production and Interrogatories, and
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Flipagram's First and Second Sets
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Offered by Applicant Flipagram, Inc.

Instagram, LLC v. Flipagram, Inc.

Opposition No. 91217238

Timeline Photos

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facebook Community Update



1.49 Billion

people on Facebook each month



800 Million

people on Whatsapp each month



700 Million

people on Messenger each month



300 Million

people on Instagram each month



1.5 Billion

searches daily



1 Billion

people offered access through Internet.org



850 Million

people using Groups on Facebook



450 Million

people using Events on Facebook



40 Million

small businesses using Pages

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Sheryl Sandberg

We just posted our Q2 results.

We're making great progress connecting the world. Almost half of the people on the internet are now on Facebook, and they're using our apps and services to connect in new ways.

Thank you to our partners everywhere – the businesses, communities and people that make Facebook what it is – and to the Facebook teams around the world. Together, we make the world a little bit smaller and more connected. — with Dave Wehner and Mark Zuckerberg at Facebook HQ.

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Exhibit E
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Offered by Applicant Flipagram, Inc.

Instagram, LLC v. Flipagram, Inc.

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OVER
200 MILLION
MONTHLY
ACTIVE USERS

MORE THAN
20 BILLION
PHOTOS UPLOADED
TO THE SERVICE TILL
DATE.

MOST POPULAR
FILTER ON
INSTAGRAM IS
NO FILTER

1.2
BILLION
DAILY LIKES.

13%
OF INTERNET
USERS USE
INSTAGRAM.



INSTAGRAM

INSIGHT INTO WORLD'S
MOST POPULAR PHOTO
SHARING APP.

43%
OF THE TOP 100
BRANDS ARE ON
INSTAGRAM.

INSTAGRAM HAS
51% MALE
AND
49% FEMALE
USERS.

75 MILLION
DAILY INSTAGRAM
USERS.

@AYESHAAMBBREEN

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8 Attorneys for Applicant/Petitioner
FLIPAGRAM, INC.

9
10 Mark: FLIPAGRAM

11 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
12 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

14
15 INSTAGRAM, LLC, a Delaware limited
liability company,

16 Opposer/Registrant

17
18 v.

19 FLIPAGRAM, INC., a California
corporation,

20 Applicant/Petitioner
21

**DECLARATION OF BERENICE
AVILA IN SUPPORT OF
FLIPAGRAM'S MOTION TO
COMPEL FURTHER RESPONSES TO
ITS FIRST AND SECOND SETS OF
REQUESTS FOR PRODUCTION AND
INTERROGATORIES, AND MOTION
TO TEST SUFFICIENCY OF
RESPONSES TO FLIPAGRAM'S
FIRST AND SECOND SETS OF
REQUESTS FOR ADMISSION**

22 Opposition No. 91217238

23 Application No. 86042264
24
25
26
27
28

1 I, Berenice Avila, declare as follows:

2 1. I am an administrative assistant at Harvey Siskind LLP, counsel for Applicant
3 Flipagram, Inc. (“Flipagram”). I make this declaration freely and of my own personal knowledge. If
4 called as a witness, I could and would competently testify to the matters set forth herein.

5 2. Annexed hereto as Exhibit A is a true and correct copy of a screen shot I captured
6 from <https://www.instagram.com/about/legal/terms/api/> on February 29, 2016.

7 3. Annexed hereto as Exhibit B are true and correct copies of screen shots I captured
8 from <https://www.instagram.com/about/faq/> on February 29, 2016.

9 4. Annexed hereto as Exhibit C is a true and correct copy of a screen shot I captured
10 from <https://itunes.apple.com/us/app/instafood-pro/id606793082?mt=8> on February 26, 2016.

11 5. Annexed hereto as Exhibit D is a true and correct copy of a screen shot I captured
12 from <https://itunes.apple.com/us/app/hipstamatic-camera/id342115564?mt=8> on February 26, 2016.

13 6. Annexed hereto as Exhibit E is a true and correct copy of a screen shot I captured from
14 <https://itunes.apple.com/us/app/instaweather-weather-photo/id564147490?mt=8> on February 26,
15 2016.

16 7. Annexed hereto as Exhibit F is a true and correct copy of a screen shot I captured from
17 <http://blog.instagram.co.in/post/42363074191/instagramfeed> on February 25, 2016.

18 8. Annexed hereto as Exhibit G is a true and correct copy of a screen shot I captured
19 from <http://blog.instagram.com/post/53448889009/video-on-instagram> on February 25, 2016.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct and that this declaration was executed this 29th day of February , 2016, in San
22 Francisco, California.

23 */Berenice Avila/*

24 Berenice Avila

Exhibit A
to Declaration of Berenice Avila
in Support of Flipagram's Motion to Compel
Further Responses to Its First and Second Sets
of Requests for Production and Interrogatories,
and Motion to Test Sufficiency of Responses to
Flipagram's First and Second Sets
of Requests for Admission

Offered by Applicant Flipagram, Inc.

Instagram, LLC v. Flipagram, Inc.

Opposition No. 91217238

ABOUT

Company

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Platform Policy

By using the Instagram APIs, you agree to this policy. We reserve the right to change this policy at any time without notice, so please check it regularly. Your continued use of the Instagram APIs constitutes acceptance of any changes. You also agree to and are responsible for ensuring that you comply with the Instagram Terms of Use and Instagram Community Guidelines.

We provide the Instagram APIs to support several types of apps and services. First, we provide them to help members of our community share their own content with apps or services. We also support apps and services that help brands and advertisers understand and manage their audience, develop their content strategy, and obtain digital rights. Finally, we provide the Instagram APIs to help broadcasters and publishers discover content, get digital rights to media, and share media using web embeds. The Instagram APIs are not intended for other types of apps or services. For those we do support, the following terms and information also apply:

A. General Terms

1. Ensure your app is stable and easily navigable.
2. Don't confuse, deceive, defraud, mislead, or harass anyone.
3. Be transparent about your identity and your app's identity.
4. Don't use the Instagram APIs for any app that constitutes, promotes or is used in connection with spyware, adware, or any other malicious programs or code.
5. Don't store or cache Instagram login credentials.
6. Follow any instructions we include in our [technical documentation](#).
7. Provide meaningful customer support for your app, and make it easy for people to contact you.
8. Provide a publicly accessible privacy policy that tells people what you collect and how you will use this information.
9. If you allow third parties to serve content, including advertisements, or collect information directly from visitors, including placing or recognizing cookies on visitors' browsers, disclose this in your privacy policy.
10. Comply with your privacy policy.
11. Comply with any requirements or restrictions imposed on usage of Instagram user photos and videos ("User Content") by their respective owners. You are solely responsible for making use of User Content in compliance with owners' requirements or restrictions.
12. Remove within 24 hours any User Content or other information that the owner asks you to remove.
13. Obtain a person's consent before including their User Content in any ad.
14. Only store or cache User Content for the period necessary to provide your app's service.
15. If you store or cache User Content, keep it up to date. For example, if a user marks a photo as "private", you must reflect that change by removing the content as soon as reasonably possible.
16. Don't use the Instagram API to simply display User Content, import or backup content, or manage Instagram relationships, without our prior permission.
17. Don't apply computer vision technology to User Content, without our prior permission.
18. Don't participate in any "like", "share", "comment" or "follower" exchange programs.
19. Don't use follower information for anything other than analytics without our prior permission. For example, don't display these relationships in your app.
20. Only use the POST and DELETE endpoints after a business has taken an explicit action in your app requesting you to do so.
21. Only use the POST and DELETE likes, comments, and relationships endpoints to enable businesses to manage communication with people who have expressed interest in them. Don't use these endpoints for non-business purposes.
22. Ensure your comments are uniquely tailored for each person. Don't post unauthorized commercial communication or spam on Instagram.
23. Don't enable a business to take more than one action on Instagram at a time.
24. Add something unique to the community. Don't use the Instagram APIs to replicate or attempt to replace the functionality or essential user experiences of Instagram.com or any of Instagram's apps.
25. Respect the way Instagram looks and functions. Don't offer experiences that change it.
26. Don't attempt to build an ad network on Instagram.
27. Don't attempt to identify groups of individuals or create demographic clusters for the purpose of contacting or targeting Instagram members on or off Instagram.
28. Don't transfer any data that you receive from us (including anonymous, aggregate, or derived data) to any ad network, data broker, influencer network, or other advertising or monetization-related service.
29. You can administer a promotion on Instagram if you comply with all applicable laws and regulations, but don't directly incentivize other actions.
30. If you want to facilitate or promote online gambling, online real money games of skill, or online lotteries, get our written permission before using any of our products.
31. Don't use an unreasonable amount of bandwidth, or adversely impact the stability of Instagram.com servers or the behavior of other apps using the Instagram APIs.
32. Don't reverse engineer the Instagram APIs or any of Instagram's apps.
33. Don't sell, lease, or sublicense the Instagram APIs or any data derived through the APIs.
34. Comply with all applicable laws or regulations. Don't violate any rights of any person, including but not limited to intellectual property rights, rights of privacy, or rights of personality. Don't expose Instagram or people who use Instagram to harm or legal liability.

B. Brand Assets

Comply with Instagram's Brand Guidelines. Don't use the trademarks of Instagram or its affiliates without written permission, including as authorized by applicable brand guidelines.

C. Things you should know

1. Instagram primarily communicates with developers through email. Please ensure that the email addresses associated with your Instagram account are current and that you don't filter out these messages.
2. Instagram may rate limit or block apps that make a large number of calls to the API that are not primarily in response to direct user actions.
3. Enforcement is both automated and manual, and can include disabling your app, restricting you and your app's access to Instagram APIs, requiring that you delete data, terminating our agreements with you or any other action that we deem appropriate.
4. Instagram may change, suspend, or discontinue the availability of any Instagram APIs at any time. In addition, Instagram may impose limits on certain features and services or restrict your access to parts or all of the Instagram APIs or the Instagram website without notice or liability.
5. If Instagram elects to provide you with support or modifications for the Instagram APIs, this support may be terminated at any time without notice to you.
6. Instagram reserves the right to charge fees for future use of or access to the Instagram APIs.
7. Instagram doesn't guarantee that any Instagram APIs are free of inaccuracies, errors, bugs, or interruptions, or are reliable, accurate, complete, or otherwise valid.
8. Licensed Uses and Restrictions: The Instagram APIs are owned by Instagram and are licensed to you on a worldwide (except as limited below), non-exclusive, non-sublicenseable basis in accordance with these terms. Your license to the Instagram APIs continues until it is terminated by either party. Please note that User Content is owned by users and not by Instagram. All rights not expressly granted to you are reserved by Instagram.
9. Disclaimer of Any Warranty: Instagram APIs and all data derived through such APIs are provided "as is" with no warranty, express or implied, of any kind and Instagram expressly disclaims any and all warranties and conditions, including but not limited to, any implied warranty of merchantability, fitness for a particular purpose, availability, security, title and non-infringement. You are solely responsible for any damage that results from the use of any Instagram APIs and all any data derived through such APIs including, but not limited to, any damage to your computer system or loss of data.
10. Limitation of Liability: Instagram shall not, under any circumstances, be liable to you for any indirect, incidental, consequential, special or exemplary damages arising out of or in connection with use of the Instagram APIs and any data derived through such APIs, whether based on breach of contract, breach of warranty, tort (including negligence, product liability or otherwise), or any other pecuniary loss, whether or not Instagram has been advised of the possibility of such damages. Under no circumstances shall Instagram be liable to you for any amount.
11. Release and Waiver: To the maximum extent permitted by applicable law, you hereby release and waive all claims against Instagram, and its subsidiaries, affiliates, officers, agents, licensors, co-branders or other partners, and employees from any and all liability for claims, damages (actual and/or consequential), costs and expenses (including litigation costs and attorneys' fees) of every kind and nature, arising from or in any way related to your use of the Instagram APIs and data derived through such APIs. If you are a California resident, you waive your rights under California Civil Code 1542, which states, "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." You understand that any fact relating to any matter covered by this release may be found to be other than now believed to be true and you accept and assume the risk of such possible differences in fact. In addition, you expressly waive and relinquish any and all rights and benefits which you may have under any other state or federal statute or common law principle of similar effect, to the fullest extent permitted by law.
12. Hold Harmless and Indemnify: To the maximum extent permitted by applicable law, you agree to hold harmless and indemnify Instagram and its subsidiaries, affiliates, officers, agents, licensors, co-branders or other partners, and employees from and against any third-party claim arising from or in any way related to your use of the Instagram APIs and any data derived through the APIs, including any liability or expense arising from all claims, losses, damages (actual and/or consequential), suits, judgments, litigation costs and attorneys' fees, of every kind and nature. Instagram shall use good faith efforts to provide you with written notice of such claim, suit or action.
13. Relationship of the Parties: Notwithstanding any provision hereof, for all purposes of the Instagram API Terms, you and Instagram shall be and act independently and not as partner, joint venturer, agent, employee or employer of the other. You don't have any authority to assume or create any obligation for or on behalf of Instagram, express or implied, and you must not attempt to bind Instagram to any contract.
14. Invalidity of Specific Terms: If any provision of the Instagram API Terms is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision and that the other provisions remain in full force and effect.
15. No Waiver of Rights by Instagram: Instagram's failure to exercise or enforce any right or provision of the Instagram API Terms shall not constitute a waiver of such right or provision.

Exhibit B
to Declaration of Berenice Avila
in Support of Flipagram's Motion to Compel
Further Responses to Its First and Second Sets
of Requests for Production and Interrogatories,
and Motion to Test Sufficiency of Responses to
Flipagram's First and Second Sets
of Requests for Admission

Offered by Applicant Flipagram, Inc.

Instagram, LLC v. Flipagram, Inc.

Opposition No. 91217238

ABOUT

Company

Jobs

FAQ

LEGAL

Terms

Privacy

Platform

Libraries

FAQ

This is a short list of our most frequently asked questions. For more information about Instagram, or if you need support, please visit our [support center](#).

What is Instagram?

Instagram is a fun and quirky way to share your life with friends through a series of pictures. Snap a photo with your mobile phone, then choose a filter to transform the image into a memory to keep around forever. We're building Instagram to allow you to experience moments in your friends' lives through pictures as they happen. We imagine a world more connected through photos.

How much is your app?

\$0.00 - available for free in the Apple App Store and Google Play store.

Where does the name come from?

When we were kids we loved playing around with cameras. We loved how different types of old cameras marketed themselves as "instant" - something we take for granted today. We also felt that the snapshots people were taking were kind of like telegrams in that they got sent over the wire to others - so we figured why not combine the two?

How did the idea come about?

We love taking photos. We always assumed taking interesting photos required a big bulky camera and a couple years of art school. But as mobile phone cameras got better and better, we decided to challenge that assumption. We created Instagram to solve three simple problems:

1. Mobile photos always come out looking mediocre. Our awesome looking filters transform your photos into professional-looking snapshots.
2. Sharing on multiple platforms is a pain - we help you take a picture once, then share it (instantly) on multiple services.
3. Most uploading experiences are clumsy and take forever - we've optimized the experience to be fast and efficient.

What other services are you compatible with?

Currently, you can share your photos on a photo-by-photo basis on Flickr, Facebook, and Twitter. Additionally, if you specify a location with your photo, you can opt to have us check you in on Foursquare. Going forward, we plan on supporting additional services but have nothing else to announce at this time.

Are you hiring?

Absolutely, yes. If you're a talented engineer or designer we want to talk to you. Check out our [jobs page](#).

I have a technical problem or support issue I need resolved, who do I email?

The best way to get in touch with us is to visit our [support center](#).

Is there an API or developer program?

Developers can register for our api at our [developer site](#).

How does privacy work?

We have adopted a follower model that means if you're "public" on Instagram, anyone can subscribe to follow your photos. We do, however, have a special private option. In this mode, a user can make sure he/she must approve all follow requests before they go through.

Who can see my photos?

All photos are public by default which means they are visible to anyone using Instagram or on the [instagram.com](#) website. If you choose to make your account private, then only people who follow you on Instagram will be able to see your photos.

How can I print my photos?

We save all the photos you process with Instagram to your camera roll. You can then sync with your computer and print as many as you'd like.

When are you going to make the app for Blackberry, Windows Phone 7, iPad, etc?

We are currently working on making the iPhone and Android experiences as solid as possible. Only then will we consider other platforms, but currently we have nothing to announce.

Exhibit C
to Declaration of Berenice Avila
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Offered by Applicant Flipagram, Inc.

Instagram, LLC v. Flipagram, Inc.

Opposition No. 91217238

iTunes Preview

Overview Music Video Charts



iTunes is the world's easiest way to organize and add to your digital media collection.

We are unable to find iTunes on your computer. To buy and download InstaFood™ PRO by byss mobile, get iTunes now.

Already have iTunes? Click I Have iTunes to open it now.

I Have iTunes



Free Download

InstaFood™ PRO

View More by This Developer

By byss mobile

Open iTunes to buy and download apps.



View in iTunes

\$1.99

Category: Food & Drink

Updated: Mar 24, 2015

Version: 2.2.2

Size: 27.3 MB

Languages: English, Afrikaans, Arabic, Czech, Dutch, Filipino, French, German, Hindi, Hungarian, Indonesian, Italian, Japanese, Korean, Latvian, Malay, Persian, Polish, Portuguese, Russian, Simplified Chinese, Slovak, Spanish, Swedish, Thai, Traditional Chinese, Turkish, Vietnamese

Seller: BYSS mobile

© byss mobile

Rated 4+

Compatibility: Requires iOS 7.0 or later. Compatible with iPhone, iPad, and iPod touch.

Also Included In



Instaweather + Instaplace + InstaFood
View in iTunes

Customer Ratings

Current Version:

★ ★ ★ 10 Ratings

All Versions:

★ ★ ★ ★ 173 Ratings

More iPhone Apps by byss mobile



Ringtone for iPhone FREE &...
View in iTunes



Major GUN
View in iTunes

Description

If you're gonna show everybody what you're eating, do it with style. This is your app! A location based Food Photo App to let everyone know exactly where and when and What you Ate in that photo. Location overlay will give you a chance to share with friends what you're eating in real time! Beautifully crafted custom skins will give your food photos PROFESSIONAL, CLEANER and more ELEGANT look. You can add whatever text you wish, plus the name of the location (custom or geolocated from Foursquare or Facebook) where you are snapping the photo.

Take Photo and add the skin of your choice and customise it to your liking. Then instantly share it on Instagram, Facebook, Twitter, Foursquare, Weibo, Tumblr or Flickr

Even while you are not social media person InstaFood is for you - just save pictures to your camera roll! It lets you beautify your pictures. You will enjoy it!

features:

- 5 sets of beautifully prepared skins for every dish you can imagine
- automatic place recognition
- location information from Foursquare or Facebook
- works on your old photos (as long as metadata contains location)

byss mobile Web Site InstaFood™ PRO Support

What's New in Version 2.2.2

fixed Facebook compatibility

iPhone Screenshot



Customer Reviews

Kids toy - disappointing ★



FREE Ringtones : set contact's...
[View In iTunes](#)



KidFace
[View In iTunes](#)



Ringtone maker 123!
[View In iTunes](#)

by Nutty Raccoon

App will not work unless you enable location services. You know, there are a LOT of us who want our privacy & since you want to force us to turn on location services I've deleted your app.

I humored it for about 5 min., turned on location services to see if the app was worth keeping ...nope, this app is a **Love it ★★★★★** ...More
by Netafan

This is great app I love it, I only will say or suggest that it need a few more skins for the paid app, and the way to edit locations.
And for the person that says that why the logo still there hey people please learn how to used first before you write ...More

Does not work ★
by j_theweirdO

I'm not sure if this is a version issue or not but this app does not work. There are no skins and no way to add/edit screen text or to make any sort of any changes or edits. The only thing the app does is save photos already on my phone or take pictures that I could have taken with just the normal camera app.

Customers Also Bought



foodpanda – Food...
Food & Drink
[View In iTunes](#)



Wongnai
Food & Drink
[View In iTunes](#)



eatigo – reservatio...
Food & Drink
[View In iTunes](#)



OpenSnap:Photo D...
Food & Drink
[View In iTunes](#)



Filipino Food Love...
Food & Drink
[View In iTunes](#)

App Store on Facebook and Twitter



Discover and share new apps.
Follow us on @AppStore.



iTunes on Facebook



Discover and share new music, movies, TV, books, and more.



Follow us @iTunes and discover new iTunes Radio Stations and the music we love.

iTunes

Shop and Learn

Mac
iPad
iPhone
Watch
TV
Music
iTunes
iPod
Accessories
Gift Cards

Apple Store

Find a Store
Genius Bar
Workshops and Learning
Youth Programs
Apple Store App
Refurbished
Financing
Reuse and Recycling
Order Status
Shopping Help

For Education

Apple and Education
Shop for College

For Business

iPhone in Business
iPad in Business
Mac in Business
Shop for Your Business

Account

Manage Your Apple ID
Apple Store Account
iCloud.com

Apple Values

Environment
Supplier Responsibility
Accessibility
Privacy
Inclusion and Diversity
Education

About Apple

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United States

Exhibit D
to Declaration of Berenice Avila
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Further Responses to Its First and Second Sets
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Offered by Applicant Flipagram, Inc.

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Opposition No. 91217238

iTunes Preview

Overview Music Video Charts



iTunes is the world's easiest way to organize and add to your digital media collection.

We are unable to find iTunes on your computer. To buy and download HIPSTAMATIC Camera by Hipstamatic, LLC, get iTunes now.

Already have iTunes? Click I Have iTunes to open it now. [I Have iTunes](#)



[Free Download](#)

HIPSTAMATIC Camera

[View More by This Developer](#)

By Hipstamatic, LLC

Essentials

Open iTunes to buy and download apps.



[View In iTunes](#)

\$2.99

Category: [Photo & Video](#)
Updated: Jan 30, 2016
Version: 311
Size: 72.6 MB
Languages: English, Dutch, French, German, Indonesian, Italian, Japanese, Korean, Malay, Portuguese, Russian, Simplified Chinese, Spanish, Swedish, Traditional Chinese
Seller: Hipstamatic, LLC
© 2009-2015 Hipstamatic, LLC
Rated 4+

Compatibility: Requires iOS 8.0 or later. Compatible with iPhone, iPad, and iPod touch.

Customer Ratings

Current Version:
★★★★☆ 51 Ratings
All Versions:
★★★★☆ 12295 Ratings

Top In-App Purchases

- Williamsburg Starte... \$0.99
- Portland HipstaPak \$0.99
- Shibuya HipstaPak \$0.99
- Camden HipstaPak \$0.99
- Mission Hipstapak \$0.99
- Soho HipstaPak \$0.99
- Foodie SnapPak \$0.99
- Bondi HipstaPak \$0.99
- RetroPak One \$1.99
- Wicker Park Hipsta... \$0.99

More iPhone Apps by Hipstamatic, LLC



[View In iTunes](#)



Description

HIPSTAMATIC® Camera is a world-class photography app and Apple's original App of the Year!

Make your photos as beautiful as your life and become part of the world's most creative community, exclusively on iPhone. Sorry, not sorry, Android users.

Want to be a better photographer? Join the millions of creative people that use HIPSTAMATIC everyday, because:

- Apple's very first App of the Year
- The original photo filter app
- The inventor of square filtered mobile photos
- Plus, all of the features below :)

ClassicMode™

Digital has never looked so analog. Shooting classic provides beautifully rendered skeuomorphic cameras that transform your experience as you swipe through lenses, flashes, and films.

- Use Multiple Exposure to shoot multiple images in one shot and get amazing artistic results ■

ProMode™

Offering the ultimate control for every mobile photographer, ProMode™ gives shooters complete control.

- Manually control focus, white balance, exposure, shutter speed, ISO, and aspect ratio ■

Darkroom Suite™

A full editing suite including over 20 professional adjustment tools and 12 signature presets.

TOOLS

- Classic Controls
- Lens
- Film
- Flash
- Crop
- Straighten & Rotate
- Skew
- Exposure
- Clarity
- Definition
- Exposure
- Clarity
- Definition
- Highlights
- Shadows
- Vibrancy
- Fade
- Curves (RGB + Red + Green + Blue)
- Temperature
- Tint
- Depth of field
- Texture
- Grain
- Vignette
- Before & After view by holding down image in edit view

FAVORITE PRESETS

Create your own favorite presets and even share your signature look with others. If you are looking for inspiration hit the shuffle button and explore a world of serendipitous beauty.

- 12 World-class presets
- Customize and edit presets
- Save new presets
- Share any favorite preset with other photographers

Hipstamatic DSPO
[View In iTunes >](#)



TinType by Hipstamatic
[View In iTunes >](#)



Cinamatic
[View In iTunes >](#)



IncrediBooth
[View In iTunes >](#)

Native Workflow

HIPSTAMATIC has defined the mobile photo workflow by syncing natively with the iOS Photo Library. Allowing you to favorite, delete, edit, share, and track engagement of all of your photos from the app.

- No need to import, just tap and edit
- Favorite
- Delete
- Always full resolution
- Save flattened copy or iOS native edits
- Browse and organize folders on your iPhone
- Sync with Photos app & iCloud Photo Library
- View detailed metadata
- View shared image details across social networks (likes, comments, etc.)

HipstaMart™ Shop

Browse amazing filter packs available for purchase via the In-App store created by the world's most talented photo makers. Collaborations from top fashion and street photographers to famous artists like Salvador Dali with new packs available monthly.

PrintLab™

Get real physical prints delivered straight to your door. We built this service in 2010 because no service would print square photos, and today PrintLab is still the best square format printing service in the world. Shipping to over 200 countries!

- Print Prints (4", 7", 10")
- 30" Gallery Prints
- Aluminum Prints (10" or 20")
- Birch Wood Prints (10" or 20")
- Even more options on <http://Printlab.Hipstamatic.com>

#HIPSTAMATIC – Share Everywhere Natively!

Instagram, Twitter, Facebook, Tumblr, Oggl, even Flickr, with more coming soon. After you share, track how your images perform across every network – all from within the new HIPSTAMATIC. Gather your Likes, Loves, & Comments and compare each image's statistics.

- Add White Borders to Instagram when sharing non-square formats ■

FEEDBACK

Help us make HIPSTAMATIC the best app ever. Send your thoughts & comments to feedback@hipstamatic.com or message us anywhere @HIPSTAMATIC

Thanks & Welcome to the HipstaFamily™

[Hipstamatic, LLC Web Site >](#) [HIPSTAMATIC Camera Support >](#) [Application License Agreement >](#)

What's New in Version 311

- Fix a bug that could cause a "Hipstaccount required" error to occur while restoring purchases
- Fix a UI bug when double-tapping to zoom the viewfinder in Classic Camera (full square image should now be visible)

[...More](#)

iPhone Screenshot



Customer Reviews

Best photo app on the market ★★★★★
by ganjaology

Shoot like a professional with many lenses, film types and speeds. This is the only photo app I use. I've recently had to have the help of customer service and they responded to me quickly and with solutions. I've used this app since I've had my iPhone 3 or 4. Can't really recall cause it's been so long. I'm now using it on my iPhone 6s.

[More](#)

Excellent customer service - Career systems engineer
by jobiegermano

A couple things to note. This is an app I've had since my first iPhone and one of the first apps I ever purchased and I have always enjoyed it and continue to do so. Secondly, I've never left a review before for any app. Finally, the app is worth a 5 star rating for many reasons I can't take time to explain.

...More

Downloading problem fixed. Thanks! ★★★★★
by Starzenize

All previously purchased paks now download properly to my iPhone 6 (and earlier devices), and I have access to everything. Hipstamatic is still a lot fun to play with. It takes some time to learn how powerful some of the tools are (it's not always intuitive), but it has given me some great shots.

...More

Customers Also Bought



PicFrame
Photo & Video
[View In iTunes](#)



8mm Vintage Cam...
Photo & Video
[View In iTunes](#)



Afterlight
Photo & Video
[View In iTunes](#)



Camera+
Photo & Video
[View In iTunes](#)



Color Splash
Photo & Video
[View In iTunes](#)

App Store on Facebook and Twitter



Discover and share new apps.
Follow us on @AppStore.



12M



Discover and share new music, movies, TV, books, and more.



31M



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United States

Exhibit E
to Declaration of Berenice Avila
in Support of Flipagram's Motion to Compel
Further Responses to Its First and Second Sets
of Requests for Production and Interrogatories,
and Motion to Test Sufficiency of Responses to
Flipagram's First and Second Sets
of Requests for Admission

Offered by Applicant Flipagram, Inc.

Instagram, LLC v. Flipagram, Inc.

Opposition No. 91217238

iTunes Preview

Overview Music Video Charts



iTunes is the world's easiest way to organize and add to your digital media collection.

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This app is designed for both iPhone and iPad

Free

Category: Weather

Updated: Feb 25, 2016

Version: 3.15.7

Size: 54.5 MB

Languages: English, Arabic, Catalan, Croatian, Czech, Danish, Dutch, Finnish, French, German, Greek, Hebrew, Hungarian, Indonesian, Italian, Japanese, Korean, Malay, Norwegian Bokmål, Norwegian Nynorsk, Polish, Portuguese, Russian, Simplified Chinese, Spanish, Swedish, Thai, Traditional Chinese, Turkish, Vietnamese

Seller: BYSS mobile

© byss mobile

Rated 4+

Compatibility: Requires iOS 7.0 or later. Compatible with iPhone, iPad, and iPod touch.

Customer Ratings

We have not received enough ratings to display an average for the current version of this application.

All Versions:

★★★★ 3400 Ratings

Top In-App Purchases

- 1. Unlock all skins \$0.99
- 2. Winter Skinset \$1.99
- 3. Good Morning Skin... \$1.99
- 4. Forecast Skinset \$1.99
- 5. Summer Skinset \$1.99
- 6. Colorful Skinset \$1.99
- 7. Delicate Skinset \$1.99
- 8. Hipster Skinset \$1.99
- 9. Professional Skinset \$1.99
- 10. Friends Skinset \$1.99

More by byss mobile



Description

This is not another boring weather forecast app :)! Welcome to best Weather Photo Editor, featuring weather overlay edit.

#1 Weather app in USA, Japan, China, UK, Brazil, Italy and other 100 countries

Downloaded over 18'000'000 times!

Create your own weather channel in your social network.

– "If you want to take your ... photos to another level, this just might be the perfect application for you." Makeusof.com

– "InstaWeather – the social side of getting wet, soaking up the sun" –macworld.co.uk

– "InstaWeather is great for posting travel shots and letting your followers not only get a feel for what you're seeing, but also how cold or hot it is there." Bestappsite.com

– "Its a great way to personalize your own forecast" Mrtaylor3234 on apponlinereview.com

– "The idea is simple, the layout is clean, and it's a new way of communicating information." Busylibrarian.com

How does it work?

With Instaweather you can edit photo and share the weather report from the place where your are now – on top of your favourite photo that you have just snapped with your iPhone camera. Then you can use photo editor to crop, filter and apply weather text.

Edit inspirational & informational photos to share quickly and easily. In seconds you can check weather edit weather overlay and talk weather.

InstaWeather knows when you are in certain moment and show it on overlay added to your photo!

Text editor – add your own text or comment to photo customized by InstaWeather? No problem! Photo editor – crop and apply camera photo filters.

Share it to any social channel in a flash: iMessage, WhatsApp, Twitter, Tumblr, Foursquare, Facebook, Instagram or send it via SMS or e-mail.

Make your friends jealous, place a perfect weather report on top of your edited photo!

Use weather editor with over 90 different skins.

You can easily choose your favourite skin, various weather data: from current temperature and simple info about the location to very detailed forecast with air pressure, temperature, rain, wind strength and direction.

You can also choose the period of the displayed forecast: today, next few days or a whole week.

Photo editor with filters & weather overlay editor with custom skins for every weather situation.

Weather works in Celsius & Fahrenheit, kilometers, miles.

Install and share the weather with friends! Let the good weather be always good for you! We use same weather information as Weather Channel.

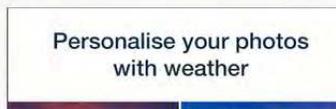
[byss mobile Web Site](#) > [InstaWeather – Weather Photo Editor Support](#) >

What's New in Version 3.15.7

direct Tumblr share

Screenshots

iPhone | iPad



Ringtones for iPhone FREE &...
View In iTunes >



Major GUN
View In iTunes >



FREE Ringtones - set contact's...
View In iTunes >



KidFace
View In iTunes >



Ringtone maker 123!
View In iTunes >



Customers Also Bought



klart.se
Weather
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METEO - Weather...
Weather
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Weather
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Yr.no
Weather
View In iTunes >



Thermo
Weather
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Follow us @iTunes and discover
new iTunes Radio Stations
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DOWNLOAD FOR IOS, ANDROID, OR WINDOWS PHONE

Introducing Your Instagram Feed on the Web

1,558 NOTES FEBRUARY 5, 2015



Today, I'm very excited to announce the launch of a product we've been wanting to build for quite some time now. Since our launch in October of 2010, we've focused on building a simple app that has inspired creativity while capturing everyday moments through the lens of your mobile phone. In fact, our focus on building out a mobile-only experience is a unique path that we've chosen for many reasons, the most important of which is that Instagram, at its core, is about seeing and taking photos on-the-go. However, to make Instagram even more accessible to our growing community, at the end of last year we started to expand to the desktop web, giving you the ability to see profiles from instagram.com. To continue that path, as of today, you can now browse your Instagram feed on the web – just like you do on your mobile device. Go to instagram.com and log in to your account to give it a try.

Your Instagram Feed on the web functions much like it does on your mobile phone. You can browse through the latest photos of people whom you follow with updates as people post new photos. Like photos by double clicking on them or pressing the like button. Or, engage in a conversation around a photo with inline commenting. Browse through pages of the most recent images to keep up on what's happening with the people you follow in realtime. And shrink your browser down to a single column for your feed to look more like your mobile feed. Simply put, we've brought a simple, powerful, and beautiful Instagram browsing experience to the web.

We believe that you should be able to access Instagram on a variety of different devices, any of which may be convenient to you at a given moment – including your desktop computer or tablet. We do not offer the ability to upload from the web as Instagram is about producing photos on the go, in the real world, in realtime. On the other hand, Instagram for the web is focused on making the browsing experience a fast, simple and enjoyable one.

This product was made possible by a small, talented group of engineers and designers on the Instagram team whose goal it was to make Instagram for the web be the most simple, straightforward, and beautiful web experience for the Instagram community. We look forward to hearing your feedback, and thank you as always for your support as we build this product and community together.

Kevin Systrom

co-founder, Instagram

#NEWS #INSTAGRAM NEWS



1,558 notes

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9:14:08 AM 2/25/2016

<http://blog.instagram.com/post/53448889009/video-on-instagram>

Instagram

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Introducing Video on Instagram

5,735 NOTES • JUNE 20, 2013



Over the past two and a half years, Instagram has become a community where you can capture and share the world's moments simply and beautifully. Some moments, however, need more than a static image to come to life. Until now these stories have been missing from Instagram.

Today, we're thrilled to introduce Video on Instagram and bring you another way to share your stories. When you go to take a photo on Instagram, you'll now see a movie camera icon. Tap it to enter video mode, where you can take up to fifteen seconds of video through the Instagram camera.

You'll also find that we've added thirteen filters built specifically for video so you can keep sharing beautiful content on Instagram. When you post a video, you'll also be able to select your favorite scene from what you've recorded as your cover image so your videos are beautiful even when they're not playing.

We're excited to see what the community will bring to video, whether it's your local cafe showing you **just how they made your latte art** this morning or an **Instagrammer on the other side of the world** taking you on a tour of their city, a **mother sharing her joys in parenting** as her children laugh and play or your favorite athlete taking you **behind the scenes**.

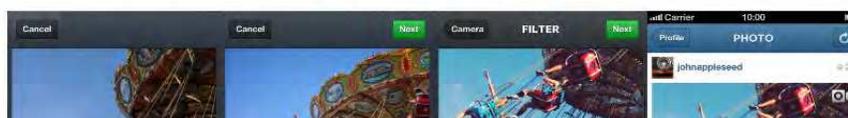
So what does this mean for your content? Nothing's different from photos. We're still committed to making sure you have control over all of your content. Only the people who you let see your photos will be able to see your videos. And as with photos, you own your videos. You can learn more about Video on Instagram—including our new **Cinema feature**—by visiting the [Instagram Help Center](#).

We can't wait to see what you'll create.

Kevin Systrom

Co-founder, Instagram

Instagram for iOS version 4.0 is currently available for download in [Apple's App Store](#) and Instagram for Android version 4.0 is now available on [Google Play](#).





Watch the video of Instagram's co-founder Kevin Systrom announce Video on Instagram here.

#NEWS #INSTAGRAM NEWS #VIDEO ON INSTAGRAM



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