

Decision

- Case ID: [REDACTED] -

In the out-of-court dispute settlement process between

[REDACTED]

- Complainant -

and

Instagram

- Online Platform -

because of

the temporary suspension of an account based on Instagram's policy on bullying and harassment

the certified out-of-court dispute settlement body User Rights decided through its independent reviewers on **03/02/25**:

User Rights states that the user violated Instagram's policy on bullying and harassment. However, the conditions for a temporary restriction of the complainant's account are not met.

I. Summary

User Rights finds that the complainant's comment violated Instagram's policy on bullying and harassment due to the use of derogatory language. However, Instagram's decision to impose a 30-day account restriction is not justified, as the platform did not meet its own criteria for such a restriction. Specifically, Instagram's policy requires five or more warnings before imposing a 30-day restriction, and there is no evidence that the complainant received the necessary warnings. Therefore, User Rights instructs Instagram to lift the account restriction imposed on the complainant.

II. Facts of the case

The subject of the complaint is a comment posted by the complainant in [REDACTED] December 2024 calling [REDACTED] a "bitch". The comment refers to an image posted by a third user, which features, among others, [REDACTED], a famous American mixed martial arts fighter. The accompanying text of the picture recounts how [REDACTED] was not happy with [REDACTED] saying "bring it on b*tch" at the countdown to UFC309.

On December [REDACTED], 2024, Instagram restricted the account of the complainant. On December [REDACTED], 2024, the complainant appealed Instagram's decision to User Rights. When filing their complaint to User Rights, the complainant was asked to provide relevant context. The complainant states that their user account has been restricted for 30 days and that he has attempted to confirm his identity. However, the process for verifying his identity did not work leaving his account still restricted.

On December [REDACTED], 2024, User Rights informed Instagram about the complaint to User Rights and gave it the opportunity to provide a submission. User Rights invited Instagram to provide additional information justifying its contested content moderation decision. The platform states that it does not permit individuals to threaten, harass, or target others with content or messages that shame or disrespect them.

III. Admissibility

The complaint is admissible.

User Rights is certified to resolve disputes between platforms and complainants regarding moderation of content posted on a social media platform in German or English. Instagram is a social media platform. The relevant content is in English, thus a language for which User Rights is certified. Instagram temporarily restricted the account. The temporary restriction of user accounts constitutes a measure which, in accordance with Art. 20 para. 1 a) and 21 para. 1 DSA, can be appealed to the out-of-court dispute settlement body User Rights.

IV. Merits

The complaint is justified.

The user violated Instagram's policy on bullying and harassment. However, the conditions for a temporary suspension of the complainant's account are not met.

1. Scope of review

In its submission to User Rights the online platform explained that it relied on its bullying and harassment to moderate the content.

When moderating the content of a user, Instagram has an obligation to provide a statement of reason satisfying the requirements of Art. 17 DSA. This statement of reason must, among other information, reference the specific contractual ground relied on, Art. 17 (3) e) DSA. The subject of the complaint is thus primarily determined by which regulation the platform bases its action on.

Should Instagram later determine that the invoked policy was not violated but a different policy was, it needs to make a new content moderation decision, provide a statement of reason for that decision to the user, and the user has the right to appeal that decision, Art. 20 or 21 DSA.

2. Substantive Assessment

The complainant's comment violates the policy on bullying and harassment. According to this policy, attacks through derogatory terms related to sexual activity (for example: whore, slut) are especially prohibited. According to the wording of the policy and its rationale, which is to protect individuals from attacks, it is not necessary for the statement itself to refer to the sexual activity of the person affected. It is sufficient that a term like 'slut' or 'whore' is used, which has a connection to sexual activities, even if the statement itself does not allude to the sexual activities of the person affected.

According to these standards, referring to [REDACTED] as a 'bitch' is impermissible. It is a similar term to 'slut' or 'whore'."

However, the conditions for a temporary restriction of the complainant's account are not met. According to Instagram's policy on restricting accounts, ten or more strikes will lead to a 30-day restriction from creating content. According to Instagram's policy on disabling accounts, users may receive additional 30-day restrictions from creating content after five strikes.

It is not apparent in this case that the platform has warned the complainant five times or more.

V. Result

User Rights states that the user violated Instagram's policy on bullying and harassment. However, the conditions for a temporary restriction of the complainant's account are not met.

Note: The decisions of out-of-court dispute settlement bodies are not binding for platforms according to Art. 21 para. 2, third sentence of the DSA. However, as part of their duty to cooperate in good faith pursuant to Art. 21 para 2, first sentence of the DSA, platforms must assess whether there are reasons against implementing the decision and must inform the dispute resolution bodies about the implementation of the decision.