

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Ercan Balci, Mahallem
Case No. D2022-0889

1. The Parties

The Complainant is WhatsApp LLC, United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is Ercan Balci, Mahallem, Turkey.

2. The Domain Name and Registrar

The disputed domain names <whatsappbusiness.net> and <whatsappshops.net> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2022. On March 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 16, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 17, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 21, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 23, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 29, 2022.

The Center appointed Andrew Brown Q.C. as the sole panelist in this matter on May 12, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant provides the popular mobile messaging application WhatsApp. The Complainant was founded in 2009, and acquired by Meta Platforms, Inc. (formerly Facebook, Inc.) in 2014. WhatsApp has over 2 billion users worldwide. It is ranked consistently among Apple iTunes 25 most popular free mobile applications and TechRadar's Best Android Apps.

The Complainant is the owner of the trademark WHATSAPP in many jurisdictions throughout the world, including:

Mark	Jurisdiction	Number	Registration Date	Classes
WHATSAPP	United States	3939463	April 5, 2001	42
WHATSAPP	European Union	009986514	October 25, 2011	9, 38, 42
WHATSAPP	International Registration	1085539	May 24, 2011	9, 38

The Complainant is the owner of the WHATSAPP trademark in many other jurisdictions worldwide. It is also the owner of numerous domain names, consisting of its WHATSAPP trademark, under various generic Top-Level Domains ("gTLDs") as well as many country code Top-Level Domains ("ccTLDs").

The disputed domain names <whatsappbusiness.net> and <whatsappshops.net> were registered on July 7, 2021.

Both disputed domain names resolve to blank pages.

5. Parties' Contentions

A. Complainant

The Complainant relies on its rights in its WHATSAPP trademark. It states that the disputed domain names incorporate its WHATSAPP trademark in its entirety with the addition of the terms "business" and "shops". The Complainant asserts its WHATSAPP trademark is clearly recognisable as the leading element of the disputed domain names.

The Complainant notes that it provides a message application specifically designed for business under the name "WhatsApp Business". This was launched on January 18, 2018. The Complainant also provides a "Shops" feature, this being a tool that allows business owners to create customised shopping experiences and integrated across the family of apps owned by the Complainant's parent company, Meta Platforms, Inc. The expansion of the "Shops" feature to the Complainant's WhatsApp was announced on June 22, 2021.

The Complainant's overall assertion is that it has established that the two disputed domain names are confusingly similar to its WHATSAPP trademark.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain names. In this regard, the Complainant states that:

- (i) the Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods or services. The Respondent is not a licensee of the Complainant nor has the Respondent been

authorised to make any use of the Complainant's WHATSAPP trademark in a domain name or otherwise;

- (ii) the Respondent cannot legitimately claim to be commonly known by the disputed domain names or a name corresponding to them;
- (iii) the Respondent is not currently making a legitimate noncommercial or fair use of the disputed domain names without intent for commercial gain to misleadingly divert consumers.

The Complainant also claims that the disputed domain names were registered and are being used in bad faith. It relies on the doctrine of passive holding.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, a complainant must prove each of the following elements with respect to the disputed domain name in order to succeed in this proceeding:

- (i) that the disputed domain name is identical or confusingly similar to a trademark in which the complainant has rights; and
- (ii) that the respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided evidence of its registration of its WHATSAPP trademark in the United States, in the European Union, and as an International Registration (designating *inter alia* Turkey, where the Respondent is located) as well as in many other individual jurisdictions. The Complainant has provided evidence of its extensive use of its WHATSAPP trademark since 2009.

It is the Panel's view that the Complainant has clearly and sufficiently demonstrated its rights in the WHATSAPP trademark. The Panel is satisfied that the Complainant is well-known by its WHATSAPP trademark as one of the world's most popular messaging services.

The Panel finds that the Complainant's WHATSAPP trademark is clearly recognisable in the disputed domain names, and the addition of terms, "business" and "shops" respectively, does not prevent a finding of confusing similarity.

Moreover, the Panel notes that previous UDRP panels have found that similarly-constructed domain names <whatsappbusiness.com> and <whatsappshopping.com> were confusingly similar to the Complainant's WHATSAPP trademark. See, *WhatsApp, LLC v. Cetin Etem Sezgin*, WIPO Case No. [D2021-2275](#) (<whatsappbusiness.com>); and *WhatsApp Inc. v. Varun Kumar*, WIPO Case No. [D2020-2166](#) (<whatsappshopping.com>).

The Panel finds that the disputed names are confusingly similar to the Complainant's WHATSAPP trademark and finds in favor of the Complainant on this first limb.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish that it has rights or legitimate interests in the disputed domain names, among other circumstances, by showing any one of the following elements:

- (i) that before notice of the dispute, the Respondent used or made demonstrable preparations to use the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; or
- (ii) that the Respondent has been commonly known by the disputed domain names, even if it has acquired no trademark or service mark rights; or
- (iii) that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names, without intent to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The overall burden of proof for establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain names lies with the Complainant.

There is no evidence of the existence of any rights or legitimate interests on the part of the Respondent in the WHATSAPP trademark pursuant to paragraph 4(c) of the Policy.

The Complainant has prior rights in the WHATSAPP trademark, which well precede the Respondent's registration of the two disputed domain names. The Panel is satisfied that the Respondent is not a licensee of the Complainant, nor has the Respondent been authorised by the Complainant to make any use of its WHATSAPP trademark.

At the time of filing the Complaint, the two disputed names pointed to blank pages. It has been held that such passive holding by itself cannot constitute a *bona fide* offering of goods or services under the Policy, see *Philip Morris USA Inc. v. Gabriel Hall*, WIPO Case No. [D2015-1779](#).

The Panel further finds that:

- (i) the Respondent is not commonly known by the disputed domain names or any name corresponding to them; and
- (ii) the Respondent has not made any legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly direct consumers or to tarnish the trademark in issue. The Respondent is not making any active use of the disputed domain names. Again, such passive holding by itself cannot confer any rights or legitimate interests in the disputed domain names. See, *Guinness World Records Limited v. Solutions Studio*, WIPO Case No. [D2016-0186](#).

The Respondent had the opportunity to demonstrate its rights or legitimate interests but it has not replied to the Complaint.

The Panel therefore finds that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names and accordingly finds that paragraph 4(a)(ii) of the Policy is satisfied in favor of the Complainant.

C. Registered and Used in Bad Faith

The Panel is also satisfied that the disputed domain names have been registered in bad faith for the following reasons:

- (i) the Panel is satisfied that the Complainant's WHATSAPP trademark is inherently distinctive and is

well-known throughout the world for the Complainant's messaging services. The Panel is further satisfied that the Respondent must have been aware of the Complainant's WHATSAPP trademark at the time of registration on July 7, 2021.

(ii) even the most cursory trademark or other online search of existing domain names or trademarks prior to the registrations by the Respondent of the disputed domain names would have instantly revealed the Complainant and its WHATSAPP trademark. See in this regard section 3.2.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

(iii) the fact that the Respondent registered two separate domain names incorporating the mark WHATSAPP plus separate suffixes shows a level of deliberation and consideration.

The Respondent has been given the opportunity to respond to the Complaint but has not done so. The Panel infers from all the facts and from the Respondent's failure to respond, that the Respondent was well aware of the Complainant and its prior rights in the WHATSAPP trademark when it registered both disputed domain names.

The Panel is also satisfied that the disputed domain names have been used in bad faith for the following reasons.

The Panel is satisfied that the doctrine of passive holding applies in this case ([WIPO Overview 3.0](#) section 3.3). Relevant factors under this doctrine, which apply in this case, are:

(i) the Complainant's WHATSAPP trademark is well-known internationally and has become exclusively associated with the Complainant. When confronted with the disputed domain names, many Internet users would be confused and wrongly assume that the disputed domain names are owned by or otherwise endorsed by the Complainant;

(ii) there is no evidence of the Respondent's actual contemplated *bona fide* use of the disputed domain names. Despite the Complainant's efforts to contact the Respondent, the Respondent has not come forward with any response or evidence of *bona fide* intent;

(iii) the combination of the Complainant's WHATSAPP trademark together with the closely associated terms, *i.e.* "business" and "shops", carries a risk of implied affiliation with the Complainant, which leads the Panel to find it implausible that the disputed domain names could be put to any good faith use by the Respondent.

Accordingly, the Panel finds that paragraph 4(a)(iii) of the Policy is satisfied in favor the Complainant.

7. Decision

For the foregoing reasons, in accordance with paragraph 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names, <whatsappbusiness.net> and <whatsappshops.net>, be transferred to the Complainant.

/Andrew Brown Q.C./

Andrew Brown Q.C.

Sole Panelist

Date: May 26, 2022