

ADMINISTRATIVE PANEL DECISION

Whatsapp LLC v. Vikas Kumar
Case No. D2022-1272

1. The Parties

The Complainant is Whatsapp LLC, United States of America (“United States”), represented by Tucker Ellis, LLP, United States.

The Respondent is Vikas Kumar, India.

2. The Domain Name and Registrar

The disputed domain name <newwhatsappgroups.com> is registered with BigRock Solutions Pvt Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 9, 2022. On April 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 12, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 April 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 4, 2022.

On April 13, 2022, the day before the proceedings commenced, the Center received an email from a person named Sandeep Kumar claiming to be the owner of the disputed domain name. On April 14, 2022, the Center replied to Sandeep Kumar, with a copy to the Parties, seeking verification of his relationship with the Respondent. On the same day, the Center received an email sent from the Respondent’s contact email address confirming that Sandeep Kumar was the current owner of the disputed domain name. On April 14,

April 23, and May 2, 2022, Sandeep Kumar sent emails to the Center regarding a possible settlement. Neither Vikas Kumar nor Sandeep Kumar attempted to file a formal response. On May 12, 2022, the Center informed the Parties of the Commencement of the Panel Appointment Process.

The Center appointed Matthew Kennedy as the sole panelist in this matter on May 20, 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 operates the WhatsApp messaging and Voice over Internet Protocol (“VoIP”) service and mobile application. Over 2 billion people around the world use WhatsApp. WhatsApp includes a feature that enables users to create and join group chats with other users. The Complainant owns multiple trademark registrations in multiple jurisdictions for WHATSAPP, including the following:

- United States trademark registrations numbers 3,939,463 and 4,083,272, registered on April 5, 2011 and January 10, 2012, respectively, collectively specifying goods and services in classes 9, 38, and 42; and
- Indian trademark registrations numbers 2149059, 3111463, and 3712442, all for WHATSAPP, registered on May 24, 2011, November 30, 2015 and December 27, 2017, respectively, collectively specifying goods and services in multiple classes.

The above trademark registrations remain current. The Complainant has also registered the domain name <whatsapp.com> that it uses in connection with a website where it provides information about itself and the WhatsApp service and offers a desktop application for download.

The named Respondent, Vikas Kumar, is an individual resident in India. According to information submitted by the Complainant, three prior panels in proceedings under the Policy have found that Vikas Kumar had registered and was using other domain names in bad faith.

The disputed domain name was registered on June 17, 2018. It resolves to a website titled “Whatsapp Group Link” that is presented as a WhatsApp group directory. The site displays lists of hyperlinks purportedly to join group chats in the Complainant’s WhatsApp service. The URLs in the hyperlinks do not incorporate the domain name used with the WhatsApp service. The website offers a mobile application for download to link to WhatsApp groups. At least one of the hyperlinks to download this application resolves to a website for Mega or Mera Online World, which invites Internet users to create an account or log in. The main menu of the website associated with the disputed domain name contains a tab labelled “Join Telegram”. The site displays a disclaimer that it is not part of WhatsApp Inc., it is just to help people get WhatsApp status and Group Link, it is designed for information and educational purposes only, and it promotes only WhatsApp and no other application. The disclaimer had been formerly displayed in a sidebar but later appeared far below, after the group directory. The site identifies the Complainant by name and offers a link to its official site. The Respondent’s website displays advertising for a web hosting service, a phishing protection solution, a subscription Video-on-Demand service, and free martial arts classes. The website’s metatags use “WhatsApp Group Link” and similar terms as keywords.

5. Parties’ Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant’s WHATSAPP mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The

Complainant has not authorized or licensed the Respondent to use the WHATSAPP mark nor does the Respondent have any legal relationship with the Complainant that would entitle the Respondent to use that mark. The Respondent uses the disputed domain name to impersonate the Complainant and trick Internet users into navigating its advertisement-filled website. The Respondent does not appear to be commonly known by the disputed domain name. The Respondent has made a plainly commercial use of the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The only reason for the Respondent's registration of the disputed domain name, which includes the exact WHATSAPP mark, is to create a likelihood of confusion with the Complainant and its mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website. The Respondent uses the WHATSAPP mark in metatags as keywords in an attempt to drive consumers seeking the Complainant's website or the websites of its affiliates to the disputed domain name. The presence of a disclaimer on the Respondent's website indicates that the Respondent is fully aware of the Complainant's WHATSAPP mark and the confusion caused by the disputed domain name and cannot cure the Respondent's bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions. The Panel takes note of the email communications by Sandeep Kumar (summarized in Section 6.1 below), which would not alter the conclusion of the Panel in this decision, nor affect its outcome.

6. Discussion and Findings

6.1 Preliminary Issue: Identity of the Respondent

A person named Sandeep Kumar, of India, contacted the Center on the day prior to the commencement of the proceeding, claiming to be the owner of the disputed domain name and to have bought it from the Registrar on June 17, 2021. The center received an email sent from the contact email address of Vikas Kumar on the following day, confirming that Sandeep Kumar was the current owner of the disputed domain name as Sandeep Kumar had bought it from the sender of the email, who was no longer the owner. Vikas Kumar did not file a formal Response. Sandeep Kumar indicated a desire to settle the case, a willingness to transfer the disputed domain name if the Complainant wished, and provided a list of 13 other domain names that incorporate the element "whatsapp".

The Panel recalls that paragraph 1 of the Rules defines "Respondent" as "the holder of a domain-name registration against which a complaint is initiated". In the present case, the Complaint identifies Vikas Kumar as the Respondent and the Registrar has verified that Vikas Kumar is the holder of the disputed domain name registration. Sandeep Kumar merely provides copy of an order for the disputed domain name that shows its expiry date without the registrant name. The Panel does not have enough evidence to conclude that there has been an actual change over the control of the disputed domain name, and such change has not been reflected in the Whois database of the Registrar. Accordingly, the Panel finds that Vikas Kumar, not Sandeep Kumar, is the proper Respondent in this dispute, but references to the use of the disputed domain name by the Respondent shall be construed to include the person in control of the disputed domain name (whomever that may be).

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the complainant must prove each of the following elements in respect of each disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Based on the evidence submitted, the Panel finds that the Complainant has rights in the WHATSAPP mark.

The disputed domain name wholly incorporates the WHATSAPP mark. It adds the words “new” and “groups” before and after the mark. Given that the mark remains clearly recognizable in the disputed domain name, the Panel does not consider that the addition of these words prevents a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8 and, for example, *WhatsApp Inc. v Trace Margon*, WIPO Case No. [D2019-1630](#).

The disputed domain name also includes a generic Top-Level Domain (“gTLD”) extension (“.com”). As a mere standard requirement of domain name registration, this element may be disregarded in the comparison between the disputed domain name and the WHATSAPP mark. See [WIPO Overview 3.0](#), section 1.11.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] of the dispute, [the respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

With respect to the first and third circumstances set out above, the disputed domain name resolves to a site that prominently displays the WHATSAPP mark and is presented as a WhatsApp group directory. The site displays a list of hyperlinks that purportedly resolve to WhatsApp groups but the hyperlinks do not appear to resolve to the Complainant’s WhatsApp service. The site offers an application for download purportedly to link to WhatsApp but at least one of the hyperlinks to download that application resolves to an account-based service on another website. The Complainant submits that it has not authorized or licensed the Respondent to use the WHATSAPP mark and that the Respondent does not have any legal relationship with the Complainant that would entitle the Respondent to use that mark. Regardless of whether the site is a scam or not, the Respondent’s site also displays a tab to “Join Telegram”, which is a messaging service that competes with the Complainant’s WhatsApp service. The disclaimer is inaccurate as it falsely claims that the site does not promote any application besides WhatsApp and, at the present time, it is not displayed at all. The site also displays advertising, which is evidence of a commercial operation. In view of these circumstances, the Panel does not consider that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, or making a legitimate noncommercial or fair use of the disputed domain name.

With respect to the second circumstance set out above, the Respondent’s name is listed in the Registrar’s WhoIs database as “Vikas Kumar”, not the disputed domain name. Nothing in the record indicates that the Respondent has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complainant's contentions.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] web site or location.

As regards registration, the disputed domain name was registered in 2018, after the registrations of the Complainant's WHATSAPP trademark, including in India where the Respondent is resident. The disputed domain name wholly incorporates the trademark, in combination with the words "new" and "groups", and it purports to provide services regarding the group chat feature on the Complainant's WhatsApp service. The Respondent's website identifies the Complainant by name and provides a link to its official site. In view of these circumstances, the Panel finds that the Respondent had the Complainant's WHATSAPP mark in mind when he registered the disputed domain name.

As regards use, the disputed domain name resolves to a site that prominently displays the WHATSAPP mark and is presented as a WhatsApp group directory. The site displays a list of hyperlinks that purportedly resolve to WhatsApp groups but the hyperlinks do not appear to resolve to the Complainant's WhatsApp service. The site offers an application for download purportedly to link to WhatsApp but at least one of the hyperlinks to download that application resolves to an account-based service on another website. The Respondent's site also displays a tab to join a messaging service that competes with the Complainant's WhatsApp service. The site displays advertising, which demonstrates that it is operated for commercial gain. In view of these circumstances, the Panel finds it more likely than not that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his website or location or of a product or service on his website or location, within the terms of paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <newwhatsappgroups.com> be transferred to the Complainant.

/Matthew Kennedy/
Matthew Kennedy
Sole Panelist
Date: June 3, 2022