

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC. v. Muhammad Usman
Case No. D2022-1836

1. The Parties

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

The Respondent is Muhammad Usman, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <whatsappstatusbay.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 20, 2022. On May 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 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 June 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 2, 2022.

The Center appointed Daniel Peña as the sole panelist in this matter on August 9, 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 is a United States company founded in 2009 and acquired by Facebook, Inc. in 2014 previously known as WhatsApp, Inc. It changed its corporate structure from a corporation to a limited liability company with effect since January 1, 2021.

The Complainant operates the WHATSAPP messaging and voice over IP service and mobile application.

The Complainant owns the exclusive rights to the WHATSAPP trademarks and service marks, which it has used since 2009.

The Complainant operates globally under the trademark WHATSAPP, providing a mobile messaging application that allows users across the globe to exchange messages via smartphones.

The Complainant holds registered trademark rights in the mark WHATSAPP in many jurisdictions, being the owner of a substantial trademark portfolio, of which the following are sufficiently representative for the present proceeding:

- United States Trademark No. 3,939,463, WHATSAPP, word mark, registered on April 5, 2011, for services in Class 42;
- European Union Trade Mark No. 009986514, WHATSAPP, word mark, registered on October 25, 2011, for goods and services in Classes 9, 38 and 42;
- International Trademark No. 1085539, WHATSAPP, word mark, registered May 24, 2011, for goods and services in Classes 9 and 38.

The disputed domain name was registered on February 17, 2016. The disputed domain name resolves to a website claiming to provide various status suggestions for use with Complainant's WhatsApp application (i.e. "Best morning day, Best Friendship status, Best WhatsApp love status") , and which displays advertisements.

5. Parties' Contentions

A. Complainant

The disputed domain name incorporates the Complainant's exact WHATSAPP mark in its entirety as a dominant element, and the additional terms "status" and "bay" do not serve sufficiently to distinguish or differentiate the disputed domain name from the mark WHATSAPP, especially as "status" is descriptive of and relevant to the Complainant's services.

The disputed domain name misappropriates all of the textual components from the Complainant's WHATSAPP Mark

The disputed domain name is confusingly similar to the Complainant's WHATSAPP trademark.

The Respondent has no rights or legitimate interest in the disputed domain name.

The Complainant has neither licensed nor authorized the Respondent to use Complainant's WHATSAPP trademark, nor does the Respondent have any legal relationship with the Complainant that would entitle the Respondent to use the WHATSAPP trademark.

The Respondent is using the disputed domain name to impersonate the Complainant and direct users to a commercial website featuring numerous advertisements.

The Respondent is not making a *bona fide* offering of goods or services at the disputed domain name.

The Respondent also uses the FACEBOOK mark, including a stylized depiction of the mark, and claims to also provide status suggestions for use with the Facebook application.

The Respondent does not appear to be commonly known by the disputed domain name.

The Respondent registered the disputed domain name with actual knowledge of the Complainant's rights as evidenced by Respondent's use of Complainant's WHATSAPP Mark on the resolving website to impersonate the Complainant. Accordingly, the Respondent registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

Considering these requirements, the Panel rules as follows:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant has provided evidence of its rights in the trademarks WHATSAPP on the basis of its multiple trademark registrations in the United States, the European Union, and an International registration designating several other countries. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.2.1).

It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such findings were confirmed, for example, within section 1.7 of the [WIPO Overview 3.0](#).

The Respondent's incorporation of the Complainant's WHATSAPP trademark in its entirety in the disputed domain name is evidence that the disputed domain name is confusingly similar to the Complainant's mark. Mere addition of the terms "status" and "bay" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's WHATSAPP mark because the Complainant's WHATSAPP mark remains clearly recognizable in the disputed domain name. As noted in [WIPO Overview 3.0](#), section 1.8: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element." Furthermore, the addition of the gTLD ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

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

B. Rights or Legitimate Interests

In accordance with paragraph 4(a)(ii) of the Policy, the Complainant must prove that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel observes that there is no relationship, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Panel also finds that there is no indication that the Respondent is commonly known by the disputed domain name because the Respondent's name is "Muhammad Usman" which has no apparent connection with the WHATSAPP trademark.

The Respondent used the disputed domain name in an unlawful attempt to fraudulently impersonate the Complainant by way of a website with various status suggestions for use with the Complainant's WhatsApp application, and that displays advertisements that presumably generate click-through revenue for the Respondent.

The Panel concludes that the Respondent deliberately chose to include the Complainant's WHATSAPP trademark in the disputed domain name, in order to achieve commercial gain by misleading Internet users, and that such use cannot be considered as a legitimate noncommercial or fair use.

The Panel further finds that the disputed domain name carries a risk of implied affiliation with the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Complainant has made a *prima facie* case and has satisfied the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a disputed domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name;
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct;
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location.

In the Panel's view, a finding of bad faith may be made where the Respondent "knew or should have known" of the registration and/or use of the trademark prior to registering the disputed domain name. In this case, the Complainant's trademark reputation is such that it is not plausible that the Respondent did not have knowledge of the Complainant's trademark at the moment of registration of the disputed domain name.

The Respondent appears to have chosen the disputed domain name in order to deliberately attract Internet users to its website in the mistaken belief that it is a website of the Complainant, or otherwise linked to or authorized by the Complainant. Noting the Complainant's trademark WHATSAPP is incorporated in the disputed domain name together with the terms "status" and "bay", the Panel finds that there is a risk of implied affiliation. As such, the Panel is satisfied that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website with various status suggestions for use with the Complainant's WHATSAPP application, and that displays advertisements that presumably generate click-through revenue for the Respondent by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its website.

Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith.

Thus, the Panel concludes that the disputed domain name was registered and is being used in bad faith.

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 <whatsappstatusbay.com> be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: August 20, 2022