

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Super Privacy Service LTD c/o Dynadot / Adam Wagner
Case No. D2022-1878

1. The Parties

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

The Respondent is Super Privacy Service LTD c/o Dynadot, United States / Adam Wagner, Cyprus.

2. The Domain Name and Registrar

The disputed domain name <whatsappdailyvideo.online> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 25, 2022. On May 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 26, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 27, 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 June 2, 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 June 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 23, 2022. Between May 27, 2022, and June 7, 2022, a number of emails were exchanged between the Center, the Respondent, and the Complainant, which are summarized below.

The Center appointed Antony Gold as the sole panelist in this matter on July 4, 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 a messaging and voice over IP service and mobile application. The Complainant's application presently has over 2 billion users in over 180 countries. The Complainant has protected its brand through trade mark registrations in multiple countries. These include, by way of example only, United States Service Mark for WHATSAPP, registration number 3,939,463 in class 42, registered on April 5, 2011.

The disputed domain name was registered on November 13, 2021. Following registration, it resolved to a directory page containing pay-per-click ("PPC") links to "Apps Development Software", "Sms Text Messaging Service", and "Online Store Mobile App". At the top of the webpage was an invitation to "Buy this domain".

On May 27, 2022, following disclosure of the details of the underlying registrant to the Complainant, the personal-named Respondent sent an email to the Center asserting that the disputed domain name had been registered in his name in error and confirming his willingness to transfer or delete it. On the same day, the Complainant's representative replied, asking for details of the correct intended registrant. The Respondent replied, stating that the disputed domain name had not been assigned to any specific account, but that it had been part of a bulk domain dropcatching order.

On May 30, 2022, further emails were exchanged between the Parties in which the Complainant asked for details of the intended registrant of the disputed domain name and requested that the directory page be disabled. The Respondent replied, signifying his agreement to doing so "provided that this is going to be part of the settlement plan aimed on amicable closing of this case and either transfer or deletion of the domain". The Complainant's representative did not reply.

On June 1, 2022, the Center wrote to both Parties asking if they wished the proceedings to be suspended whilst settlement discussions took place. On the same day, the Respondent replied confirming his agreement. No response was received from the Complainant. On June 7, 2022, the Respondent sent a further email to the Center, reiterating that he claimed no rights in the disputed domain name and that he consented to it being transferred or deleted. The disputed domain name continues to resolve to an active directory page, containing links to "Education", "Non-profit Organizations" and "Religion".

5. Disposal of proceedings by consent

Section 4.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) deals with the issues which arise where a respondent has indicated a willingness to surrender a domain name in issue outside of the standard settlement process and explains that in these circumstances, many panels will order the requested remedy solely on the basis of the respondent's consent, that is without proceeding to a decision on the merits.

Despite such consent, UDRP panels will, in certain circumstances, consider it appropriate to proceed to a substantive decision on the merits. Section 4.10 explains that the scenarios in which a panel may find it appropriate to do so include; (i) where the panel finds a broader interest in recording a substantive decision on the merits, (ii) where, whilst consenting to the requested remedy, the respondent has expressly disclaimed any bad faith, (iii) where the complainant has not agreed to accept such consent and has expressed a preference for a recorded decision, and (iv) where there is ambiguity as to the scope of the respondent's consent.

Whilst the Respondent has promptly and unequivocally indicated a willingness to transfer the disputed domain name to the Complainant, on the basis that he claims no rights in it, a respondent in this position would usually have taken steps to deactivate the domain name in question as part of its consent; see, for example, *Jardiland v. WhoisGuard, Inc. / Basile Quinchon*, WIPO Case No. [D2020-1853](#). In the present instance, the Panel notes that the disputed domain name still resolves to a directory page containing PPC links and that the Complainant did not reply to the Respondent's email of May 30, 2022, seeking to attach conditions to the taking down of his website, nor to the Center's email dated June 1, 2022, asking if the Parties wished the proceedings to be suspended. Having regard to the fact that the Complainant did not accept the Respondent's proposal and that the disputed domain name still resolves to an active directory page, the Panel proceeds to provide a brief decision on the merits.

6. Parties' Contentions

A. Complainant

The Complainant says that the disputed domain name is confusingly similar to its WHATSAPP mark in that it incorporates that mark in its entirety. The additional, descriptive terms within it do not prevent a finding of confusing similarity.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Use of the disputed domain name to resolve to a website offering it for sale and containing PPC links relating to services which are associated with, or compete with, those of the Complainant does not comprise either a *bona fide* use, nor a legitimate noncommercial or fair use, of the disputed domain name. Nor is there any indication that the Respondent is commonly known by it.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. Registration of a domain name that is obviously connected with a particular trade mark by someone with no connection with the trade mark owner suggests bad faith. Use of a domain name to direct to a landing page which offers it for sale and contains PPC links which clearly relate to the complainant's business is in bad faith.

B. Respondent

The Respondent did not serve a Response to the Complaint.

7. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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

The Complainant has provided details of its trade and service mark rights for WHATSAPP and has thereby established its rights in this mark. As a technical requirement of registration, the generic Top-Level-Domain suffix ".online" is disregarded for the purposes of the comparison under the first element.

The disputed domain name incorporates the entirety of the Complainant's mark and the additional words "daily video" do not prevent the disputed domain name from being found confusingly similar to it. As explained at section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"); "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

The Complainant's WHATSAPP mark is recognizable within the disputed domain name and the Panel therefore finds that it is confusingly similar to a trade or service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, without limitation, examples of circumstances whereby a respondent might demonstrate that it has rights or legitimate interests in a domain name. In summary, these are if a respondent has used, or made demonstrable preparations to use, the domain name in connection with a *bona fide* offering of goods and services, if a respondent has been commonly known by the domain name or or if a respondent has made a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark in issue.

It is well established under the Policy that use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with, or capitalise upon, the reputation and goodwill of a complainant's trade mark; see section 2.9 of the [WIPO Overview 3.0](#). The links which initially featured on the Respondent's directory page, namely "Apps Development Software", "Sms Text Messaging Service", and "online Store Mobile App" are clearly associated with the Complainant's business and WHATSAPP mark and exploit the Complainant's repute in it. The more recent and unrelated links featured on the Respondent's landing page also do so, because the Respondent is still using, without the Complainant's consent, the repute of its mark in order to attract Internet users to his webpage, and thereby to seek to derive an unfair commercial benefit. The use which the Respondent has made of the disputed domain name does not therefore comprise a *bona fide* offering of goods and services.

There is no evidence that the Respondent has been commonly known by the disputed domain name and the second circumstance under paragraph 4(c) of the Policy is therefore inapplicable. The third circumstance is also inapplicable; the Respondent has been making a commercial use of the disputed domain name and such use is, for the reasons outlined above, not fair.

The Panel accordingly finds that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

Whilst the Respondent claims to have registered the disputed domain name without an awareness of the Complainant's rights, prior UDRP panels have held that especially domainers undertaking bulk purchases or automated registrations have an affirmative obligation to avoid the registration of trademark-abusive domain names; see, for example, *CareFusion Corporation v. James H Park*, WIPO Case No. [D2018-1244](#). Additionally, as explained at section 3.1.4 of the [WIPO Overview 3.0](#). "[p]anel have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith". See also *Costco Wholesale Membership Inc. and Costco Wholesale Corporation v. Almantas Kakareka and Hostmaster Oneandone, 1&1 Internet, Inc.*, WIPO Case No. [D2007-1833](#). The Panel therefore finds the registration of the disputed domain name to have been in bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a respondent has intentionally attempted to attract, for commercial

gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website.

The use to which the Respondent has put the disputed domain name falls within this circumstance in that the Respondent is using the fame of the Complainant's mark in order to attract Internet users to his website who are likely to assume that from the confusing similarity between the disputed domain name and the Complainant's mark, that the disputed domain name resolves to a website, operated or authorized by the Complainant. The fact that such users would realize on reaching the Respondent's website that this is not the case is immaterial because the Respondent will have achieved his objective of attracting them to his website in order to seek to earn PPC revenue from such visits; see *Yahoo! Inc. v. Hildegard Gruener*, WIPO Case No. [D2016-2491](#).

For the above reasons, the Panel finds that the disputed domain name was both registered and used in bad faith.

8. 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 <whatsappdailyvideo.online> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: July 19, 2022