

ADMINISTRATIVE PANEL DECISION

WhatsApp, LLC v. Marvedys Mata

Case No. DCO2023-0004

1. The Parties

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

The Respondent is Marvedys Mata, United States.

2. The Domain Name and Registrar

The disputed domain name <whatsapp-marketing.co> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 13, 2023. On January 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 13, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name(s) which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 16, 2023 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 January 18, 2023.

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 January 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 13, 2023.

The Center appointed Evan D. Brown as the sole panelist in this matter on February 21, 2023. 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 well-known WhatsApp mobile messaging application, used by people around the world to communicate with one another. The Complainant owns a number of registrations for the trademark WHATSAPP, including United States Reg. No. 3,939,463, registered on April 5, 2011.

According to the WhoIs records, the disputed domain name was registered on September 14, 2018. The Respondent has used the disputed domain name to point to a website in Spanish that purports to offer for sale subscriptions for the use of a communication management tool known as "AutoSend Web (ASW)", which allows users to send large volumes of automated messages via the WhatsApp application.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used 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. The Panel finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. WHATSAPP is a well-known trademark, being the mark used to identify one of the most popular messaging apps in the world. The Complainant owns trademark registrations for the WHATSAPP mark. The disputed domain name incorporates the WHATSAPP mark in its entirety – this is sufficient here to establish confusing similarity. The presence of the additional dictionary term "marketing" in the disputed domain name does not prevent a finding of confusing similarity.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant).

See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

The Complainant has established, *prima facie*, that the Respondent lacks rights or legitimate interests in the disputed domain name. On this point, the Complainant asserts, among other things, that:

- (1) The Respondent is not using the disputed domain name in connection with any *bona fide* offering of goods or services.
- (2) The Respondent is not commonly known by the disputed domain name.
- (3) The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

The Respondent failed to introduce evidence to rebut this *prima facie* showing. The Panel finds that the Complainant has established this second element under the Policy.

C. Registered and Used in Bad Faith

The Panel finds the Respondent registered the disputed domain name in bad faith because, given the Complainant's renown and goodwill worldwide, it would be inconceivable for the Respondent to argue that it did not have knowledge of the Complainant's trademarks at the time of registration of the disputed domain name. The facts make it clear that the Respondent targeted the Complainant and its well-known trademark when it registered the disputed domain name.

Bad faith use is clear from a number of facts. The Respondent set up a website that attempts to attract visitors by using the well-known WHATSAPP trademark in the disputed domain name. The Complainant asserts that the website employs a color scheme similar to that used by the Complainant. And the Complainant notes an appreciable risk that software available via the website may be used to send unsolicited electronic communications (spam), for phishing, or for other unauthorized activities.

The Panel finds the Complainant has succeeded under this third element under 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 <whatsapp-marketing.co> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: March 13, 2023