

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. vincent lai, yh tec
Case No. D2024-2974

1. The Parties

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

The Respondent is vincent lai, yh tec, China.

2. The Domain Name and Registrar

The disputed domain name <gbwhatsapp.dev> is registered with TLD Registrar Solutions Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 22, 2024. On July 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 2024, 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 (“REDACTED FOR PRIVACY yh tec China”) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 26, 2024, 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 July 30, 2024.

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 August 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 2, 2024.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on September 9, 2024. 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.

On September 11, 2024, the Center received an email communication from the Respondent.

4. Factual Background

The Complainant is a provider of one of the world's most popular mobile messaging applications. Founded in 2009 and acquired by Meta Platforms, Inc. (formerly known as Facebook, Inc.) in 2014, the Complainant's app allows users across the globe to exchange messages for free via smartphones, including iPhone and Android. As of 2023, the Complainant's app has over 2 billion monthly active users worldwide. Consistently being ranked amongst Google Play and Apple iTunes 25 most popular free mobile applications and Tech Radar's Best Android Apps, the Complainant's app is the 5th most downloaded application in the world as per data.ai's Top Apps Rankings in 2024.

The Complainant is the owner of several trademarks for WHATSAPP ("WHATSAPP trademark"), including:

- China Trademark Registration WHATSAPP, No. 21470708A, registered on December 21, 2017;
- US Trademark WhatsApp No. 3939463, registered on April 5, 2011; and
- International Trademark Registration WHATSAPP, No. 1085539, registered on May 24, 2011, designated inter alia for Australia, Switzerland and Japan.

The Complainant is also the owner of several domain names including the WHATSAPP trademark, such as the domain name <whatsapp.com>, registered on September 4, 2008.

The disputed domain name was registered on July 5, 2022. The Complainant has provided evidence showing that the disputed domain name resolved to an active website which promoted and offered for downloading a modified version of the Complainant's app as well as prominently displayed the WHATSAPP trademark and a variation of the Complainant's figurative telephone trademark logo. At the time of the decision, the disputed domain name resolves to a blocked webpage.

Further, on February 12, 2024, the Complainant's lawyers sent to the Respondent a cease-and-desist letter using the email address previously displayed on the website under the disputed domain name. In this letter, the Complainant's lawyers asserted the Complainant's trademark rights and requested a transfer of the disputed domain name. No response was received. The Complainant has provided evidence that the disputed domain name at some point after the Complainant's lawyers sent the cease-and-desist letter resolved to a parking page with Pay-Per-Click (PPC) links to third party websites.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

On the first element of the Policy, the Complainant claims that the disputed domain name is confusingly similar to the Complainant's WHATSAPP trademark. The Complainant owns trademark registrations for WHATSAPP in jurisdictions throughout the world. The Complainant submits that the disputed domain name incorporates the WHATSAPP trademark, preceded by the letters "gb", under the general Top-Level-Domain gTLD ".dev". The Complainant submits that the addition of the two letters "gb" in the disputed domain name does not prevent a finding of confusing similarity with the WHATSAPP trademark, which remains clearly

recognizable in the disputed domain name. The gTLD “.dev” may be disregarded for the purposes of assessment under the first element, as it is viewed as a standard registration requirement.

On the second element of the Policy, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent is unable to invoke any of the circumstances that would demonstrate its rights or legitimate interests in the disputed domain name. The Respondent is not a licensee of the Complainant, is not affiliated with the Complainant in any way and has not granted any authorization for the Respondent to make use of its trademarks, in a domain name or otherwise. The Complainant submits that the Respondent was unable to be viewed as a bona fide service provider, as it was not providing sales or repairs in relation to a product provided by the Complainant. Rather, the Respondent was making unauthorized use of the WHATSAPP trademark to promote a third party modified version of the Complainant’s app. The Respondent’s website purported to offer for download a third-party unauthorized version of the Complainant’s application. As such, the Respondent could not be said to be using the website to offer the goods or services at issue, namely the WhatsApp application. The Respondent’s website failed to accurately and prominently disclose its relationship with the Complainant given that it featured no disclaimer as to the lack of relationship with the Complainant. The Complainant further submits that the modified Android Application Package (APK) previously promoted via the disputed domain name is not authorized by the Complainant, and violates the Complainant’s Terms of Service. In addition, the Respondent made prominent use of the WHATSAPP trademark and a variation of the Complainant’s distinctive telephone trademark logo to promote the modified APK. Prior UDRP panels have found that the use of modified versions of the Complainant’s figurative telephone logo contributes to a risk of affiliation with the Complainant and confusion and cannot constitute bona fide use.

The Complainant further contends that the disputed domain name (at the time the Complaint was filed) resolved to a parking page with PPC links. Moreover, the Respondent’s organisation name “yh tec” listed in the Whois bears no resemblance to the disputed domain name. To the best of the Complainant’s knowledge, there is no evidence of the Respondent having acquired or applied for any trademark registrations for WHATSAPP or GBWHATSAPP as reflected in the disputed domain name. Neither the Respondent’s current or previous use of the disputed domain name can support any reasonable claim of being commonly known by the disputed domain name, nor does such use give rise to any reputation in the disputed domain name itself, independent of the Complainant’s trademark rights. The Respondent’s previous use of the disputed domain name to offer for download an unauthorized modified version of the Complainant’s app did not amount to legitimate noncommercial or fair use. The provision of services that violated the Complainant’s Terms of Services/Brand Guidelines could not give rise to rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established a prima facie showing that the Respondent lacks rights or legitimate interests in the disputed domain name.

On the third element of the Policy, the Complainant asserts that the Respondent registered the disputed domain name in bad faith. The WHATSAPP trademark is inherently distinctive and well known throughout the world in connection with its messaging application, having been continuously and extensively used since the respective launching of its services, and acquiring considerable reputation and goodwill worldwide, including in China. The fact that access to the Complainant’s services is currently blocked in China is irrelevant to the Respondent’s presumed knowledge of the Complainant and its trademarks. Furthermore, all top search results obtained by typing the term WHATSAPP into Google’s search engine at “www.google.com” and Baidu’s search engine at “www.baidu.com” refer to the Complainant. In light of the above, the Complainant submits that the Respondent could not credibly argue that it did not have knowledge of the Complainant or its trademarks when registering the disputed domain name in 2022. Furthermore, the content of the website clearly demonstrates the Respondent’s knowledge of the Complainant and its trademarks, as it made multiple references to the WHATSAPP trademark (along with a variation of its distinctive logo) and offered for download an unauthorized modified version of the Complainant’s application. Such use of the disputed domain name clearly indicates the Respondent’s intent to target the WHATSAPP trademark at the time of registration of the disputed domain name. Having no relationship with the Complainant or authorization to make use of its trademark in a domain name or otherwise, the Respondent has knowingly proceeded to register the disputed domain name, carrying a risk of implied affiliation with the

Complainant, in bad faith. The disputed domain name was previously used to point to the website which promoted and offered for download a modified APK version of the Complainant's app known as "GB WhatsApp". The promotion of an unauthorized modified APK not only violated the Complainant's Terms of Service but also placed the security of the Complainant's users at risk. The Respondent's previous use of the disputed domain name to offer such modified APK under the WHATSAPP trademark disrupted the Complainant's business by driving the Complainant's users to third-party applications. Similarly, there was no clearly-worded disclaimer, or indeed any disclaimer at all, on the Respondent's Website as to the Respondent's lack of relationship with the Complainant, although even if such a disclaimer were featured on the Respondent's website, it would not have been sufficient to cure the Respondent's illegitimate use of the disputed domain name. The fact that the Respondent is currently not making any apparent substantive use of the disputed domain name does not prevent a finding of bad faith. In addition, the Complainant submits that the Respondent's failure to respond to the cease-and-desist letter sent by the Complainant's lawyers also indicates bad faith. Finally, the fact that the disputed domain name has stopped resolving to the website further to the Complainant's cease-and-desist letter cannot cure but further indicates the Respondent's bad faith.

B. Respondent

The Respondent did not substantially reply to the Complainant's contentions. On September 10, 2024, the Center received the following communication from the Respondent: "Who you are? You're robbing the domain." However, the Respondent did not provide any substantive explanation as to why the disputed domain name should not be transferred to the Complainant.

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

It has been a consensus view in previous UDRP decisions that a respondent's default (i.e., failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

- (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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The applicable TLD in a domain name (e.g., ".com," ".club," ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the WHATSAPP trademark is reproduced within the disputed domain name. The disputed domain name only differs from the WHATSAPP trademark by the addition of the letters “gb” in front.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other letters (here, “gb”) may bear on assessment of the second and third elements, the Panel finds the addition of such letters does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the WHATSAPP trademark. The Panel finds on the record that there are no indications that the Respondent is commonly known by the disputed domain name or otherwise has any rights to or legitimate interests in the disputed domain name. Further, there are no evident preparations for the use of the disputed domain name for a bona fide offering of goods or services. Rather, the Complainant provided evidence showing that the disputed domain name resolved to an active website which promoted and offered for download a modified version of the Complainant’s app as well as prominently displayed the WHATSAPP trademark and a variation of the Complainant’s figurative telephone trademark logo. Such website failed to disclose its lack of relationship with the Complainant and both the composition of the disputed domain name (namely, the addition of “gb” to the Complainant’s trademark that may falsely indicate an affiliate or subsidiary of the Complainant in “Great Britian” (United Kingdom) and the content of the website that repeatedly featured the Complainant’s trademarks, reinforce the false impression of affiliation or sponsorship by the Complainant. Further, the Complainant has provided evidence that the disputed domain name resolved to a parking page with PPC links resolving to third party websites after the Complainant’s lawyers sent a cease-and-desist letter to the Respondent. Such change in use reinforces the notion that the Respondent was not actually providing any bona fide offering of goods or services through the previously impersonating website and the current PPC links reflect the Respondent’s intent for commercial gain through the confusingly similar disputed domain name.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. In particular, the Respondent’s correspondence of September 10, 2024, is not a substantiated defense against the Complaint.

Further, Panels have held that the use of a domain name for illegal activity (as applicable to this case: passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel notes the world-famous reputation of the WHATSAPP trademark and that the WHATSAPP trademark was registered long before the disputed domain name. The Panel finds that it is more likely than not that the Respondent registered the disputed domain name with the knowledge of the Complainant's trademarks, which indicates registration in bad faith.

Further, the Complainant has provided evidence showing that the disputed domain name resolved to an active website which promoted and offered for download a modified version of the Complainant's app as well as prominently displayed the WHATSAPP trademark and a variation of the Complainant's figurative telephone trademark logo. The website under the disputed domain name did not contain any disclaimer as to the Respondent's lack of relationship with the Complainant. Further, the Complainant has provided evidence that the disputed domain name at some point resolved to a parking page with PPC links to third party websites after the Complainant's lawyers sent a cease-and-desist letter to the Respondent, reflecting the Respondent's intent to attract Internet users to its website for its commercial gain by creating a likelihood of confusion with the Complainant's trademark. The Respondent has failed to respond to the cease-and-desist letter sent by the Complainant's lawyers and failed to provide any substantive response to the Complaint.

By using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the WHATSAPP trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of services on the Respondent's website.

Moreover, panels have held that the use of a domain name for illegal activity (as applicable to this case: passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The Panel also notes that the current non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitute bad faith under the Policy.

The Panel finds the third element of the Policy has been established.

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 <gbwhatsapp.dev> be transferred to the Complainant.

/Christian Gassauer-Fleissner/

Christian Gassauer-Fleissner

Sole Panelist

Date: September 23, 2024