

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Mytoolz net
Case No. DIO2024-0035

1. The Parties

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

The Respondent is Mytoolz net, United States.

2. The Domain Name and Registrar

The disputed domain name <whatsappmods.io> is registered with CloudFlare, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 5, 2024. On November 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 6, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 7, 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 November 15, 2024.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 November 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 10, 2024.

The Center appointed Angela Fox as the sole panelist in this matter on December 27, 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.

4. Factual Background

The Complainant is the provider of one of the world's most popular mobile messaging applications ("apps"), WhatsApp. The WhatsApp app was launched in 2009 and has been continuously in use since then to allow users around the world to exchange messages for free via smartphones, including iPhone and Android phones. The Complainant also operates a website at "https://whatsapp.com" at which Internet users can access the WhatsApp messaging platform.

Since its launch in 2009, the WhatsApp app has become one of the fastest growing and most popular mobile apps in the world, with over 2 billion monthly active users worldwide as of 2023. As such, it has acquired a considerable reputation and goodwill worldwide. It has been consistently ranked among Google Play's and Apple iTunes' 25 most popular free mobile apps and Tech Radar's Best Android Apps and is the 4th most downloaded app for iOS phones worldwide according to the app information company, Data.ai.

The Complainant is also active under the WhatsApp name and trademark on social media forums including Facebook, where its official page has over 40 million followers, and X, where it has 5.5 million followers.

The Complainant owns trademark registrations around the world for WHATSAPP, including the following, details of which were annexed to the Complaint:

- United States Trademark Registration No. 3,939,463, WHATSAPP, registered on 5 April 2011;
- European Union Trade Mark No. 009986514, WHATSAPP, registered on 25 October 2011; and
- International Registration No. 1085539, WHATSAPP, registered on 24 May 2011.

The disputed domain name was registered on November 8, 2022. Annexed to the Complaint were screenshots of the website linked to it, which show that it resolves to a website that purports to offer for download an unauthorized modified version of the WhatsApp app with additional features, including the ability to modify chats, change the date and time, and create fake chats. The website linked to the disputed domain name has a similar look and feel to the Complainant's WhatsApp app and website, featuring a logo which is almost indistinguishable from the Complainant's green and white "telephone" logo and incorporating a very similar colour scheme.

The website linked to the disputed domain name reads in relevant part:

"WhatsAppMods – GBWhatsApp – YoWA

[...] Contains ads

[...]

What is GBWhatsApp/WhatsAppMods GBWhatsApp

Is a Antiban mod its based on the WhatsApp. GBWA is modification Of original [sic] WA. That make the whole the app Antiban.and this mod Made by Sam Mods. this is the best whatsapp for who was bored with Officail [sic] and others Modded Whatsapp Only Sam Mods Provide Antiban Mod [...]

Special Features

These are the special features of GBWhatsApp, such as you can modify the chats in WhatsApp, you can change the date time, you can create fake chat, you can stop incoming unknown messages or there are many special features when you use it to know more features."

At the bottom of the page appear the following words in a small font size in the footer: "We are not affiliated with WhatsApp at all".

The Complainant's lawyers sent a cease-and-desist letter to the Respondent on October 11, 2024, but no reply was ever received. This Complaint was filed on November 5, 2024.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name is confusingly similar to the trademark, WHATSAPP, in which the Complainant has rights. The Complainant's trademark appears in the disputed domain name in its entirety and is recognizable within it, and the additional term "mods" does not alter that.

The Complainant also submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not a licensee of the Complainant, nor is the Respondent affiliated with the Complainant in any way, nor is the Respondent commonly known by the disputed domain name. The Complainant has not authorized the Respondent to make use of its WHATSAPP trademark, in a domain name or otherwise. The Respondent has been using the disputed domain name to offer for download an unauthorized, modified version of the Complainant's WhatsApp app, but the Complainant asserts that the Respondent's activities do not constitute a bona fide offering of goods or services under the Policy taking account of the criteria relating to re-sellers and service providers set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), because the Respondent is not actually offering the Complainant's app but rather a third-party, unauthorized version of it, and because the look and feel of the website is so substantially similar to that of the Complainant's WhatsApp website and app that the small disclaimer in the footer is not likely to be sufficient to avoid Internet users from being misled into believing that the Respondent's website is operated or authorized by the Complainant, when in fact it is not. The Complainant asserts that there is a risk of affiliation and confusion with the Complainant and cannot therefore constitute a bona fide use. The Complainant also submits that the Respondent's use of the disputed domain name to offer an unauthorized, modified version of the Complainant's app violates the WhatsApp Terms of Service, which prohibit the copying, adaptation, and modification of the WhatsApp app by users.

The Complainant also submits that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name because the Respondent's website indicates that the unauthorized, modified version of the app which it is offering "contains ads", which the Complainant interprets as meaning that the unauthorized application, once downloaded, features in-app advertising, from which the Respondent is likely to be deriving commercial gain.

Finally, the Complainant submits that the Respondent has registered and has used the disputed domain name in bad faith. The Complainant submits that from the content of the Respondent's website and the fame of the Complainant's WHATSAPP trademark worldwide at the time the disputed domain name was registered in November 2022, it is clear that the Respondent knew of the Complainant and was in fact targeting it when it registered and used the disputed domain name, and that it has been using it to intentionally attempt to attract, for commercial gain (including in the form of in-app advertising), Internet users to its website by creating a likelihood of confusion with the WhatsApp app as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

B. Respondent

The Respondent did not reply to the Complainant's contentions and is in default. No exceptional circumstances explaining the default have been put forward. Therefore, in accordance with paragraphs 14 (a) and (b) of the Rules, the Panel will decide the Complaint and shall draw such inferences, as it considers appropriate from the Respondent's default.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the panel finds that:

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

All three elements must be present before a complainant can succeed in an administrative proceeding under the Policy.

A. Identical or Confusingly Similar

The first element functions primarily as a standing requirement, and in line with the approach under paragraph 4(a)(i) of the UDRP, on which the .IO Policy is based, the test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown that it has rights in the WHATSAPP trademark within the meaning of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the WHATSAPP mark is reproduced within the disputed domain name. The additional matter appearing in the disputed domain name, namely the word "mods" and the country code Top-Level Domain ".io", do not alter the fact that the Complainant's trademark is clearly recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Complainant's WHATSAPP mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 is on a complainant, panels have recognized that proving that 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 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.

In this case, the Respondent is not a licensee of, nor in any way affiliated with, the Complainant, and there is nothing on the facts to indicate that it is commonly known by the disputed domain name. The Respondent has been using the disputed domain name to offer for download an unauthorized, modified version of the Complainant's WhatsApp app, which the Respondent describes as containing ads, and which therefore appears to be a commercial use for the Respondent's gain. However, in the Panel's view, this is not a bona fide offering of goods or services under the Policy. Where a respondent is re-selling a complainant's products or providing services relating to them, then the applicable criteria for determining whether a respondent can assert a right or legitimate interest in a domain name that incorporates the complainant's trademark are set out in *Ok! Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). However, the

Panel agrees with the Complainant that the Respondent does not fall within these criteria because it is not in fact offering services in relation to the Complainant's app at all, but is rather offering for download a third-party, unauthorized version of the Complainant's app. Moreover, as noted by the Complainant, the look and feel of the website linked to the disputed domain name is so substantially similar to that of the Complainant's WhatsApp website and app that the small disclaimer in the footer is unlikely to avoid Internet users being misled into believing that the Respondent's website is operated or authorized by the Complainant, when in fact it is not.

There is a risk of implied affiliation and confusion with the Complainant arising from the intrinsically confusing similarity of the disputed domain name with the Complainant's WHATSAPP trademark and from the nature of the Respondent's use, which through its use of the Complainant's trademark and a logo and colour scheme closely similar to the Complainant's logo and colour scheme appears intended to create an impression that it is the Complainant or is in some way related to or authorized by it. The very small disclaimer in the footer of the Respondent's website is unlikely to be sufficient to avoid the impression of affiliation to which all these other factors give rise.

The Complainant also submits that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name because the Respondent's website indicates that the unauthorized, modified version of the app which it is offering "contains ads", which the Complainant interprets as meaning that the unauthorized application, once downloaded, features in-app advertising, from which the Respondent is likely to be deriving commercial gain.

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

C. Registered or Used in Bad Faith

Paragraph 4(b) of the Policy establishes certain circumstances which, in particular, but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Under paragraph 4(b)(iv) of the Policy, such circumstances include that by using the disputed 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 its website or location or of a product or service on its website or location.

In this case, the Respondent has used the disputed domain name in connection with a website which clearly targets the Complainant, and which uses the Complainant's WHATSAPP trademark, adopts the Complainant's colour scheme, and incorporates a logo closely similar to that of the Complainant. Given the Complainant's worldwide use and reputation by the date on which the disputed domain name was registered, the Respondent could not credibly argue that it was not aware of the Complainant's activities as well as its logo and the look and feel of the WhatsApp app. Through the website linked to the disputed domain name, the Respondent purportedly offers for download an unauthorized, modified version of the Complainant's WhatsApp app, which carries with it a risk of implied affiliation with the Complainant. It is evident from these facts that the Respondent was aware of and targeting the Complainant when it registered and used the disputed domain name, and its statement that its unauthorized modification of the WhatsApp contains advertising indicates that it was carrying out these activities for commercial gain. The Panel finds that the Respondent has been using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant.

Taking all of this into account, the Panel finds that the Respondent registered and has used the disputed domain name in bad faith. The Complainant has therefore established the third element 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, <whatsappmods.io>, be transferred to the Complainant.

/Angela Fox/

Angela Fox

Sole Panelist

Date: January 10, 2025