

ADMINISTRATIVE PANEL DECISION

WhatsApp Inc. v. Mohammad Motevalli
Case No. DIR2024-0009

1. The Parties

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

The Respondent is Mohammad Motevalli, Iran (Islamic Republic of).

2. The Domain Names and Registrar

The disputed domain names <gbwhatsapp.ir> and <whatsappdl.ir> (the “Disputed Domain Names”) are registered with IRNIC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 21, 2024, initially for one Disputed Domain Name <gbwhatsapp.ir>. Hard copies of the Complaint were received by the Center on May 28, 2024. On May 22, 2024, the Center transmitted by email to IRNIC a request for registrar verification in connection with this Disputed Domain Name. On May 25, 2024, IRNIC 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 (Unknown Respondent) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 27, 2024, providing the registrant and contact information disclosed by IRNIC, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 31, 2024 and requested to add the disputed domain name <whatsappdl.ir> to the current proceedings. The Center transmitted by email to IRNIC a further request for registrar verification in connection with this additional Disputed Domain Name on June 3, 2024. On June 5, 2024, IRNIC transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the same contact details of the Respondent as those in the Amended Complaint.

The Center verified that the Complaint and the amended Complaint satisfied the formal requirements of the .ir Domain Name Dispute Resolution Policy (the “Policy” or “irDRP”), the Rules for .ir Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .ir Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 6, 2024. In accordance with the Rules, paragraph 5(a), the due date for Response was June 26, 2024. On June 27, 2024, the Center notified the Respondent's default.

The Center appointed Nicholas Weston as the sole panelist in this matter on June 28, 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 a United States social technology company owned by Meta Platforms, Inc., that operates a messaging application business with over 2.7 billion monthly active users. The business also makes available a standalone business app called WhatsApp Business, which enables users to have a business presence on WhatsApp. The Complainant holds registrations for the trademark WHATSAPP in numerous countries, which it uses to designate computer applications, software programs, websites, databases, wireless communication, mobile information access and remote data management for wireless delivery of content to computers and smartphones. United States Trademark Registration No. 3,939,463, for example, for the mark WHATSAPP cites a first-use date of February 24, 2009 and was registered on April 5, 2011. International Trademark Registration No. 1483880 for the figurative WhatsApp Business logo (comprised of the capitalized letter "B" in a green talk bubble) was registered on October 16, 2018 ("the WHATSAPP BUSINESS trademark").

The Complainant owns numerous domain names that comprise of, or contain, the trademark WHATSAPP, including the domain name <whatsapp.com>, and has from 2009 operated an active website as an online resource that allows Internet users around the world to access its messaging platform and to support its mobile communications apps.

The Disputed Domain Name <gbwhatsapp.ir> was registered on January 1, 2021, and this Disputed Domain Name previously redirected to another website in Farsi titled "WhatsApp GB" that displayed the WHATSAPP and WHATSAPP BUSINESS trademarks and purported to offer for download unauthorized modified APK2 versions of the WhatsApp app, including "OGWhatsapp", "FmWhatsapp", "YoWhatsapp" and "GBWhatsapp", as well as a version of the third-party Snapchat app. This Disputed Domain Name does not currently resolve to an active website.

The Disputed Domain Name <whatsappdl.ir> was registered on January 1, 2021, and redirects to an inactive web page. At the time of filing the Complaint, the Disputed Domain Name <whatsappdl.ir> also resolved to an inactive web page.

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 Names.

Notably, the Complainant cites its trademark registrations in the United States and internationally for the mark WHATSAPP and variations of it, as prima facie evidence of ownership.

The Complainant submits, in essence, that its rights in that the mark WHATSAPP mark predate the Respondent's registration of the Disputed Domain Names. It submits that the Disputed Domain Names are confusingly similar to its trademark, because the Disputed Domain Names are comprised of the WHATSAPP trademark and that the addition of the letters "gb" and "dl", respectively, are not sufficient to avoid the

confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because “The Respondent is not a licensee of the Complainant, nor has the Respondent been authorized by the Complainant to make any use of its WHATSAPP trademark, in a domain name or otherwise” and that none of the circumstances set out in paragraph 4(c) of the Policy apply.

Finally, the Complainant alleges that the registration and use of the Disputed Domain Names were, and currently are, in bad faith, contrary to the Policy and the Rules having regard to the prior use and well-known nature of the Complainant’s trademark, and advances the argument that the use of the Disputed Domain Name <gbwhatsapp.ir> to offer for download unauthorized APK versions of the Complainant’s WhatsApp application from a webpage displaying the Complainant’s WHATSAPP trademarks (before it became inactive) and use of the Disputed Domain Name <whatsappdl.ir> to resolve to an active website is, in both cases, use in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

- (i) that the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names; and
- (iii) that the Disputed Domain Names have been registered or are 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 Names. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7¹.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. The requirements of the first element for purposes of the Policy may be satisfied by a trademark registered in any country. [WIPO Overview 3.0](#), section 1.2.1. The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark WHATSAPP in numerous countries.

Turning to whether the Disputed Domain Names are identical or confusingly similar to the WHATSAPP trademark, the Panel observes that each Disputed Domain Name is comprised of: (a) an exact reproduction of the Complainant’s trademark WHATSAPP; (b) with, respectively, the letters “gb” inserted beforehand or the letters “dl” inserted at the end; (c) followed by the Top-Level Domain (“TLD”) “.ir”.

It is well established that the TLD used as part of a domain name is generally disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11. The relevant comparison to be made is

¹ Given the similarities between the irDRP and Rules and the Uniform Domain Name Dispute Resolution Policy (“UDRP”) and Rules, the Panel finds UDRP precedent generally to be relevant to this case (except to the extent of relevant differences between the policies, such as the absence of a conjunctive requirement for bad faith).

with the second-level portion of each of the two Disputed Domain Names, specifically: “gbwhatsapp” and “whatsappdl”, respectively.

The Panel finds that the entirety of the mark is reproduced within the Disputed Domain Names. Accordingly, the Disputed Domain Names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the letters “gb” and “dl” respectively, may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the Disputed Domain Names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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 these 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 disputed 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.

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 Names. 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 Names such as those enumerated in the Policy or otherwise.

The Panel notes the evidence that the Disputed Domain Name <gbwhatsapp.ir> previously redirected to a website in Farsi titled “WhatsApp GB” that displayed the WHATSAPP and WHATSAPP BUSINESS trademarks and purported to offer for download unauthorized modified APK2 versions of the WhatsApp app, including “OGWhatsapp”, “FmWhatsapp”, “YoWhatsapp” and “GBWhatsapp”, as well as a version of the third-party Snapchat app.

The Panel also notes that the Disputed Domain Name <whatsappdl.ir> redirects to an inactive web page.

The Panel finds that neither of these instances represent a bona fide offering of goods or services, or a legitimate noncommercial or fair use, given the evidenced reputation and goodwill of the Complainant’s mark or capacity to otherwise mislead Internet users.

Based on the available record, the Panel finds the second element of the Policy has been established for all of the Disputed Domain Names.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, bad faith merely requires a complainant to provide sufficient proof of either bad faith registration or bad faith use, rather than both in conjunction, as required by the UDRP. Cognizant of this difference, the Panel will rely on relevant UDRP jurisprudence for appropriate guidance.

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.

In the present case, the Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Names in bad faith.

On the issue of registration, the Panel infers that the Respondent knew of the Complainant's well-known trademark when registering the Disputed Domain Names particularly noting the use of the Complainant's trademark on the website at one of the Disputed Domain Names (see *WhatsApp, Inc. v. Nasser Bahaj*, WIPO Case No. [D2016-0581](#) ("the trademark WHATSAPP is well-known"); *WhatsApp, Inc. v. Domain Manager, SHOUT marketing SL, and Gonzalo Gomez Rufino, River Plate Argentina, and Gonzalo Gomez Rufino, SHOUT Marketing SL*, WIPO Case No. [D2018-1581](#) ("Complainant's trademark WHATSAPP has become well-known around the world"); *WhatsApp Inc. v. Emreacan Yildirimlar*, WIPO Case No. [D2019-0895](#) ("Complainant's well-known WHATSAPP trademark").

This Panel finds that there is no reason for the Respondent to have registered the Disputed Domain Names other than to trade off the reputation and goodwill of the Complainant's well-known trademark. [WIPO Overview 3.0](#), section 3.1.4.

Further, a gap of several years between registration of a complainant's trademark and respondent's registration of a disputed domain name (containing the trademark) can indicate bad faith registration. In this case, the Complainant's rights in its trademark predate any rights that could possibly flow from the Respondent's registration by around 10 years. The Panel accepts this as further evidence of bad faith.

The matter may end there as the requirement is not conjunctive but, for completeness, I will also consider the issue of use. The Complainant's evidence is that, before it became inactive, the Disputed Domain Name <gbwhatsapp.ir> was being used to offer for download unauthorized APK versions of the Complainant's WhatsApp application from a webpage displaying the Complainant's WHATSAPP trademarks. By using this 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.

The evidence is also that the Disputed Domain Name <whatsappdl.ir> does not currently resolve to an active website. Previous UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the 'passive holding' doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put" (See [WIPO Overview 3.0](#), section 3.3). This Panel notes that the factors are not exhaustive and also notes the reputation of the Complainant's trademark, the Respondent's failure to file a response, and the implausibility of any good faith use to which this Disputed Domain Name may be put considering the Disputed Domain Name clearly targets the Complainant's trademark, and finds that the passive holding of this Disputed Domain Name does not prevent a finding of bad faith in this case.

Based on the available record, the Panel finds that the Complainant has 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 Names, <gbwhatsapp.ir> and <whatsappdl.ir>, be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: July 12, 2024