

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Domain Administrator, See PrivacyGuardian.org /
Naser Seferi
Case No. D2022-2641

1. The Parties

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

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States / Naser Seferi, Austria.

2. The Domain Name and Registrar

The disputed domain name <whatsapp-ico.com> (“Disputed Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 19, 2022. On July 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 20, 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 July 21, 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 July 22, 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 July 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 16, 2022.

The Center appointed Nicholas Weston as the sole panelist in this matter on August 18, 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 application business with over two billion monthly active users. 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 WHATSAPP Trademark Registration No. 3,939,463, for example, cites a first-use date of February 24, 2009, and was registered on April 5, 2011.

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 app.

The Disputed Domain Name <whatsapp-ico.com> was registered on January 19, 2022. At the time of the filing of the Complaint, the Disputed Domain Name resolved to a webpage which displayed the Whatsapp logo and invited users to “Sign in with your Whatsapp Token Account”.

5. Parties’ Contentions

A. Complainant

The Complainant cites its trademark registrations of the trademark WHATSAPP in the United States and other jurisdictions as *prima facie* evidence of ownership.

The Complainant submits that the mark WHATSAPP is well known and that its rights in that mark predate the registration of the Disputed Domain Name <whatsapp-ico.com>. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates in its entirety the WHATSAPP trademark and that the confusing similarity is not removed by the addition of the hyphen or the acronym “ico”, which it submits is “an acronym for ‘Initial Coin Offering’”.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it resolves to “a login page impersonating WhatsApp, where users were asked to provide their confidential account information in order to access to their ‘WhatsApp Token Account’” thereby creating “a misleading impression of association with the Complainant ...(which)... does not constitute legitimate noncommercial or fair use within the meaning of the Policy”.

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and Rules and submits, on the issue of registration, that “the Respondent could not credibly claim not to have had knowledge of the Complainant’s WHATSAPP trademark at the time of registration” and, on the issue of use, that “(t)he Respondent appears to have been using the Domain Name in the furtherance of a fraudulent scheme”. The Complainant also submits the “the Respondent’s use of a privacy service to conceal its identity with regard to the Domain Name further supports an inference of 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 Name is 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 Name; and
- (iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark WHATSAPP in numerous countries. The requirements of the first element for purposes of the Policy may be satisfied by a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the WHATSAPP trademark, the Panel observes that the Disputed Domain Name comprises: (a) an exact reproduction of the Complainant's trademark WHATSAPP; (b) followed by a hyphen together with the acronym "ico" (c) followed by the generic Top-Level-Domain ("gTLD") ".com".

It is well established that the gTLD used as technical part of a domain name may be disregarded (see [WIPO Overview 3.0](#), section 1.11). The gTLD chosen appears to have no special significance in this proceeding. The relevant comparison to be made is with the second-level portion of the Disputed Domain Name, specifically: "whatsapp-ico".

It is also well established that in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

In the absence of any aspect of the response that addresses this issue, this Panel accepts the Complainant's contention that the addition of the acronym "ico" (meaning "Initial Coin Offering") after the hyphen and the Complainant's registered trademark is an additional element that does not serve to distinguish the Disputed Domain Name (see *Meta Platforms, Inc. v. Domain Administrator*, See *PrivacyGuardian.org / Leutrim Hamiti*; *Whois Privacy, Private by Design, LLC / Giovanni Niemann*; *Privacy Service Provided by Withheld for Privacy ehf / Mero Hery*; *ContactID 7827838 / Isimtescil.net / Whoisprotection.biz*; *Bigrug Mishok*; *Gixha Mesho*; *Fari Gashi*; *Gmugjo Muasho*; *Malyc Micoz*; *Fatmir Lima*; *Fatmir Nako*; *Lurry Luma*; *Rruje Rakun*; *Faruk Mecha*; *Wu Yu*; *Gözlük Stok*; *Syle Sylez*; *Super Privacy Service LTD c/o Dynadot*, WIPO Case No. [D2022-1784](#) ("the addition of other terms or letters (such as "sale", "presale", "launch" etc.) do not prevent a finding of confusing similarity between the disputed domain names and the Complainant's trademark, since the Complainant's trademark is easily recognizable within the disputed domain names"). Seven of the 33 disputed domain names in that UDRP proceeding included the acronym "ico".

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden on the Complainant to establish the absence of the Respondent's rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put

forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it is not the Respondent's name, there is no license from the Complainant to use the Complainant's trademark, there is no evidence of the Respondent's use, or demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods and services, and the evidence is that it resolved to a webpage featuring the WHATSAPP trademark on a login portal prompting users for their Whatsapp login details.

The uncontested evidence is that the Respondent has not made, and is not currently making, a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers pursuant to paragraph 4(c)(iii) of the Policy. Nor, alternatively, does paragraph 4(c)(ii) of the Policy apply.

Having regard to the associated website content, the Panel also finds that the use of the Disputed Domain Name for phishing by passing itself off as somehow affiliated with the Complainant, appears to be intentional illegal activity that can never confer rights or legitimate interests on a respondent, and that such a false suggestion of affiliation is not a fair or legitimate use (see [WIPO Overview 3.0](#), section 2.13.1).

This Panel accepts that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name and, in the absence of a Response by the Respondent, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(ii) of the Policy.

The Panel finds that the Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy that the Complainant must also demonstrate is that the Disputed Domain Name has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both of these conjunctive requirements.

The Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Name 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 Name (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. Emreca Yildirimlar*, WIPO Case No. [D2019-0895](#) ("(...) Complainant's well-known WHATSAPP trademark").

This Panel accepts, as the basis of a further finding of bad faith, the Complainant's submission that "the Respondent could not credibly claim not to have had knowledge of the Complainant's WHATSAPP trademark at the time of registration of the Domain Name in 2021, by which time WhatsApp had amassed over 2 billion monthly active users".

In addition, a gap of several years between registration of the Complainant's trademark and the Respondent's registration of the Disputed Domain Name (containing the trademark) can in certain circumstances be an indicator of bad faith. (See *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#)). In this case, the Complainant's rights in its trademark predate any rights that could possibly flow from the Respondent's registration by at least 11 years. The Panel accepts this as further evidence of bad faith.

On the issue of use, the Complainant's evidence is that the Disputed Domain Name does not currently resolve to an active website but previously resolved to a webpage featuring the WHATSAPP trademark on a login portal prompting users for their Whatsapp login details. 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 the evidence is that all four factors are present in this proceeding.

The Panel accepts the evidence that the Respondent is attempting to use the Disputed Domain Name to extract personal information from unsuspecting Internet users by impersonating the Complainant and, in line with numerous previous Panel decisions, such behavior is manifestly considered evidence of bad faith (see [WIPO Overview 3.0](#), section 3.1.4).

In the absence of any evidence to the contrary, this Panel accepts the Complainant's evidence and finds that the Respondent has taken the Complainant's trademark WHATSAPP and incorporated it in the Disputed Domain Name along with a hyphen and the acronym "ico", without the Complainant's consent or authorization, for the purpose of capitalizing on the reputation of the trademark to infringe upon the Complainant's rights.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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, <whatsapp-ico.com> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: August 19, 2022