

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / Muhammad Asif

Case No. D2022-3170

1. The Parties

The Complainant is WhatsApp LLC, United States of America (“United States”), represented by Tucker Ellis, LLP, United States.

The Respondent is Registration Private, Domains By Proxy, LLC, United States / Muhammad Asif, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <gbwhatsappdownload.com> 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 August 26, 2022. On August 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 August 30, 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 August 31, 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 September 2, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 22, 2022. The Respondent did not submit any response. However, an email communication received from the Respondent on September 5, 2022, requesting removal of the disputed domain name. The “Possible Settlement” email was sent by the Center

on September 23, 2022, but Suspension was not requested by the Complainant. Accordingly, the Center sent the "Commencement of Panel Appointment Process" email on September 26, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on October 3, 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 is a United States based company, which provides a widely known service to exchange messages via smartphones. Based on uncontested information provided in the case record, the Complainant has 2 billion users in over 180 countries.

The Complainant is the owner of the word and figurative mark WHATSAPP, which is registered in a large number of jurisdictions. For instance, the Complainant is the owner of the United States Trademark Registration No. 3939463, registered on April 5, 2011. The Complainant is further the owner of the International Trademark Registration No. 1085539, registered on May 24, 2011, designating a large number of jurisdictions. The registered trademarks provide protection for various goods and services, in particular International Classes 9, 38, and 42 (Annex 11 to the Complaint).

The Complainant further holds and operates various domain names consisting of or including the WHATSAPP trademark, such as <whatsapp.com>, <whatsapp.net>, <whatsapp.us> and <whatsapp.org> (Annex 5 and 9 to the Complaint).

The disputed domain name was registered on October 24, 2021.

The Respondent is reportedly an individual located in Pakistan.

According to the documents provided by the Complainant, the disputed domain name resolved to a website in English language that prominently used the WHATSAPP trademark and offered software applications unrelated to the Complainant for download (Annex 12 to the Complaint).

At the time of the decision, the disputed domain name is used to redirect Internet users to a third-party website offering games and software applications for download (Annex 13 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusing similar to its WHATSAPP trademark.

Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Finally, the Complainant argues that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions. In his email communication to the Center

on September 5, 2022, the Respondent made clear that he does not want to challenge this case. Literally, he stated: “please remove the dispute so I can delete the domain from my [...] account”. However, the Respondent did not expressly state that he would also be willing to transfer the disputed domain name to the Complainant.

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

For the evaluation of this case, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

The Panel notes that the Complainant has registered trademark rights in the widely known mark WHATSAPP by virtue of various trademark registrations around the world.

The Panel further finds that the disputed domain name is confusingly similar to the Complainant’s registered WHATSAPP trademark, as it fully incorporates the Complainant’s trademark. As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the additions of other terms would generally not prevent a finding of confusing similarity. The mere addition of the letters “gb” and the generic term “download”, does not, in view of the Panel, serve to avoid a finding of confusing similarity between the disputed domain name and the Complainant’s WHATSAPP trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

While the burden of proof on this element remains with the Complainant, previous UDRP panels have recognized that this would result in the often impossible task of proving a negative, in particular as the evidence in this regard is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel finds that the Complainant has satisfied this requirement, while the Respondent has failed to file any evidence or make any convincing argument to demonstrate rights or legitimate interests in the disputed

domain name according to the Policy, paragraphs 4(a)(ii) and 4(c).

In its Complaint, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests to use the Complainant's trademark WHATSAPP in a confusingly similar way within the disputed domain name.

There is also no indication in the current record that the Respondent is commonly known by the disputed domain name. In the absence of a substantive response, the Respondent has particularly failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain name.

The Panel further notes that the nature of the disputed domain name carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#).

As a conclusion, the Panel finds that the Complainant has also satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In the Panel's view, the Respondent has registered and is using the disputed domain name in bad faith.

The Panel is convinced that the Respondent must have had the Complainant's trademark in mind when registering the disputed domain name.

In view of the Panel, the Respondent has registered the disputed domain name solely for the purpose of creating an association with the Complainant and its smart phone application. After having reviewed the Complainant's screenshots of the website initially linked to the disputed domain name (Annex 12 to the Complaint), the Panel is convinced that the Respondent, who is not challenging this case, has intentionally registered the disputed domain name in order to generate traffic to its website. The prominent use of the Complainant's WHATSAPP trademark, the lack of a visible disclaimer on the website linked to the disputed domain name to explain that there is no existing relationship between the Respondent and the Complainant and the nature of the disputed domain name is, in view of the Panel, sufficient evidence that the Respondent intentionally tries to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation or endorsement of its website.

The fact that Internet users are meanwhile redirected to a third-party website (still offering smartphone applications for download) does not change the Panel's assessment that the Respondent has registered and is using the disputed domain name in bad faith. Rather, the Panel believes that this is a typical cybersquatting case, which the UDRP was designed to stop.

The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant has also satisfied the third element of the Policy, namely, 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 <gbwhatsappdownload.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: October 17, 2022