

ADMINISTRATIVE PANEL DECISION

WhatsApp, LLC v. Teamdevseo
Case No. D2023-0396

1. The Parties

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

The Respondent is Teamdevseo, Thailand.

2. The Domain Name and Registrar

The disputed domain name <descargarwhatsappdescargar.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 27, 2023. On January 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 30, 2023, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 7, 2023, 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 in English on February 8, 2023.

On February 1, 2023, the Center transmitted an email communication to the Parties in English and Thai regarding the language of the proceeding. On February 2, 2023, the Complainant submitted its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to the Complaint and 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 February 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 3, 2023.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on March 10, 2023. 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 company founded in 2009. It operates globally under the trademark WHATSAPP, providing a mobile messaging application (or "app") that allows users across the globe to exchange messages via smartphones. The Complainant's main website available at "www.whatsapp.com" also allows Internet users to access its messaging platform.

The Complainant holds registered trademark rights in the mark WHATSAPP in many jurisdictions being the owner of a substantial trademark portfolio, including:

- United States Trademark No. 3,939,463, WHATSAPP, registered April 5, 2011, in class 42;
- Thailand Trademark No. 811848, WHATSAPP, registered on September 20, 2013, in class 9; and
- International Trademark No. 1085539, WHATSAPP, registered on May 24, 2011, in classes 9 and 38, (collectively "the WHATSAPP mark").

Prior decisions under the Policy have recognized the well known character of the WHATSAPP mark¹.

The Complainant further owns numerous domain names comprising the WHATSAPP mark, under various generic Top-Level Domains ("gTLDs") and country code Top-Level Domains ("ccTLDs"), which are linked to its corporate websites in connection with its services, including <whatsapp.com> (registered on September 4, 2008), <whatsapp.net> (registered on February 20, 2009), <whatsapp.org> (registered on February 1, 2010), <whatsapp.us> (registered on February 1, 2010), and <whatsapp.th> (registered on August 9, 2019).

The disputed domain name was registered on April 18, 2022, and it resolves to a website in Thai language (with some content in English language) that promotes various online gambling platforms, such as "slot 777", "Spade Gaming" and "Dream Gaming", and contains information related to gambling. This website prominently displays at its heading and at its footer the expression "pbn seo Just another WordPress site". It does not provide any information about the owner of the site or that of the disputed domain name, and its lack of relationship with the Complainant.

On November 18, 2022, the Complainant sent a cease and desist letter to the Respondent via the temporary proxy email address generated by the Registrar. The Respondent did not reply to this communication.

¹ See, e.g., *WhatsApp, Inc. v. Abdallah Almqbali*, WIPO Case No. [D2016-1287](#); *WhatsApp Inc. v. Luis Raffael Sanchez De La Cruz*, WIPO Case No. [D2019-2485](#); *WhatsApp Inc. v. Contact Privacy Inc. Customer 0153186272/MOHD WILDAN AMIR MUSA*, WIPO Case No. [D2019-0456](#); *WhatsApp Inc. v. Luis Raffael Sanchez De La Cruz*, WIPO Case No. [D2019-2485](#); *WhatsApp Inc. v. Donald Huen*, WIPO Case No. [D2020-2331](#); and *WhatsApp LLC. v. Sanjay kumar*, WIPO Case No. [D2022-3045](#).

5. Parties' Contentions

A. Complainant

Key contentions of the Complaint may be summarized as follows:

The disputed domain name is confusingly similar to the WHATSAPP mark. The disputed domain name incorporates the WHATSAPP mark in its entirety, surrounded by the dictionary term "descargar" ("download" in Spanish language). The WHATSAPP mark is immediately recognizable in the disputed domain name, the addition of the term "descargar" does not prevent a finding of confusing similarity, and the gTLD ".com" may be disregarded as it is viewed as a standard registration requirement.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name, is not affiliated with the Complainant, and has not been authorized to use the WHATSAPP mark. The Respondent's disclosed name bears no resemblance to the disputed domain name, and to the best of the Complainant's knowledge, the Respondent has no trademark rights over the term "whastapp", nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name. The composition of the disputed domain name is such that it carries a high risk of implied affiliation with the Complainant, and it is being used to point to a website promoting various online gambling platforms for commercial gain, trading on the Complainant's reputation and goodwill by diverting traffic to those gambling sites. The disputed domain name may have been registered and used by a prior holder to offer a way to download the Complainant's app, and, after its expiration, it may have been re-registered by the Respondent to build a "Private Blog Network" in an attempt to capture the previous traffic. The three letters "PBN" displayed at the Respondent's website likely stand for "Private Blog Network", which are websites normally created using expired domain names to provide backlinks to other sites in order to improve their Google search rankings.

The disputed domain name was registered and is being used in bad faith. Given the Complainant's renown and goodwill worldwide, including in Thailand, it is inconceivable for the Respondent to argue that it did not have knowledge of the WHATSAPP mark when it registered the disputed domain name. All search results obtained for the term "Whastapp" over the Internet refer to the Complainant and its corporate website. The use of a privacy registration service and incomplete contact details in the Whois of the disputed domain name further indicate bad faith. The disputed domain name is used to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the WHATSAPP mark. The Respondent obtains a commercial gain from the promotion of various gambling platforms, which may also tarnish the Complainant's distinctiveness, image and reputation. The Respondent's failure to reply to the Complainant's clear and explicit cease and desist letter is also indicative of its bad faith.

The Complainant has cited previous decisions under the Policy as well as various sections of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)") that it considers supportive of its position, and requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

A. Preliminary Issue: Language of the Proceedings

The language of the Registration Agreement of the disputed domain name is Thai. The Complainant has requested English to be the language of the proceedings, since the disputed domain name consists of English characters instead of Thai characters, the website associated with the disputed domain name displays partial content in English, and the Respondent is using a service provider based in Canada. The Respondent has not responded to the Complaint and has not commented on the language of the proceedings.

Under these circumstances, the Panel finds that it would be unfair and disproportionate to require the Complainant to translate and submit the Complaint and all evidence in Thai. Therefore, according to paragraph 11(a) of the Rules, the Panel determines English to be the language of the proceedings.

B. Identical or Confusingly Similar

The Complainant indisputably has rights in the registered trademark WHATSAPP, both by virtue of its numerous trademark registrations and as a result of its global goodwill and reputation. The disputed domain name incorporates the WHATSAPP mark in its entirety adding the Spanish term “descargar”, both before and after the mark, which does not prevent a finding of confusing similarity. The Complainant’s trademark is recognizable in the disputed domain name and the gTLD “.com” is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. See sections 1.7, 1.8, and 1.11, [WIPO Overview 3.0](#).

Accordingly, this Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark, and the first element of the Policy under paragraph 4(a)(i) has been satisfied.

C. Rights or Legitimate Interests

Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, prior UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily if not exclusively within the knowledge of the Respondent. Thus, the consensus view is that paragraph 4(c) of the Policy shifts to the Respondent the burden of coming forward with evidence of rights or legitimate interests in the disputed domain name, once the Complainant has made a *prima facie* showing indicating the absence of such rights or legitimate interests.

The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Complainant’s assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name, providing the circumstances of paragraph 4(c) of the Policy, without limitation, in order to rebut the Complainant’s *prima facie* case. However, the Respondent has not replied to the Complainant’s contentions, not providing any explanation and evidence of rights or legitimate interests in the disputed domain name.

The Panel considers that the Complainant has made out a strong *prima facie* case that the Respondent could not have rights or legitimate interests in respect of the disputed domain name, not being authorized to use the WHATSAPP mark, and not existing any evidence that suggests that the Respondent may be commonly known by the disputed domain name. In this respect, the Panel notes that the Respondent’s name provided in the Registrar verification has no resemblance with the disputed domain name. Additionally, the Panel, under its general powers articulated, *inter alia*, in paragraph 10 of the Rules, has corroborated through a search at the Global Brand Database that the Respondent does not own any trademark registration or application including or consisting of the term “whatsapp”.

A core factor in assessing fair use of the disputed domain name is that it does not falsely suggest affiliation with the Complainant's trademark. See section 2.5, [WIPO Overview 3.0](#). The disputed domain name incorporating the Complainant's trademark in its entirety, adding a term ("descargar" or "download" in English), which is connected to the Complainant's app and the action of downloading this app, may enhance the affiliation with the Complainant, its reputed trademark, and its app. Therefore, the Panel considers that there is a risk of implied affiliation.

The Panel further notes that the disputed domain name resolves to a PBN or "Private Blog Network" website that is used to promote various gambling platforms likely for a commercial gain, which share no apparent connection to the Complainant, its messaging app or its WHATSAPP mark. This PBN website linked to the disputed domain name does not inform about its owner or that of the disputed domain name and its lack of relationship to the Complainant and the WHATSAPP mark. The Panel finds that this use cannot be considered a legitimate use or a *bona fide* offering of goods or services under the Policy. On the contrary, it points to an illegitimate intention to trade on the Complainant's reputation and goodwill by diverting traffic to various gambling sites for a commercial gain.

The Panel considers further remarkable the Respondent's attitude choosing not to reply to the Complainant's cease and desist letter or to the Complaint.

All these circumstances lead the Panel to conclude that the Complainant has established a *prima facie* case, not rebutted by the Respondent, and all cumulative facts and circumstances of this case point to consider that the Respondent lacks any rights or legitimate interests in the disputed domain name. Therefore, the second element of the Policy under paragraph 4(a)(ii) has been established.

D. Registered and Used in Bad Faith

The Policy, paragraph 4(a)(iii), requires that the Complainant establishes that the disputed domain name has been registered and is being used in bad faith.

The applicable standard of proof is, likewise, the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Panel notes the global reputation and extensive use of the WHATSAPP mark and considers inconceivable that the Respondent did not have knowledge of this trademark at the time of registration of the disputed domain name, approximately 13 years after the launch of the Complainant's messaging app. Furthermore, all cumulative circumstances of this case point to bad faith registration and use of the disputed domain name:

- (i) the disputed domain name incorporates the WHATSAPP mark in its entirety, adding a term that may refer to the action of downloading the Complainant's app, which enhances the intrinsic likelihood of confusion and affiliation;
- (ii) the Complainant's trademark is well known worldwide;
- (iii) the Complainant operates globally including in the country (Thailand) where the Respondent is located according to the Whois record of the disputed domain name;
- (iv) the Respondent used a privacy registration service, and provided incomplete contact details in the Whois record of the disputed domain name;
- (v) the website linked to the disputed domain name is a PBN site that promotes various gambling platforms unrelated to the Complainant's app and the WHATSAPP mark; and

(vi) the Respondent did not reply to the cease and desist letter or to the Complaint, not offering any explanation of any rights or legitimate interests in the disputed domain name and not coming forward to deny the Complainant's assertions of bad faith.

In light of the above, taking into consideration all cumulative facts and circumstances of this case, on the balance of probabilities, the Panel considers that the disputed domain name was registered and is being used in bad faith, with the intention of obtaining a free ride on the established reputation of the Complainant. The disputed domain name was registered and used targeting the Complainant and its reputed trademark, intentionally creating a likelihood of confusion as to the affiliation or association to misleadingly attract Internet users to the Respondent's website to promote various gambling platforms likely for commercial gain.

The Panel further finds that due to the meaning of the terms included in the disputed domain name, it may be used to obtain sensitive private information from Internet users with the pretended purpose of downloading the Complainant's app.

Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the disputed domain name has been registered and is being used in bad faith.

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, <descargarwhatsappdescargar.com>, be transferred to the Complainant.

/Reyes Campello Estebarez/

Reyes Campello Estebarez

Sole Panelist

Date: March 20, 2023