

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Host Master, Transure Enterprise Ltd
Case No. D2023-1694

1. The Parties

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

The Respondent is Host Master, Transure Enterprise Ltd, United States.

2. The Domain Name and Registrar

The disputed domain name <downloadwhatsapp.com> is registered with Above.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 18, 2023. On April 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 19, 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 (ABOVE_PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 20, 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 on April 26, 2023.

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 May 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 22, 2023.

The Center appointed Ezgi Baklacı Güllökar as the sole panelist in this matter on July 5, 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 the provider of WhatsApp, a messaging and voice-over-IP service and a mobile messaging application allowing users to exchange messages and voice via smartphones or computers. The Complainant, was founded in 2009 and as of April 2023, the WhatsApp application had over 2 billion active users in over 180 countries. The Complainant owns, *inter alia*, the following United States and International trademark registrations (among other registrations around the world):

- United States trademark WHATSAPP, Reg. No. 3939463, registered on April 5, 2011 covering services in International Class 42;
- United States trademark WHATSAPP, Reg. No. 4083272, registered on January 10, 2012 covering products in International Class 9 and services in International Class 38;
- International Registration WHATSAPP, Reg. No. 1085539, registered on May 24, 2011, covering products in International Class 9 and services in International Class 38)

The Complainant owns the domain names consisting of the WHATSAPP Mark in combination with various generic and country code top-level domain names, *i.e.*, <whatsapp.com>, <whatsapp.net>, <whatsapp.org> and <whatsapp.us> as evidenced with the Annex 9.

The disputed domain name was registered on November 6, 2010. The Respondent is reportedly based in the United States.

The disputed domain name redirects users to numerous other websites as evidenced with the Annex 12 to induce the visitors to download software to their computers as well as other websites advertising third-party software. Also, in some cases, the disputed domain name resolves to a parking page which directs visitors to advertisements and third-party websites.

5. Parties' Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy is satisfied in the present case, as follows:

Identical or confusingly similar

The Complainant argues that the disputed domain name is confusingly similar to the WHATSAPP Mark in full, the sole difference being the addition of the term "download" which is a descriptive term and fails to distinguish the disputed domain name from the Complainant's trademark.

The Complainant also refers to a number of previous UDRP decisions to argue that addition of descriptive terms to a complainant's mark in a domain name would not differentiate the domain name from the trademark itself.

The Complainant also contends that the Top-Level Domain ("gTLD") ".com" is has no distinguishing value in the Policy as it is viewed as a standard registration requirement and is as such disregarded under the first element confusing similarity test.

Rights or legitimate interests

The Complainant argues that the Respondent has no rights and legitimate interests in the disputed domain name, has no affiliation with the Complainant and the Complainant has not given the Respondent permission to register and/or use the Complainant's trademarks in any manner.

In addition, the Complainant argues that the Respondent is not known by the disputed domain name and the Complainant submits that the Respondent is not authorized to use the Complainant's trademark, nor the Respondent is the licensee of the mark.

Furthermore, the Respondent has neither made use of the domain name nor engaged in any demonstrable preparations to use it in connection with a *bona fide* offering of goods or services, instead the Respondent is using the Disputed Domain Name to divert Internet traffic to various commercial websites that offer third-party software and a commercial parking page featuring a number of links and a generalized offer to sell the disputed domain name as evidenced with the Annex 12.

The Complainant iterates that the Respondent's activities create a likelihood of confusion regarding source, and the Complainant further argues that such uses cannot be accepted within the scope of noncommercial or fair use.

The disputed domain name was registered and used in bad faith.

The Complainant emphasizes the Respondent's exploitation of the disputed domain name acquired with prior knowledge of the Complainant's established rights to redirect Internet traffic to other websites for the Respondent's financial as demonstrative of bad faith registration and use under the Policy.

The Complainant further asserts that mere fact of registration of the disputed domain name is alone sufficient to give rise to an inference of bad faith registration and use considering the extensive presence of the Complainant's WhatsApp Mark all over the Internet, it is clear that the disputed domain name clearly references the Complainant's trademarks.

The Complainant lastly argues that the Respondent has knowingly registered the disputed domain name in order to create an impression of an association with the Complainant.

In summary, the Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for a transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

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 the trademarks or service marks in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (ii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has demonstrated that it has well-established rights in the WHATSAPP Mark.

The disputed domain name incorporates the Complainant's trademark with sole difference being the addition of the term "download". 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 be considered confusingly similar (see the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition "[WIPO Overview 3.0](#)", section 1.7).

The addition of the term "download" in the disputed domain name does not prevent the finding of confusing similarity as the Complainant's WHATSAPP Mark remains overtly recognizable ([WIPO Overview 3.0](#), section 1.8).

Moreover, the gTLD ".com" is disregarded in the confusing similarity test, as it does not form part of the comparison as it is a standard registration requirement for technical reasons (see [WIPO Overview 3.0](#), section 1.11.1).

In the light of the above, the Panel is of the view that the disputed domain name is confusingly similar to the Complainant's trademarks and the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. While the overall burden of proof in UDRP proceedings is on the Complainant, previous UDRP panels have recognized that proving a Respondent lacks rights or legitimate interests in a domain name may result in the often impossible 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. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element (see [WIPO Overview 3.0](#), section 2.1) (*Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#))

The Panel notes that there is no evidence showing that the Respondent holds any rights in the term "WhatsApp". The Panel also notes that there is no evidence showing that the Respondent is authorized or licensed to use the Complainant's WHATSAPP Mark.

The case file also does not contain any evidence that the Respondent has been commonly known by the disputed domain name as an individual, business, or other organization. Further, the Panel notes that there is no evidence of the Respondent's use of, or preparation to use the disputed domain name; and there is also no evidence that the Respondent is making a legitimate noncommercial or fair use under the disputed domain name.

On the contrary, what the evidence submitted by the Complainant establishes, is that the disputed domain name redirects Internet users and the Complainant's customers to websites that contain commercials for third party applications and number of third-party links for the Respondent's financial gain. Also, it is noted that in some cases, the disputed domain name resolves to a parking page which directs visitors to advertisements and third-party websites. Previous UDRP panels have categorically held that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (See [WIPO Overview 3.0](#), section 2.9). The Panel finds that such conduct cannot by any means be accepted as legitimate noncommercial or fair use activity within the scope of the Policy.

Therefore, the Panel finds that the Respondent does not have rights or any legitimate interests in the disputed domain name within the meaning of Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that a complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith. Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's trademark ([WIPO Overview 3.0](#), section 3.1).

The Panel finds that the Respondent was clearly aware of the WHATSAPP Mark and had the Complainant in mind at the time it registered the disputed domain name on November 06, 2010. The Panel notes from the Complaint and annexes, that the Complainant had been using the WHATSAPP Mark as well as its domain names since 2009, and that the Complainant was well-known by the WHATSAPP Mark long before the disputed domain name was registered. Additionally, the composition of the disputed domain name, including the term "download", which is directly connected to the Complainant's services, further reinforces this notion.

In addition, previous UDRP panels have held that the mere registration of a domain name that is confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith (See [WIPO Overview 3.0](#), section 3.1.4). The disputed domain name is so obviously connected with the Complainant and its services that already its very use by the Respondent, which has no connection with the Complainant, clearly suggests the disputed domain name has been selected with a deliberate intent to create an impression of an association with the Complainant (see *General Motors LLC v. desgata*, WIPO Case No. [D2012-0451](#)). In addition, the Panel finds the fact that the Respondent intentionally diverted Internet traffic to other websites for financial gain shows clear bad-faith. Also see (*WhatsApp LLC. v. Eli Bitton, Novellino*, WIPO Case No. [D2021-4059](#)).

Further, the Panel notes that the Respondent has been involved in a number of trademark-abusive domain name registrations (e.g. *Toyota Motor Sales, U.S.A., Inc. v. Transure Enterprise Ltd. et al.*, WIPO Case No. [D2022-0367](#); *WhatsApp Inc. et al. v. Transure Enterprise Ltd et al.*, WIPO Case No. [D2019-0510](#)).

In the view of the Panel this behavior demonstrates a pattern of conduct by the Respondent of taking advantage of trademarks of third parties without any right to do so and is indicative of the Respondent's bad faith. Previous UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration, see [WIPO Overview 3.0](#), section 3.1.2.

In light of these particular circumstances, the Panel concludes that the Complainant has succeeded in proving the requirement of paragraph 4(a)(iii) that the disputed domain name has been registered and used in bad faith by the Respondent.

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 <downloadwhatsapp.com> be transferred to the Complainant.

/Ezgi Baklacı Gülkökar/

Ezgi Baklacı Gülkökar

Sole Panelist

Date: July 19, 2023