

ADMINISTRATIVE PANEL DECISION

WhatsApp, LLC v. Contact Privacy Inc. Customer 7151571251, Contact Privacy Inc. / Gulsher Khan
Case No. D2023-5230

1. The Parties

The Complainant is WhatsApp, LLC, United States of America ("United States"), represented by Greenberg Traurig, LLP, United States.

The Respondent is Contact Privacy Inc. Customer 7151571251, Contact Privacy Inc., Canada / Gulsher Khan, Pakistan¹.

2. The Domain Name and Registrar

The disputed domain name <gbwhatsappdownloadpro.net> is registered with Squarespace Domains II LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 14, 2023. On December 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 15, 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 December 18, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant sent a communication on December 21, 2023, stating that it did not want to file an amendment to the Complaint.

¹ At the time of filing the Complaint, the relevant Whois information showed a privacy or proxy service, "Contact Privacy Inc. Customer 7151571251, Contact Privacy Inc.". For mutual jurisdiction purposes, the Complainant chose not to amend the Complaint in the light of disclosure provided by the Registrar. In the present circumstances, the Panel considers the Registrar-confirmed underlying registrant details of the disputed domain name to constitute the concerned Respondent at issue.

The Center verified that the 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 December 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 17, 2024.

The Center appointed Alistair Payne as the sole panelist in this matter on January 29, 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 the provider of one of the world’s most popular mobile messaging applications with users in more than 180 countries and is rated among the top mobile applications in the market. It is used by over two billion people and is available in many different languages and is ranked amongst the top applications in the market. The Complainant owns numerous trade mark registrations worldwide for its WHATSAPP mark, including United States trade mark registration WHATSAPP number 3939463 registered on April 5, 2011. It also owns United States trade mark registration 4359872 registered on July 2, 2013 for its logo comprising a green speech balloon with a representation of a telephone receiver inside it. The Complainant owns the domain name <whatsapp.com> and <whatsapp.net> and the equivalent domain names in various generic and country code level domain name extensions.

The disputed domain name was registered on March 9, 2023, and resolves to a website which markets the Respondent’s own unauthorized “GB WhatsApp” mobile messaging app and which features references to the Complainant and representations of the Complainant’s WhatsApp Logo.

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 name.

The Complainant contends that its WHATSAPP mark is wholly contained in the disputed domain name and that the disputed domain name is therefore confusingly similar to its registered trade mark. It says that the addition of the letters “GB”, as well as the terms “download” and “pro” do not prevent a finding of confusing similarity.

The Complainant submits that the Respondent is neither a licensee of the Complainant nor is it affiliated with the Complainant in any way. The Complainant says that it has not authorised the Respondent to make any use of its WHATSAPP trade mark, whether in a domain name, in a mobile app, in the use of its logos on the website, or otherwise. The Complainant says that there is no evidence to suggest that the Respondent is commonly known by the disputed domain name, as intended under paragraph 4(c)(ii) of the Policy.

The Complainant further notes that the Respondent’s website associated with the disputed domain name refers directly to the Complainant’s distinctive and well-known WHATSAPP trade mark and to the Complainant’s goods and services and purports to offer a modified version of the Complainant’s WHATSAPP mobile application, boasting additional features not available on the Complainant’s original mobile application. It says that this type of software is routinely used to send unsolicited electronic

communications (spam), for phishing, for malware, and for other unauthorised activities and that the Respondent's use of the disputed domain name promotes activities that place the security of the Complainant's WHATSAPP platform and its users at risk.

Further, the Complainant says that the Respondent has promoted its "GB WhatsApp" product using a confusingly similar variation of the Complainant's WHATSAPP Logo, the common elements being a white telephone receiver against a green background in a speech bubble. It says that the use of its WHATSAPP Logo, not only on the Respondent's website found at the disputed domain name, but also in the favicon, are both intended and likely to confuse Internet users into believing that the disputed domain name and the modified "GB WhatsApp" mobile application are operated, approved, or sponsored by, or affiliated with the Complainant. It says that this implied affiliation or sponsorship cannot constitute noncommercial fair use under the Policy.

The Complainant also asserts that the Respondent's use of the disputed domain name to attract Internet users to its own site, which promotes a modified version of the Complainant's application and leverages the Complainant's reputation and goodwill attached to its trade marks in order to do so, is in direct competition to its product and cannot be considered as a bona fide use of the WHATSAPP trade mark under 4(c)(i) of the Policy and therefore that the Respondent has no rights or legitimate interests in the disputed domain name.

In terms of registration in bad faith, the Complainant says that its WHATSAPP trade mark is inherently distinctive and well-known throughout the world in connection with its messaging application, having been continuously and extensively used since the launching of its services in 2009. It says that the term "whatsapp" is highly distinctive and is exclusively associated with the Complainant and that all search results obtained by typing the term "whatsapp" into the Google search engine available at "www.google.com" refer to the Complainant. The Complainant says that in view of the Respondent's content at the website to which the disputed domain name resolves (namely misappropriating the Complainant's WHATSAPP Logo and repeatedly referencing the Complainant's WHATSAPP mark and mobile application), the Respondent cannot credibly argue that it did not have prior knowledge of the Complainant's trade marks at the time the disputed domain name was registered on March 9, 2023, at which time the Complainant's "WhatsApp" platform had amassed over two billion users worldwide.

The Complainant says that, quite apart from the argument that the mere registration of a domain name incorporating such a well reputed mark creates a presumption of bad faith, the circumstances of the Respondent's use of the disputed domain name to resolve to a website for a directly competing product, which references its mark and uses a similar logo, supports a finding of bad faith under paragraph 4(b)(iv) of the Policy.

The Complainant also notes that it sought to contact the Respondent directly and through its registrar Squarespace and proxy hosting provider Cloudflare on numerous occasions in March 2023, including by requesting that the disputed domain name be suspended, however the Respondent failed to answer and failed to remove the content found at the disputed domain name.

B. Respondent

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

6. Discussion and Findings

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 name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, namely “GB”, “download” and “pro” 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 name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 UDRP 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 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. [WIPO Overview 3.0](#), section 2.1.

The Complainant has submitted that the Respondent is neither a licensee of the Complainant nor is it affiliated with the Complainant in any way. The Complainant has asserted that it has not authorised the Respondent to make any use of its WHATSAPP trade mark, whether in a domain name, in a mobile app, in the use of its logos on the website, or otherwise and it has said that there is no evidence to suggest that the Respondent is commonly known by the disputed domain name, as intended under paragraph 4(c)(ii) of the Policy.

The Panel notes that the Respondent’s website associated with the disputed domain name refers directly to the Complainant’s distinctive and well-known WHATSAPP trade mark and to the Complainant’s goods and services and purports to offer a modified version of the Complainant’s WHATSAPP mobile application, boasting additional features that the Complainant says are not available on the Complainant’s original mobile application. The Complainant has asserted that this type of software is routinely used to send unsolicited electronic communications (spam), for phishing, for malware, and for other unauthorised activities and that the Respondent’s use of the disputed domain name promotes activities that place the security of Complainant’s WHATSAPP platform and its users at risk.

The Panel also notes that the Respondent has promoted its “GB WhatsApp” product using a confusingly similar variation of the Complainant’s WHATSAPP Logo, the common elements being a white telephone receiver against a green background in a speech bubble. The Complainant has submitted that the use of the Complainant’s WHATSAPP Logo not only on the Respondent’s website found at the disputed domain name but also in the favicon, are both intended and likely to confuse users into believing that the disputed domain name and the modified “GB WhatsApp” mobile application are operated, approved, or sponsored by, or affiliated with the Complainant.

The Complainant has also asserted that the Respondent’s use of the disputed domain name to attract Internet users to its own site in order to promote a modified version of the Complainant’s application is based upon leveraging the Complainant’s reputation and goodwill attaching to its trade marks and is in direct

competition to the Complainant's product. The Complainant has asserted and the Panel agrees, that this cannot be considered as bona fide use of the WHATSAPP trade mark under 4(c)(i) of the Policy.

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

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Respondent only registered the disputed domain name on March 9, 2023 by which time the Complainant's "WhatsApp" platform had amassed over two billion users worldwide and a very considerable goodwill and reputation to the extent that the Complainant's distinctive WHATSAPP mark could be considered to be in the category of "well-known" marks. In view of the degree of renown attaching to the Complainant's trade mark and the content at the website to which the disputed domain name resolves (namely, a modified version of the Complainant's WHATSAPP Logo and repeated references to the Complainant's WHATSAPP mark and mobile application), the Respondent cannot credibly argue that it did not have prior knowledge of the Complainant's trade marks at the time the disputed domain name was registered.

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.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

In this case the Respondent has used the disputed domain names to intentionally attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's WHATSAPP mark and diverting them in each case to a website which offers a directly competing commercial product and which includes references to the Complainant's mark and an unauthorised version of its registered logo. This amounts to conduct that satisfies the requirements of paragraph 4(b)(iv) of the Policy and is evidence of registration and use of the disputed domain name in bad faith.

In these circumstances, the fact that the Respondent failed to answer and failed to remove the content found at the disputed domain name when so requested by the Complainant in pre-action communications only reinforces the Panel's view of the Respondent's bad faith.

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 name <gbwhatsappdownloadpro.net> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: February 12, 2024