

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Krishan Gahlot, Krishan Gahlot
Case No. D2022-2080

1. The Parties

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

The Respondent is Krishan Gahlot, Krishan Gahlot, India.

2. The Domain Name and Registrar

The disputed domain name <whatsappchannels.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 8, 2022. On June 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 9, 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 June 14, 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 June 17, 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 June 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 12, 2022.

The Center appointed Taras Kyslyy as the sole panelist in this matter on July 22, 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 the WhatsApp messaging and voice over IP service and mobile application. It has about 2 billion customers in over 180 countries using the Complainant's services. Amongst its features, WhatsApp allows for the sharing of messages, photos and videos with up to 512 people at once through group chats. Similar to WhatsApp group chats, WhatsApp channels are used to send messages to up to 256 people, but differ in that only administrators are able to send messages to group members.

The Complainant owns numerous WHATSAPP trademark registrations in various jurisdictions, including for instance the United States registration No. 3939463, registered on April 5, 2011.

In addition to the <whatsapp.com> domain name, the Complainant owns and operates numerous other domain names consisting of the WHATSAPP trademark in combination with various generic and country code Top-Level Domains, including <whatsapp.net>, <whatsapp.org>, and <whatsapp.us>.

The disputed domain name was registered on September 28, 2015, and resolved to a website prominently using the Complainant's trademark as well as the Complainant's distinctive green-and-white color scheme, and offering WhatsApp channels for paid use in different countries. The following disclaimer was included at the bottom of the Respondent's website: "Copyright 2020 – WA Channels – All Rights Reserved. WA Channels does not have any connection with WhatsApp or Facebook and is an independent party. Clients are required by law not to use the product for any type of harmful or inappropriate content. 3rd Party software terms apply". At the time of this decision the disputed domain name does not resolve to any active web-page.

On September 6, 2021, the Complainant's lawyers sent a cease and desist notice to the Respondent through the Registrar's contact form, asserting the Complainant's rights and requesting, *inter alia*, transfer of the disputed domain name to the Complainant. The Respondent did not respond.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's trademark. The disputed domain name incorporates the Complainant's trademark in its entirety as the dominant element, and the additional term "channels" does not serve sufficiently to distinguish or differentiate the disputed domain name from the Complainant's trademark, especially as "channels" is descriptive of and relevant to the Complainant's services. The addition of a generic Top-Level Domain ("gTLD") has no distinguishing value as well.

The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not licensed nor authorized the Respondent to use the Complainant's trademark, nor does the Respondent have any legal relationship with the Complainant that would entitle the Respondent to use the Complainant's trademark. The Respondent's use of the disputed domain name to resolve to a website that offers for sale access to channels on the WhatsApp platform, using third party-phone numbers, has the effect of facilitating the use of the Complainant's services for the sending of spam, unsolicited electronic communications, chain letters, pyramid schemes, or illegal or impermissible communications, thereby encouraging Internet users to act in ways that violate the WhatsApp business terms of service. Prominent use of the Complainant's trademark and logo on its website creates a misleading impression of association with the Complainant, to the Respondent's own commercial gain. Neither the registration data for the disputed domain name nor the corresponding website available at the disputed domain name support that the Respondent is known by the disputed domain name. The term "channels" has an inherent reference to the Complainant's services, and its combination with the Complainant's trademark in the disputed domain name may have the effect of misleading Internet users viewing the disputed domain name into believing that it is operated by or otherwise endorsed by the Complainant.

The disputed domain name was registered and is being used in bad faith. The content of the Respondent's website clearly demonstrates actual knowledge of the Complainant and its trademark, as it makes extensive reference to the Complainant, its messaging services, and makes prominent use of the Complainant's trademark and a variation of its logo. The Respondent registered the disputed domain name, having no authorization to make use of the Complainant's trademark, in a domain name or otherwise, with a view to creating a misleading impression of association with the Complainant, for the Respondent's commercial gain, in bad faith. The Respondent's prior registration of the domain names <whatsappauto.com> and <bulkvibersender.com> further evidences its bad faith. According to the Respondent's website, the channels offered are alleged to be compatible with unauthorized third-party bulk-messaging software. Such software is often used to send unsolicited electronic communications (spam), for phishing, or for other unauthorized activities in a way that contravenes the Complainant's business terms of service. The Respondent's website makes extensive reference to the Complainant, uses the same green-and-white color scheme used by the Complainant, and makes use of a logo similar to the Complainant's logo. By registering and using the disputed domain name the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website. Notwithstanding the inclusion of a short, disclaimer-like statement at the bottom of the Respondent's website, the Internet users are likely to be misled into believing that the Respondent's website is operated by or in some way approved by the Complainant. The Respondent's failure to reply to the Complainant's cease and desist notice may also be considered an additional indicator of the Respondent's bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (the "[WIPO Overview 3.0](#)") the applicable gTLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards gTLD ".com" for the purposes of the confusing similarity test.

According to section 1.7 of the [WIPO Overview 3.0](#) in cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. The Panel finds that in the present case the disputed domain name incorporates the entirety of the Complainant's trademark.

According to section 1.8 of the [WIPO Overview 3.0](#) where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The Panel finds that in the present case the addition of descriptive term "channels" does not prevent finding of confusing similarity between the disputed domain name and the Complainant's trademark.

Considering the above the Panel finds the disputed domain name is confusingly similar to the Complainant's trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent provided no evidence that it holds rights or legitimate interests in the disputed domain name.

As confirmed by the available evidence the Respondent is not commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademark by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

The disputed domain name used to direct Internet users to a website with a logo similar to the Complainant's and designed similarly to the Complainant's website to make the Internet users believe that they actually access the Complainant's website. Past UDRP panels confirmed that such actions prove registrant has no rights or legitimate interests in a disputed domain name (see, e.g., *Daniel C. Marino, Jr. v. Video Images Productions, et al.*, WIPO Case No. [D2000-0598](#); *Houghton Mifflin Co. v. Weatherman, Inc.*, WIPO Case No. [D2001-0211](#)).

The Panel also finds that the nature of the services provided on the website at the disputed domain name, in particular, sale access to channels on the WhatsApp platform, using third party-phone numbers, has the effect of facilitating the use of the Complainant's services contrary to the Complainant's business terms of service, cannot constitute a *bona fide* offering of goods or services or legitimate noncommercial fair use (see, e.g., *Andrey Ternovskiy dba Chatroulette v. Polina Butenina*, WIPO Case No. [D2018-1499](#)).

Furthermore, the Respondent has no right or legitimate interests in the disputed domain name resolving to an inactive website at the time of this Decision (see, e.g., *Philip Morris USA Inc. v. Daniele Tornatore*, WIPO Case No. [D2016-1302](#)).

According to section 2.5.1 of the [WIPO Overview 3.0](#) even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. The Panel finds this applies in the present case.

Noting the risk of implied affiliation between the disputed domain name and the confusingly similar well-known trademark of the Complainant, the Panel finds that there is no plausible fair use to which the disputed domain name could be put that would not have the effect of being somehow connected to the Complainant (see, e.g., *Instagram, LLC v. Super Privacy Service LTD c/o Dynadot / Zayed*, WIPO Case No. [D2019-2897](#)).

Considering the above the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to section 3.2.2 of the [WIPO Overview 3.0](#) noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen Top-Level Domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark. The Panel finds that the use of the disputed domain name for offering to facilitate the Complainant's services confirms the Respondent knew and targeted the Complainant and its trademark when registering the disputed domain name, which is bad faith.

According to section 3.1.4 of the [WIPO Overview 3.0](#) the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is convinced that the Complainant's trademark is well established through long and widespread use and the Complainant has acquired a significant reputation and level of goodwill in its trademark both in the United States and internationally. Thus, the Panel finds that a presumption of bad faith is appropriate here.

Moreover, according to paragraph 4(b)(iv) of the Policy the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location. In this case, the disputed domain name was resolving to a website featuring the Complainant's trademark and logo and offering to facilitate the Complainant's services allowing the Respondent to earn revenue from it. The Panel finds that in such a way the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website and service on the website. Moreover, the disclaimer is not clear and sufficiently prominent on the website, and where the overall circumstances of a case point to the respondent's bad faith, the mere existence of a disclaimer cannot cure such bad faith.

Although at the time of this decision the disputed domain name resolves to inactive webpage, its previous bad faith use and lack of explanation of possible good faith use from the Respondent makes any good faith use of the disputed domain name implausible. Thus, the current passive holding of the disputed domain name does not prevent a finding of bad faith.

Moreover, the Respondent failed to respond to the Complainant's cease and desist letter, and did not provide any good reason to justify this, which confirms the bad faith (see, e.g., *Compagnie Generale des Etablissements Michelin v. Vaclav Novotny*, WIPO Case No. [D2009-1022](#)).

Considering the above the Panel finds the disputed domain name was registered and is being used in bad faith. Therefore, the Complainant has established its case under 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 <whatsappchannels.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: July 25, 2022