

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Aprup Shet
Case No. D2023-1168

1. The Parties

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

The Respondent is Aprup Shet, India.

2. The Domain Name and Registrar

The disputed domain name <cryptowhatsapp.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 March 15, 2023. On March 16, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 17, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 22, 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 March 23, 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 April 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 24, 2023.

The Center appointed Ahmet Akgüloğlu as the sole panelist in this matter on May 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, WhatsApp LLC, is a global company that provides a mobile messaging application (apps) and has “www.whatsapp.com” which allows Internet users to access its messaging platform as well. The Complainant is also one of the most popular and well-known messaging applications worldwide.

The Complainant has ownership of several trademarks throughout the world including international trademark registrations for WHATSAPP such as: United States trademark Registration No. 3939463 registered on April 5, 2011, European Union trademark registration No. 009986514, registered on October 25, 2011, and International trademark registration No. 1085539 registered on May 24, 2011.

The disputed domain name was registered on June 30, 2021 and resolves to a Registrar parking page.

5. Parties' Contentions

A. Complainant

- (a) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

The Complainant states that the Complainant owns numerous trademark registrations for WHATSAPP in jurisdictions throughout the world and established trademark rights in WHATSAPP for the purposes of paragraph 4(a)(i) of the Policy. The Complainant argues that the domain name is confusingly similar to trademarks in which the Complainant has rights since the domain name incorporates the Complainant's WHATSAPP trade mark in its entirety as its leading element with the addition of the term “crypto”, the addition of the term “crypto” does not prevent a finding of confusing similarity and the presence of its WHATSAPP trade mark in the domain name is sufficient to establish confusing similarity between the domain name and the Complainant's trade mark. The Complainant further notes that the generic Top-Level-Domain “.com” may be disregarded for purposes of assessing confusing similarity, as it is viewed as a standard requirement of registration.

- (b) The respondent has no rights or legitimate interests in respect of the domain name

The Complainant confirms that the Respondent has no rights or legitimate interests in the domain name and asserts that the Respondent is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy, in order to demonstrate rights or legitimate interests in the domain name.

The Complainant reaffirms that the Respondent is not using the domain name in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy and is not a licensee of the Complainant, nor has the Respondent been otherwise authorized by the Complainant to make any use of the Complainant's WHATSAPP trade mark in a domain name or otherwise.

The Complainant claims that the Respondent cannot legitimately claim to be commonly known by the domain name within the meaning of paragraph 4(c)(ii) of the Policy. In this regard, the Complainant states that the domain name has been registered using a privacy service according to the publicly available Whois records and there is no evidence of the Respondent having acquired or applied for any trademark registrations for “whatsapp”, “crypto whatsapp” or any variation thereof, as reflected in the domain name to the best of the Complainant's knowledge. The Complainant therefore alleges that the Respondent's use of the domain name does not support any reasonable claim of being commonly known by the domain name, nor does it give rise to any reputation in the domain name itself, independent of the Complainant's trademark rights.

The Complainant asserts that nor is the Respondent currently making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers within the meaning

of paragraph 4(c)(iii) of the Policy and further notes that the domain name resolves to a GoDaddy web page stating that it may be for sale and prior UDRP panels have found such use to not be a noncommercial or fair use of the disputed domain name. The Complainant further asserts that there is no evidence of the Respondent having made any other substantive use of the domain name of a nature that would otherwise confer rights or legitimate interests on the Respondent pursuant to paragraph 4(c)(iii) of the Policy. Based on these reasonings, the Complainant asserts that it has established a *prima facie* case that the Respondent has no rights or legitimate interests in the domain name, the burden of production therefore shifts to the Respondent to come forward with evidence to rebut the Complainant's case against it and the Complainant may be deemed to have satisfied the requirements of paragraph 4(a)(ii) of the Policy in the absence of such evidence.

(c) The domain name was registered and is being used in bad faith.

The Complainant states that the Complainant's WHATSAPP trademark is inherently distinctive and well known throughout the world in connection with its messaging application and the Complainant's trademarks have been continuously and extensively used since the respective launching of its services, and have rapidly acquired a considerable reputation and goodwill worldwide with a note that prior UDRP panels have repeatedly recognized the strength and renown of the Complainant's trade mark, and have ordered the transfer of disputed domain names to the Complainant. The Complainant submits that the Respondent could not credibly argue that it did not have prior knowledge of the Complainant's trademark at the time it registered the domain name in June 2021, at which time the Complainant's social network had already amassed over 2.2 billion users. The Complainant further states that the domain name resolves to a web page provided by the Registrar containing no content but advertising that it may be for sale and that the Respondent has not been making any apparent substantive use of the domain name in any event. Therefore, the Complainant submits that such non-use of the domain name is similar to passive holding, which would not prevent a finding of bad faith, and that the presence of the domain name in the hands of the Respondent and its general offer to sell it represents an abusive threat hanging over the head of the Complainant as a continuing abusive use.

B. Respondent

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

6. Discussion and Findings

The Complainant must meet the following conditions to succeed in regards to the disputed domain name, according to paragraph 4(a):

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel notes the guidance at paragraph 14(a) of the Rules: "In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the Panel shall proceed to a decision on the complaint."

A. Identical or Confusingly Similar

The Complainant has provided sufficient evidence regarding the ownership of the WHATSAPP trademark. It is uncontested to the Panel that the Complainant also has rights to WHATSAPP trademark as a result of goodwill and acquired reputation throughout the usage of the trademark globally as well as the registrations

with a note that the term “trademark or service mark” as used in the Policy encompasses both registered and unregistered marks (see section 1.1, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, [“WIPO Overview 3.0”](#)).

The disputed domain name is composed of the terms “whatsapp” and “crypto”.

“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 nature of such additional terms may however bear on assessment of the second and third elements.” (see [WIPO Overview 3.0](#), section 1.8.). The disputed domain name incorporates the Complainant’s WHATSAPP trademark in its entirety with the addition of the term “crypto”. In the view of the Panel, the addition of this term does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s marks.

For the reasons explained above, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks as required by the Policy 4(a)(i).

B. Rights or Legitimate Interests

The evidence presented demonstrates that the Complainant is the owner of multiple well-known WHATSAPP trademarks used in the disputed domain name. There is no evidence that the Respondent has any authorization, license, or permit to use the Complainant’s registered trademarks.

Even though the overall burden of proof is on the Complainant in a proceeding under the Policy (see Section 2.1 of [WIPO Overview 3.0](#)), panels recognize the impossibility of “proving a negative”. Hence, where a complainant presents a *prima facie* case that the respondent lacks rights or legitimate interests in a domain name, the burden of production transfers to the respondent in order to come forward with relevant documentation, which proves the respondent’s legitimate rights (see *NUTREXPA, S.A. v. Juan Silher*, WIPO Case No. [D2000-1386](#) and *Ritual Beverage Company LLC v. Tom Tom, Tom Tom S. DE R.L. DE C.V.*, WIPO Case No. [D2021-3643](#)). Here, the Respondent has not submitted any response to the Complaint.

There is no evidence that the Respondent’s disputed domain name activity constitutes fair use, or that the Respondent is making legitimate noncommercial or fair use of the disputed domain name. Additionally, the Respondent has failed to provide evidence of any the Respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with any *bona fide* offering of goods or services.

Based on the facts presented in the Complaint, the Panel determines that the use of the disputed domain name, which integrates the Complainant’s trademark in its entirety, indicates an awareness of the Complainant and its trademark and intent to take unfair advantage of such, which does not correspond to the legitimate noncommercial or fair use of the disputed domain name under the Policy.

For the above reasons, the Panel finds that the condition of paragraph 4(a)(ii) of the Policy has been satisfied, i.e., the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The trademark WHATSAPP is registered by the Complainant in several jurisdictions and has become well known worldwide (see *WhatsApp, Inc. v. Domain Manager, SHOUT marketing SL, and Gonzalo Gomez*

Rufino, River Plate Argentina, and Gonzalo Gomez Rufino, SHOUT Marketing SL, WIPO Case No. [D2018-1581](#)).

The registration of the disputed domain name <cryptowhatsapp.com> by the Respondent was on June 30, 2021, many years after the first WHATSAPP trademark registrations.

By adding the term “crypto”, a descriptive adjective to the Complainant’s well-known trademarks WHATSAPP, the Panel finds that the Respondent aims to gain unfair benefit from the trademark. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

Furthermore, the disputed domain name resolves to a Registrar parking page with no content but advertising that it may be for sale, as per the screenshot of the website provided by the Complainant with regard to the disputed domain name. From the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the [WIPO Overview 3.0](#)).

In this case noting (i) the degree of distinctiveness and reputation of the Complainant’s WHATSAPP trademark, (ii) the failure of the respondent to submit a response, (iii) the Respondent concealing its identity, and (iv) the implausibility of any good faith use to which the inherently misleading disputed domain name may be put.

For the above reasons and in light of these circumstances, the Panel finds that the condition of paragraph 4(a)(iii) of the Policy has been satisfied, *i.e.*, 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 <cryptowhatsapp.com> be transferred to the Complainant.

/Ahmet Akgüloğlu/
Ahmet Akgüloğlu
Sole Panelist
Date: May 19, 2023