

## **ADMINISTRATIVE PANEL DECISION**

WhatsApp LLC v. Above.com Domain Privacy  
Case No. D2022-4205

### **1. The Parties**

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

The Respondent is Above.com Domain Privacy, Australia.

### **2. The Domain Name and Registrar**

The disputed domain name <group4whatsapp.com> is registered with DropCatch.com 483 LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 7, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on November 7, 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 November 9, 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 November 15, 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 November 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 6, 2022.

The Center appointed José Ignacio San Martín Santamaría as the sole panelist in this matter on December 9, 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 WhatsApp LLC operates the WhatsApp messaging and voice over IP service and mobile application.

The Complainant is the proprietor of multiple trademark registrations for the WHATSAPP trademark, *inter alia*:

- U.S. trademark Registration No. 3939463 WHATSAPP, registered on April 5, 2011 in class 42;
- U.S. trademark Registration No. 4083272 WHATSAPP, registered on January 10, 2012 in classes 9 and 38;
- U.S. trademark Registration No. 6142062 WHATSAPP, registered on September 1, 2020 in class 9;
- U.S. trademark Registration No. 5492738 WHATSAPP, registered on June 12, 2018 in classes 9, 38, 42, and 45;
- U.S. trademark Registration No. 5520108 WHATSAPP, registered on July 17, 2018 in class 35;
- International trademark Registration No. 1396913 WHATSAPP, registered on December 21, 2017 in classes 9, 38, 42 and 45;
- International trademark Registration No. 1491341 WHATSAPP, registered on October 16, 2018 in classes 9, 36, 38, 42, and 45;
- International trademark Registration No. 1085539 WHATSAPP, registered on May 24, 2011 in classes 9 and 38;
- International trademark Registration No. 1475251 WHATSAPP, registered on October 15, 2018 in classes 35 and 36;
- European Union trademark Registration No. 014814347 WHATSAPP, registered on April 26, 2016 in classes 9, 35, 36, 38, 42, and 45;
- European Union trademark Registration No. 014988844 WHATSAPP, registered on September 5, 2016 in classes 3, 14, 16, 18, 24, 25, 28, 32, 33, 39, 40, 41, and 43; and
- European Union trademark Registration No. 009986514 WHATSAPP, registered on October 25, 2011 in classes 9, 38, and 42.

The disputed domain name was registered on September 17, 2022 and apparently redirects to a parking website with links to third parties services.

#### **5. Parties' Contentions**

##### **A. Complainant**

- The Complainant, WhatsApp LLC, operates the WhatsApp messaging and voice over IP service and mobile application. The Complainant owns the exclusive rights to the WhatsApp trademarks and service marks, which it has used since 2009.
- The Respondent is a known cybersquatter who has a history of targeting numerous famous and distinctive trademarks.
- The Complainant is the owner of the above mentioned trademark registrations. The disputed domain name, which adds the descriptive phrase "group 4" before the WHATSAPP mark, is confusingly similar to the Complainant's WHATSAPP mark.

- The Respondent has no rights or legitimate interest in the disputed domain name. The Respondent cannot demonstrate any of the factors that would support rights or legitimate interests in the disputed domain name under the Policy.

- The disputed domain name is being used to divert Internet users seeking the Complainant's goods or services to commercial parking pages featuring "Related searches" links, some of which reference the Complainant or pertain to similar services. When clicked, the links advertisements for competing products or services or third-party websites unrelated to the Complainant.

- It is well settled that the use of a domain name that is identical or confusingly similar to a complainant's mark to host a commercial advertising page is evidence of bad faith. The registration and commercial use of a confusingly similar domain name that is obviously connected with a particular trademark owner, to create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the respondent's website, thereby taking advantage of the complainant's mark for a respondent's commercial gain, supports a finding of bad faith under Policy.

- Given the fame of the Complainant's WHATSAPP mark, and the Respondent's unauthorized incorporation of the exact WHATSAPP mark into the disputed domain name, there are no circumstances under which the Respondent's registration and use of the disputed domain name could plausibly be in good faith under the Policy.

As a consequence, the Complainant requests that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Pursuant to paragraph 4(a) of the Policy and 15 of the Rules, the Panel shall grant the remedies requested if the Complainant proves that:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

Pursuant to paragraph 4(a) of the Policy and 15 of the Rules, for this purpose the Panel shall decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

### **A. Identical or Confusingly Similar**

The Complainant has trademark rights for its trademark WHATSAPP, obviously a well-known mark.

The disputed domain name wholly incorporates the Complainant's trademark WHATSAPP with the expression "group 4" before that mark. The WHATSAPP trademark is clearly recognizable within the disputed domain name.

As stated in *Crédit Industriel et Commercial v. Manager Builder, Builder Manager*, WIPO Case No. [D2018-2230](#):

“The disputed domain name incorporates the CIC trademark in its entirety. Numerous UDRP panels have recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark (see e.g., *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)). Moreover, it has been held in many UDRP decisions and has become a consensus view among UDRP panelists (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([‘WIPO Overview 3.0’](#), section 1.8), that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element of the UDRP. Accordingly, the addition of the term ‘banks’, which even is the English translation of the French term ‘banques’ as it is reflected in the Complainant’s CIC BANQUES trademark, does not avoid the confusing similarity arising from the incorporation of the Complainant’s CIC trademark in the disputed domain name.”

The Panel therefore finds that the disputed domain name is confusingly similar to the Complainant’s WHATSAPP trademarks as provided under paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

The Complainant has established based on the facts set out above a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Having done so, the burden of production shifts to the Respondent to come forward with appropriate evidence demonstrating rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.1). Given that the Respondent has defaulted, he or she has not met that burden.

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a disputed domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent’s use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent’s use cannot be considered as a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Panels have consistently held that the use of a domain name to divert consumers to a commercial parking page with links is not 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).

## **C. Registered and Used in Bad Faith**

According to paragraph 4(b)(iv) of the Policy, registration or use of a domain name will be considered in bad faith when:

“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.”

The Respondent's registration and use of the disputed domain name wholly incorporating a well-known mark is, in the Panel's view, indicative of bad faith. The Respondent registered the disputed domain name and uses it to redirect to commercial parking pages featuring "Related searches" links, some of which reference the Complainant or pertain to similar services, according to the evidence provided by the Complainant, not contested by the Respondent.

As mentioned in *Andrey Ternovskiy dba Chatroulette v. Alexander Ochkin*, WIPO Case No. [D2017-0334](#):

"It is clear in the Panel's view that in the mind of an Internet user, the disputed domain names could be directly associated with the Complainant's trademark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it (see *AT&T Corp. v. Amjad Kausar*, WIPO Case No. [D2003-0327](#))."

As reminded in section 3.1.4 of the [WIPO Overview 3.0](#):

"Panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful,.."

Finally, the use of a privacy service also seems to confirm the bad faith of the Respondent. While there may be circumstances that make the use of a privacy service legitimate, several UDRP decisions have considered it a circumstance that contributes to consider bad faith proven when it is combined with other types of circumstances. In *GVC Holdings plc / ElectraWorks Limited v. Registration Private, Domains By Proxy, LLC / Adnan Atakan Alta*, WIPO Case No. [D2016-2563](#), the panel found that:

"Although privacy services might be legitimate in certain circumstances, it is for the Panel difficult to see in the present case why the Respondent should need to protect its identity except to make it difficult for the Complainant to protect its trademark rights. The Panel rather believes that the choice of the disputed domain names (which fully incorporate the Complainant's trademark), the content as well as the design of the Respondent's corresponding websites rather indicate that the Respondent deliberately opted for a privacy shield in order to prevent an efficient enforcement of legitimate trademark rights by the Complainant."

In the light of the above, the Panel finds that the Complainant has established registration and use of the disputed domain name in bad faith and concludes that paragraph 4(a)(iii) of the Policy is satisfied.

## 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, <group4whatsapp.com>, be transferred to the Complainant.

*/José Ignacio San Martín Santamaría/*

**José Ignacio San Martín Santamaría**

Sole Panelist

Date: December 23, 2022