

## **ADMINISTRATIVE PANEL DECISION**

WhatsApp LLC v. Bulk Whatsapp Sender, Ravi Enterprises  
Case No. D2022-0457

### **1. The Parties**

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

The Respondent is Bulk Whatsapp Sender, Ravi Enterprises, India.

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

The disputed domain name <bulkwhatsappsender.shop> 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 February 10, 2022. On February 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 14, 2022, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

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 February 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 24, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on April 4, 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 was founded in 2009. It is the provider of the WhatsApp mobile messaging and voice-over-IP service and mobile application, which is a global leader in messaging services for mobile devices, with over 2 billion users in over 180 countries.

The Complainant is the owner of the following trademark registrations for WHATSAPP (the “WHATSAPP trademark”):

- the United States trademark WHATSAPP with registration No. 3939463, registered on April 5, 2011, for services in International Class 42;
- the International trademark WHATSAPP with registration No. 1085539, registered on May 24, 2011, for goods and services in International Classes 9 and 38;
- the European Union Trade Mark WHATSAPP with registration No. 009986514, registered on October 25, 2011, for goods and services in International Classes 9, 38, and 42; and
- the Indian trademark WHATSAPP with registration No. 3111463, registered on November 30, 2015 for goods and services in International Classes 9, 35, 36, 38, 42, and 45.

The Complainant is also the owner of the domain names <whatsapp.com> registered on September 4, 2008, <whatsapp.net>, registered on February 20, 2009, <whatsapp.org>, registered on February 1, 2010, and <whatsapp.us>, registered on January 31, 2010. These domain names resolve to the Complainant’s main website where Internet users may also access the WhatsApp messaging platform.

The disputed domain name was registered on August 16, 2020. It resolves to a commercial website that offers an automated software for sending WhatsApp messages in bulk.

#### **5. Parties’ Contentions**

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

The Complainant states that the disputed domain name is confusingly similar to the WHATSAPP trademark, because it incorporates the trademark in its entirety as its dominant element, and the additional terms “bulk” and “sender” do not sufficiently distinguish the disputed domain name from the trademark.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because the Complainant has not licensed nor authorized it to use the WHATSAPP trademark, and the Respondent has no relationship with the Complainant and is not known by the disputed domain name. According to the Complainant, the Respondent uses the disputed domain name for a commercial website purporting to sell “an automated software designed to send WhatsApp messages in bulk.” This website prominently displays the WHATSAPP trademark and a variation of the Complainant’s telephone logo, and uses a green color that is similar to that used by the Complainant on its official website at “www.whatsapp.com” and on the Complainant’s WhatsApp mobile application. The Complainant notes that the use of automated or bulk messaging on WhatsApp is a violation of the Complainant’s terms of service and harms the Complainant’s ability to safeguard the private nature of the WhatsApp platform and to keep its users safe from abuse.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent’s conduct shows that the Respondent was aware of the Complainant and its WHATSAPP trademark at the time of registration of the disputed domain name, and the reason for its

registration and use was to create a likelihood of confusion with the Complainant and its WHATSAPP trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website with the Complainant, for commercial gain. The Complainant notes that the presence of a disclaimer near the bottom of the Respondent's website indicates that the Respondent is well aware of the Complainant's WHATSAPP trademark and the confusion caused by the disputed domain name, and cannot cure the Respondent's bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

- (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; and,
- (iii) the Respondent has registered and is using the disputed domain name in bad faith.

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

The Complainant has provided evidence and has thus established its rights in the WHATSAPP trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the generic Top-Level Domain ("gTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1. The Panel sees no reason not to follow the same approach here, so it will disregard the ".shop" gTLD of the disputed domain name.

The relevant part of the disputed domain name incorporates the elements "bulk", "whatsapp", and "sender". The "whatsapp" element reproduces the WHATSAPP trademark entirely and makes it easily recognizable in the disputed domain name. Where the relevant trademark is recognizable within a disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element. See section 1.8 of [WIPO Overview 3.0](#).

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the WHATSAPP trademark in which the Complainant has rights.

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

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 domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain names, stating that the Respondent has not been authorized by the Complainant to use the WHATSAPP trademark and is not known by the disputed domain name. According to the Complainant, the automated bulk messaging application offered for sale on the Respondent's website violates the Complainant's terms of service, and is offered for commercial gain, and the website uses the WHATSAPP trademark and features the same green color scheme as WhatsApp, thus creating a misleading impression of association with the Complainant. The Complainant submits that the presence of a disclaimer at the bottom of the Respondent's website does not render the Respondent's activities *bona fide*. Thus, 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 submitted a Response and has not denied the contentions of the Complainant and the evidence submitted by it. This evidence shows that the disputed domain name has indeed been used for a website that features the WHATSAPP trademark and offers an automated bulk messaging application to be used in the Complainant's WhatsApp platform, and the use of such application appears to be in violation of the WhatsApp Terms of Service as submitted by the Complainant.

All the above supports a finding that the Respondent, being aware of the popularity of the Complainant's WhatsApp service and of its WHATSAPP trademark, has more likely than not registered and used the disputed domain name in an attempt to exploit their popularity to attract Internet users to the Respondent's website at the disputed domain name and to offer for commercial gain an application to be used in conjunction with the Complainant's platform would appear to be in violation of the Complainant's terms of service. The Panel does not regard such conduct as a legitimate activity that may give rise to rights or legitimate interests of the Respondent in the disputed domain name under the Policy.

The Panel notes the Complainant's allegation that the Respondent's website at the disputed domain name contains a disclaimer for the lack of relationship between the Parties, but the Panel agrees that the presence of this disclaimer does not render the Respondent's activities *bona fide* under the Policy. When Internet users have a chance to read the disclaimer they have already been attracted to the Respondent's website, under the impression that the disputed domain name and the website are associated with the Complainant's WHATSAPP trademark, and would be exposed to the commercial offer on it.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

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

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) 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."

As discussed above, the disputed domain name is confusingly similar to the WHATSAPP trademark and includes the dictionary words “bulk” and “sender”, which describe the service performed by the software offered on the Respondent’s website. The Respondent does not deny that it has used the disputed domain name for a website that offers exactly this – an automated bulk message sending application to be used in conjunction with the Complainant’s WhatsApp service, and its operation would appear to be in violation of the Complainant’s terms of service. The Internet users of the Respondent’s application have to pay a fee for it, which shows that the Respondent’s activities are aimed to attract for commercial gain. As discussed in the section on rights and legitimate interests above, the presence of a disclaimer on the Respondent’s website does not render its activities *bona fide* under the Policy.

Taking the above into account, the Panel accepts that it is more likely than not that the Respondent has registered and used the disputed domain name with knowledge of the Complainant and targeting the WHATSAPP trademark in an attempt to attract, for commercial gain, Internet users to the Respondent’s website, by creating a likelihood of confusion with the WHATSAPP trademark as to the affiliation or endorsement of its website and of the mobile application offered on it.

Therefore, the Panel finds that the disputed domain name has been registered and 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 <bulkwhatsappsender.shop> be transferred to the Complainant.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: April 18, 2022