

## **ADMINISTRATIVE PANEL DECISION**

WhatsApp LLC v. wangcong

Case No. D2022-1819

### **1. The Parties**

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

The Respondent is wangcong, China.

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

The disputed domain name <girlwhatsappgroup.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 19, 2022. On May 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 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 May 24, 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 May 25, 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 May 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 15, 2022.

The Center appointed Tuukka Airaksinen as the sole panelist in this matter on June 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. Its service is used by over 2 billion people in over 180 countries and is available in 60 different languages.

The Complainant owns the trademark WHATSAPP, which has been used since 2009. The Complainant's WHATSAPP trademark has been registered in several jurisdictions around the world, for example, in the United States under registration No. 3939463 as of April 5, 2011.

The disputed domain name was registered on May 25, 2021. The disputed domain name currently does not resolve to an active website, but used to resolve to a website displaying adult-oriented and pornographic content.

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

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

The disputed domain name, which adds the descriptive terms "girl" and "group" to the Complainant's WHATSAPP mark, is confusingly similar to the Complainant's trademark. The disputed domain name incorporates the Complainant's trademark in its entirety as a dominant element, and the additional terms are not sufficient to distinguish the disputed domain name from the Complainant's trademark.

The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not licensed or otherwise 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 Complainant is not aware of the Respondent being commonly known by the disputed domain name and the Respondent has used the disputed domain name to direct to a website with adult-oriented and pornographic content. UDRP panels have consistently held that the use of a domain name to direct to a website with adult-oriented content, presumably for commercial gain, is not a *bona fide* offering of goods or services.

The Respondent has registered the disputed domain name that is confusingly similar to the Complainant's trademark and has used the disputed domain name to provide adult-oriented content, presumably for commercial gain, which suggests bad faith. Because the WHATSAPP mark is so obviously connected with the Complainant and the disputed domain name clearly references this mark, the registration and use of the disputed domain name by the Respondent, who has no connection with the Complainant, supports a finding of bad faith under the Policy.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

In order to obtain the transfer of a domain name, a complainant must prove the three elements of paragraph 4(a) of the Policy, regardless of whether the respondent files a response to the complaint or not. The first element is that the domain name is identical or confusingly similar to a trademark or service mark in which

the complainant has rights. The second element the complainant must prove is that the respondent has no rights or legitimate interests in respect of the domain name. The third element the complainant must establish is that the domain name has been registered and is being used in bad faith.

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

Paragraph 4(a)(i) of the Policy requires that the Complainant establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Consequently, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to this trademark.

According to section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[t]he applicable Top Level Domain ('TLD') 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".

Furthermore, "[w]here 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 term(s) may however bear on assessment of the second and third elements". See section 1.8 of the [WIPO Overview 3.0](#).

The disputed domain name is confusingly similar to the Complainant's trademark, which is clearly recognizable in the disputed domain name. The addition of the terms "girls" and "group" does not prevent a finding of confusing similarity with the Complainant's trademark.

This means that the disputed domain name is confusingly similar with the Complainant's trademark and hence the first element of the Policy has been fulfilled.

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

Paragraph 4(a)(ii) of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests to the disputed domain name.

It is widely accepted among UDRP panels that once a complainant has made a *prima facie* case showing the absence of the respondent's rights or legitimate interests in a disputed domain name, the burden of production shifts to the respondent to come forward with evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of the Policy. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); and section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain name, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain name, and is not commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy.

Furthermore, because the Complainant's WHATSAPP trademark is distinctive and widely used, it is difficult to conceive any plausible legitimate noncommercial or fair use of the disputed domain name by the Respondent.

Moreover, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant's trademark. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that has not been rebutted by the Respondent. Considering the Panel's findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain name. Therefore, the Panel finds that the second element of the Policy is fulfilled.

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

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides that 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 the disputed domain name in bad faith:

“(i) circumstances indicating that [the respondent has] registered or has 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 [the respondent's] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] 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 [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location.”

The Panel is of the opinion that the Complainant's trademark WHATSAPP is distinctive and widely used, which means that it is inconceivable that the Respondent would not have been aware of the Complainant's trademark when registering the disputed domain name. It is also difficult to conceive any plausible legitimate noncommercial or fair use of the disputed domain name by the Respondent.

The disputed domain name currently does not resolve to an active website, but to an error page. Accordingly, the disputed domain name is not in active use, see *e.g.*, *Accenture Global Services Limited v. Domain eRegistration*, WIPO Case No. [D2018-1994](#). This, however, does not prevent the finding of bad faith under the doctrine of passive holding. See section 3.3 of [WIPO Overview 3.0](#). In this regard, the Panel notes that the Complainant's trademark is well known, the Respondent has not responded to the Complaint, there are no good faith uses to which the disputed domain name may be put.

Moreover, the Complainant provided evidence that the disputed domain name previously resolved to a website with adult-oriented content, which the Panel finds in the present circumstances supports a finding that the disputed domain name has been registered and is being used in bad faith.

Therefore, the Panel finds that the third element of the Policy is fulfilled.

## 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 <girlwhatsappgroup.com> be transferred to the Complainant.

*/Tuukka Airaksinen/*

**Tuukka Airaksinen**

Sole Panelist

Date: July 6, 2022