

## **ADMINISTRATIVE PANEL DECISION**

WhatsApp LLC. v. Arun Cha  
Case No. D2022-3046

### **1. The Parties**

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

The Respondent is Arun Cha, India.

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

The disputed domain name, <mywhatsappstatusvideo.com> (the “Domain Name”), 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 August 18, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 19, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on August 23, 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 August 24, 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 August 29, 2022. In accordance with the Rules, paragraph 5, the due date

for Response was September 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 20, 2022.

The Center appointed Tony Willoughby as the sole panelist in this matter on September 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.

The invitation to the Complainant to file an amended Complaint stemmed from the fact that the Domain Name was registered in the name of a privacy service. In response to the Center's registrar verification request, the Registrar disclosed the name and address of the entity in whose name the Domain Name is currently registered. The amended Complaint names the underlying registrant as the Respondent.

#### **4. Factual Background**

The Complainant, a Delaware limited liability company, operates a messaging and voice-over-IP service and mobile application under and by reference to the name "WhatsApp", a name that it has used since 2009. The Complainant is the registered proprietor of numerous trade mark registrations covering the "WhatsApp" name. One such registration is United States Registration No.3,939,463 WHATSAPP (standard character mark) registered on April 5, 2011 (application filed on April 1, 2009) for a variety of services in class 42.

That the Complainant's WHATSAPP trade mark is very well known internationally is clear from the evidence before the Panel and as repeatedly recognised in previous decisions under the Policy. In *WhatsApp Inc. v. Donald Huen*, WIPO Case No. [D2020-2331](#) the panel stated:

"The global recognition of the Complainant's trademark is well evidenced in prior UDRP decisions, repeatedly maintaining that "Complainant's trademark WHATSAPP has become well known around the world"; that it is "composed of a coined term that confers to it certain distinctiveness" and that "Respondents must have been aware of the existence of Complainant's trademark WHATSAPP at the time of registration of each disputed domain name." 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 Complainant's WhatsApp product has a "status" feature that allows users to share text, photo, video, and GIF updates that other users may view and interact with and incorporates a video calling feature which allows users to make and receive video calls.

The Domain Name was registered on October 8, 2019 and is connected to a website purportedly suggesting statuses and videos for use with the Complainant's WhatsApp application while directing users to a commercial website featuring sponsored advertisements and displaying links that download files directly to a user's computer. It also features a link to the Complainant's website at "www.whatsapp.com".

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

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

The Complainant contends that the Domain Name is confusingly similar to a trade mark in which the Complainant has rights; that the Respondent has no rights or legitimate interests in respect of the Domain Name; and that the Domain Name has been registered and is being used in bad faith.

The Complainant contends that: “the only reason for Respondent’s registration of the domain name, which includes the exact WhatsApp Mark, is to create a likelihood of confusion with Complainant and its mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website with Complainant. Because the WhatsApp Mark is so obviously connected with Complainant and its well-publicized mobile application and services, and the subject domain name clearly references this mark, the registration and use of the subject domain name by Respondent, who has no connection with 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**

### **A. General**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (i) the 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 Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

### **B. Identical or Confusingly Similar**

The Domain Name comprises the Complainant’s WHATSAPP trade mark preceded by the word “my” and followed by the dictionary words “status” and “video” and the “.com” generic Top-Level Domain identifier.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition explains the test for identity or confusing similarity under the first element of the Policy and includes the following passage:

“While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.”

The Complainant’s WHATSAPP trademark is readily recognizable in its entirety in the Domain Name. The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights.

While not directly relevant to the assessment under this element of the Policy, the addition of the words “status” and “video” in conjunction with the Complainant’s WHATSAPP trade mark make it abundantly clear, if any clarification were necessary, that in selecting the Domain Name the Respondent had the Complainant in mind.

### **C. Rights or Legitimate Interests**

The Complainant asserts that it has no connection with the Respondent and has given the Respondent no permission to use its WHATSAPP trade mark.

The Complainant recites the circumstances set out in paragraph 4(c) of the Policy, any of which if found by the Panel to be present shall demonstrate rights or legitimate interests for the purposes of this element of the Policy, and contends that none of them is applicable. The Complainant contends that the use being made of the Domain Name, which is calculated to deceive Internet users into believing that the Respondent's website (featuring a direct link to the Complainant's website) is in some way associated with the Complainant, cannot constitute a *bona fide* offering of goods or services for the purposes of paragraph 4(c)(i) of the Policy; self evidently from the Registrar's Whois record, the Domain Name is not the Respondent's name, and the Complainant is unaware of anything to suggest that the Respondent is commonly known by the Domain Name, rendering paragraph 4(c)(ii) of the Policy inapplicable; finally, the Complainant contends that the use being made of the Domain Name is a commercial use, is not fair and is not covered by paragraph 4(c)(iii) of the Policy.

The Panel is satisfied that the Complainant has made out a *prima facie* case under this element of the Policy; in other words, a case calling for an answer from the Respondent. The Respondent has not responded to the Complainant's contentions. While respondents may fail to respond for a variety of reasons, in this case the Panel is satisfied on the balance of probabilities that the Respondent has failed to respond because he has no satisfactory answer to the Complainant's contentions.

The Panel can conceive of no basis upon which the Respondent could be said to have acquired rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

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

The Complainant's contentions under this element of the Policy are conveniently encapsulated in the following passage from the Complaint:

"Moreover, given the fame of Complainant's WhatsApp Mark, and the Respondent's unauthorized incorporation of the exact WhatsApp Mark into the subject domain name, there are no circumstances under which the Respondent's use of the subject domain name could plausibly be in good faith under the Policy. As one panel explained, "[i]t is unlikely that Respondent could have registered the Domain Names for any legitimate purpose, given in particular the notoriety of Complainant's WHATSAPP mark." *WhatsApp Inc. v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. [D2018-1654](#); *WhatsApp, Inc. v. M. Rashid Alkalbani et al.*, WIPO Case No. [D2016-2299](#) ("[T]he WHATSAPP mark is not one that traders could legitimately adopt for commercial use other than for the purpose of creating an impression of an association with the Complainant.")"

The Panel accepts that the findings of the panelists in those cases are applicable to the facts of this case. The evidence supports the Complainant's contention that the Respondent registered the Domain Name with knowledge of the Complainant and its WhatsApp product and with the intention of deceiving Internet users into believing the Respondent's website to be in some way associated with the Complainant. The Panel accepts on the balance of probabilities that the Respondent's objective was commercial gain and notes that none of the Complainant's contentions has been challenged by the Respondent.

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances, which if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. Paragraph 4(b)(iv)

provides: “by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel finds that the Domain Name has been registered and is being used in bad faith within the meaning of paragraphs 4(a)(iii) and 4(b)(iv) 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 Domain Name, <mywhatsappstatusvideo.com>, be transferred to the Complainant.

*/Tony Willoughby/*

**Tony Willoughby**

Sole Panelist

Date: September 28, 2022