

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / Rakesh Sinha

Case No. D2022-3128

1. The Parties

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

The Respondent is Registration Private, Domains By Proxy, LLC, United States of America / Rakesh Sinha, India.

2. The Domain Name and Registrar

The disputed domain name <whatsappcallgirls.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 August 24, 2022. On August 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 26, 2022, the Registrar transmitted by email to the Center its verification 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 August 26, 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 30, 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 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 20, 2022. On August 26, 2022, September 1 and 21, 2022, the Center received communications from the Respondent in response to which the Center sent to the Parties an email regarding possible settlement. The Complainant did not request a suspension of the proceedings. The Respondent did not submit a formal response. Accordingly, on September 21, 2022, the Center notified the Parties that it was proceeding to panel appointment.

The Center appointed Alistair Payne as the sole panelist in this matter on September 23, 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 is the provider of one of the world's most popular mobile messaging applications with users in more than 180 countries and is rated among the top mobile applications in the market. It is used by over 2 billion people and is available in 60 different languages, and is the fourth most downloaded application globally.

The Complainant owns numerous trade mark registrations worldwide for its WHATSAPP mark including Indian trade mark registration number 2149059 registered on May 24, 2011. The Complainant owns the domain name <whatsapp.com> from which it hosts its main website and also owns a number of other domain names that incorporate its WHATSAPP mark in combination with various generic and country code Top-Level domain extensions, including: <whatsapp.net>, <whatsapp.org>, and <whatsapp.us>.

The disputed domain name has been registered on October 30, 2017, and resolves to a website featuring pornographic content and advertisement of escort services in India.

5. Parties' Contentions

A. Complainant

The Complainant submits that the disputed domain name wholly incorporates its WHATSAPP trade mark and adds the term "call girls" to it. It says that the addition of a descriptive term to a complainant's mark in a domain name fails to distinguish the domain name from the mark and that in this case the addition of the "call girls" does not prevent a finding of confusing similarity.

The Complainant submits that it has not licensed or authorised the Respondent to use its WHATSAPP mark, and it says that the Respondent does not have any legal relationship with the Complainant that entitles the Respondent to use its trade mark. It says that neither the Whois data for the disputed domain name nor the corresponding website to which it resolves, suggests that the Respondent is known by the disputed domain name. Further, the Complainant says that it monitors the use of its WHATSAPP mark and is not aware of the Respondent being known by the disputed domain name in any other way.

It says that the Respondent has no legitimate reason for using the WHATSAPP mark within the disputed domain name and that the Respondent is using the disputed domain name to impersonate the Complainant and to direct users to a commercial website for escort services with adult related content which in no way relates to the Complainant. The Complainant notes that the Respondent prominently uses the WHATSAPP mark repeatedly throughout its website, uses the Complainant's registered telephone logo design and also provides an email address associated with the domain name as a contact information point. The Complainant notes that the website encourages users to "Book Me As Your Erotic Girlfriend" and provides a list of accepted credit card payment options. It says that to further deceive users visiting the website, the Respondent displays a sidebar at the bottom of the website in a teal color similar to that used by the Complainant on its legitimate WHATSAPP website and mobile application and that this sidebar remains visible as the user scrolls through the website and when clicked, directs to the Complainant's own website at "www.web.whatsapp.com".

The Complainant says that such use is likely to confuse or deceive consumers and make them think that there is an affiliation where in fact there is not one and also says that use in connection with pornographic or adult content is not consistent with *bona fide* use of the disputed domain name under the Policy. The

Complainant notes that under its online brand guidelines, it expressly prohibits the use of the WHATSAPP mark in this manner and that the Respondent's use of the WHATSAPP mark within the disputed domain name and in connection with its application is unauthorised and clearly a violation of these terms.

The Complainant submits that the Respondent does not appear to be commonly known by the disputed domain name. The Whois data for the disputed domain name does not identify a person or company commonly known by the disputed domain name and the Respondent was identified by the registrar in its verification process as being called "Rakesh Sinha" which, says the Complainant, does not resemble the disputed domain name in any way. It also contends that the disputed domain name is clearly used to misdirect users into navigating to Respondent's website to promote escort services and adult content. The Complainant says that such use is not a legitimate, noncommercial, or fair use.

As far as bad faith is concerned, the Complainant notes that the Respondent registered the disputed domain name on October 30, 2017, which postdates the registration and use of the Complainant's mark by many years and that in view of the degree of renown attaching to the Complainant's WHATSAPP mark the Respondent must have been aware of the Complainant's mark when it registered the disputed domain name.

The Complainant says that the circumstances here support a finding of bad faith under paragraph 4(b)(iv) of the Policy. It says that the Respondent has registered the confusingly similar disputed domain name and uses it to direct users to a website with pornographic content and which advertises escort services which in and of itself amounts to bad faith. The Complainant notes that in order to further create a likelihood of confusion, the Respondent repeatedly uses the WHATSAPP mark throughout its website and also uses the Complainant's registered telephone logo mark. It says that the only reason for the Respondent's registration of the disputed domain name, which includes the exact WHATSAPP Mark, is to create a likelihood of confusion with the Complainant and its mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website with the Complainant. It says that because the WHATSAPP Mark is so obviously connected with Complainant and its well-publicised services and mobile application and the disputed domain name clearly references this mark, the registration and commercial 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 file a formal response but within the timeframe for response, sent two emails to the Center asserting that it did not wish to hold the disputed domain name and that it should be deleted.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns various registered trade mark rights internationally for its WHATSAPP mark, including Indian trade mark registration number 2149059 registered on May 24, 2011. The disputed domain name wholly incorporates this mark and therefore is confusingly similar to it. The addition in the disputed domain name of the English term "call girls" after the Complainant's WHATSAPP mark does not prevent a finding of confusing similarity.

As a result, the Complaint succeeds under this element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that the Respondent has no legitimate reason for using the WHATSAPP mark within the disputed domain name and instead that the Respondent is using the disputed domain name to impersonate the Complainant and to direct users to a commercial website featuring pornographic content and which advertises escort services in Pune in India and seems to provide the means for booking such

services.

The Complainant has also submitted that the Respondent does not appear to be commonly known by the disputed domain name. It has been noted that the Whois data for the disputed domain name does not identify a person or company commonly known by the disputed domain name and that the Respondent was identified by the registrar in its verification process as being called "Rakesh Sinha" which does not resemble the disputed domain name in any way. It is apparent to the Panel that the disputed domain name is being used to misdirect users towards the Respondent's website in order to promote escort services which is neither a legitimate, noncommercial, or fair use of the disputed domain name.

In all these circumstances, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. As the Respondent has failed to rebut this case, the Panel finds that the Complainant has successfully made out its case and that the Complaint also succeeds under this element of the Policy.

C. Registered and Used in Bad Faith

As far as bad faith registration is concerned, the Respondent registered the disputed domain name on October 30, 2017, which postdates the registration and use of the Complainant's mark by many years. In view of the very substantial degree of worldwide renown attaching to the Complainant's WHATSAPP mark the Panel finds that the Respondent must have been aware of the Complainant's mark when it registered the disputed domain name.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

In this case the Respondent is using the disputed domain name containing the WHATSAPP mark to direct users to a website with pornographic content that advertises and facilitates the booking of escort services in the city of Pune in India. It is apparent that the Respondent is using the disputed domain name incorporating the Complainant's very well reputed WHATSAPP mark to attract Internet users by creating a likelihood of confusion with the Complainant and its mark as to the source, sponsorship, affiliation, or endorsement of the website. The services being promoted from the website are obviously commercial, and the Panel finds that the requirements of paragraph 4(b)(iv) of the Policy are fulfilled. The Respondent's use of a privacy service to mask its identity only reinforces the Panel's view of the Respondent's bad faith.

The Panel further notes that the unauthorised use of a well reputed-mark to redirect to a website containing pornographic content or advertising related services has regularly been found by past panels to amount to bad faith in and of itself.

Accordingly, the Panel finds that the disputed domain name has both been registered and used in bad faith and that the Complaint also succeeds under this element 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 disputed domain name, <whatsappcallgirls.com>, be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: October 7, 2022