

## **ADMINISTRATIVE PANEL DECISION**

WhatsApp LLC v. Rahul Kumar, tech Vikash  
Case No. D2022-3129

### **1. The Parties**

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

The Respondent is Rahul Kumar, tech Vikash, India.

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

The disputed domain name <indianwhatsappgroup.com> (the “Domain Name”) is registered with Atak Domain Hosting Internet ve Bilgi Teknolojileri Limited Sirketi d/b/a Atak Teknoloji (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 Domain Name. On August 26, 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 29, 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 September 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 27, 2022.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on October 3, 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 a company operating the WhatsApp instant messaging and voice-over-IP calling application. Currently, around 2 billion people in over 180 countries use the Complainant's WhatsApp application. According to Statista, there are over 487 million WhatsApp users in India alone.

The Complainant is the owner of numerous WHATSAPP trademark registrations, including:

- the United States of America Trademark Registration WHATSAPP No. 3939463 registered on April 5, 2011;
- the Indian Trademark Registration WHATSAPP No. 2149059 registered on May 24, 2011;
- the International Trademark Registration WHATSAPP No. 1396913 registered on December 21, 2017;
- the European Union Trademark Registration WHATSAPP No. 014814347 registered on April 26, 2016.

The Complainant is also the owner of numerous domain names incorporating its WHATSAPP trademark, such as <whatsapp.net>, <whatsapp.org> or <whatsapp.us>.

The Domain Name was registered on October 30, 2020.

The Complaint contains evidence that the Domain Name resolved previously to the website that impersonated the Complainant and contained sponsored advertisements and links (the "Website"). At the time the Complaint was filed, the Domain Name resolved to an inactive website. As of the date of this Decision, the Domain Name still resolves to the inactive website.

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

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

The Complainant requests that the Domain Name be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Name is confusingly similar to the WHATSAPP trademark in which the Complainant has rights.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant submits that the Domain Name was registered and is being used in bad faith.

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

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

## 6. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

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

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

### A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the Domain Name is identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant holds valid WHATSAPP trademark registrations which precede the registration of the Domain Name. The Domain Name incorporates this trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *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](#)).

The addition of the terms “indian” and “group” in the Domain Name does not prevent a finding of confusing similarity between the Domain Name and the Complainant’s WHATSAPP trademark. UDRP panels have consistently held that where 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. See section 1.8, [WIPO Overview 3.0](#).

The Top-Level Domain (“TLD”) “.com” in the Domain Name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Name is confusingly similar to the Complainant’s trademark. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name.

The respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made 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 prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it intends to make a legitimate, noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the Complainant's WHATSAPP trademark registration predate the Respondent's registrations of the Domain Name. There is no evidence in the case file that the Complainant has licensed or otherwise permitted the Respondent to use the WHATSAPP trademark or to register the Domain Name incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name.

Moreover, it results from the evidence in the record that the Respondent does not make use of the Domain Name in connection with a *bona fide* offering of goods or services, as well as it does not make a legitimate, noncommercial or fair use of the Domain Name without intent for commercial gain. On the contrary, the Domain Name is used to attract Internet users to the Website which impersonates the Complainant by displaying the Complainant's WHATSAPP trademark and logo, as well as contains sponsored advertisements and links. Such use of the Domain Name does not confer rights or legitimate interests on the Respondent.

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant's *prima facie* case. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

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

The third requirement the Complainant must prove is that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the WHATSAPP trademark predate the registration of the Domain Name. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration of the Domain Name. This finding is supported by the content of the Website featuring the Complainant's WHATSAPP trademark and logo, as well as suggesting legitimate association with the Complainant. Moreover, it has been proven to the Panel's satisfaction that the

Complainant's WHATSAPP trademark is well known and unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of services under this trademark. In sum, the Respondent in all likelihood registered the Domain Name with the expectation of taking advantage of the reputation of the Complainant's WHATSAPP trademark.

Moreover, the Complainant presented evidence that the Domain Name was used in bad faith by the Respondent to attract Internet users to the Website featuring sponsored advertisements and links. In addition, as indicated above, the Complaint contains evidence that the Domain Name is listed on several block lists which supports the finding that the Domain Name was used in connection with spam, malware, or other domain name abuse. By reproducing the Complainant's WHATSAPP trademark in the Domain Name and on the Website, the Respondent suggested the legitimate association with the Complainant. There is thus little doubt that the Respondent intended to earn profit from the confusion created with Internet users and give credibility to its operations. In sum, this Panel finds that the Respondent used the Domain Name in an attempt to attract, for commercial gain, Internet users to the Website by creating a likelihood of confusion with the WHATSAPP trademark as to the source, sponsorship, affiliation, or endorsement of the Website or the activity carried out through the Website by the Respondent.

Finally, the Panel notes that at the time of submitting the Complaint, the Domain Name resolved to an inactive website. In the overall circumstances of this case, the Panel finds that the Respondent's passive holding of the Domain Name does not prevent a finding of bad faith. As numerous UDRP panels have held, passive holding, under the totality of circumstances of the case, may not prevent a finding of bad faith under the Policy. Here, given the Respondent's previous use of the Domain Name, the Respondent's failure to participate in this proceeding, and the implausible good faith use to which the Domain Name could be put, the Panel agrees with the above.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under paragraph 4(a)(iii) 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 <indianwhatsappgroup.com> be transferred to the Complainant.

*Piotr Nowaczyk*

**Piotr Nowaczyk**

Sole Panelist

Date: October 17, 2022