

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Registration Private/ Domains By Proxy, LLC / Kiran Kumar
Case No. D2022-3130

1. The Parties

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

The Respondent is Registration Private/ Domains By Proxy, LLC, USA / Kiran Kumar, India.

2. The Domain Name and Registrar

The disputed domain name <whatsappgrouplink.app> 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 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 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 September 3, 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 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 27, 2022. The Respondent sent informal communications to the Center between August 29, 2022, and September 14, 2022, which are summarised below. The Respondent did not submit any formal response. Accordingly, the Center notified the parties that it would proceed to panel appointment on September 29, 2022.

The Center appointed Mihaela Maravela as the sole panelist in this matter on October 11, 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 language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant operates a messaging and voice over IP service and mobile application. The Complainant is a global leader in messaging services for mobile devices, with over 2 billion people in over 180 countries now using its application to stay in touch with friends and family via free messages and calling. The Complainant's application has consistently ranked among the top apps in the market. The Complainant's application also enables users to create and join group chats with other users within the Complainant's mobile application.

The Complainant proved ownership of many WHATSAPP trademarks, including the USA trademark No. 3,939,463 registered on April 5, 2011, the European Union Trademark No. 009986514 registered on October 25, 2011, the International trademark No. 1085539 registered on May 24, 2011.

In addition to the <whatsapp.com> domain name, the Complainant owns and operates numerous other domain names consisting of the WHATSAPP trademark in combination with various generic and country code top-level domain extensions, including <whatsapp.net>, <whatsapp.org>, and <whatsapp.us>.

The disputed domain name was registered on September 7, 2020, and resolves to a website offering various statuses for use with the Complainant's application, and contains advertisements with links to third party services. The website also features the Complainant's trademark and logo. At the bottom of the page a disclaimer is displayed, stating *inter alia* that "[t]his website is not affiliated with WhatsApp."

On August 29, 2022, following the Notice of Registrant Information from the Center, the personal-named Respondent sent an email to the Center saying that "If you want that domain name i will transfer". On August 30, 2022, the Respondent wrote another email to the Center, asking how to transfer the disputed domain name. On August 30, 2022, the Center wrote to the Parties, informing them that if they wish to explore settlement options, the Complainant should submit a request for suspension. No response was received from the Complainant. Between August 30, 2022, and September 2, 2022, the Respondent wrote a number of emails to the Center, saying that he is ready to transfer/delete the disputed domain name and asking for guidance on further steps, and also saying that the disputed domain name is locked and cannot delete it, but will surely delete it.

On September 3, 2022, the Respondent wrote a further email to the Center saying *inter alia* that "I have purchased the Whatsappgrouplink.app domain name from Godaddy register, and i don't know about copyrights and trademarks, after this mail i have shared this information with my dear ones. After that I came to know that trade marks domains are not actually owned by us, and it will always remain with the original owners of the trademarks. [...] I done registering the domain only without any knowledge of Trademarks and copyrights. And I'm ready to transfer it to the complaint or Trademark owner" Between September 7, 2022, and September 14, 2022, the Respondent wrote several emails to the Center asking for the disputed domain name to be suspended or cancelled/deleted from his "godaddy account".

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to its WHATSAPP trademarks, as the additional terms "group" and "link" do not sufficiently serve to distinguish or differentiate the disputed domain name from the said trademark, especially as "group" is descriptive of and relevant to the Complainant's services.

As regards the second element, the Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not licensed nor authorized the Respondent to use the Complainant's WHATSAPP trademark, nor does the Respondent have any legal relationship with the Complainant that would entitle the Respondent to use the WHATSAPP trademark. Further, the Whois data for the disputed domain name does not support a finding that the Respondent is known by the disputed domain name. Moreover, the Complainant contends that the Respondent is using the disputed domain name to impersonate the Complainant, likely generating revenue from clickthrough advertising. The Respondent prominently uses the WHATSAPP trademark as well as the Complainant's logo throughout its website and provides links purportedly to join groups on the Complainant's WhatsApp application. Moreover, the disputed domain name is also on one or more block lists indicating that it has been used in connection with spam, malware, or other domain name abuse.

With respect to the third element, the Complainant argues that the Respondent has registered the confusingly similar disputed domain name and uses it to provide a website with links purportedly to join groups on the Complainant's application, and display advertisements which presumably generate click-through revenue for the Respondent. To further create a likelihood of confusion, the Respondent repeatedly uses both the WHATSAPP trademark and logo throughout its website. According to the Complainant, the Respondent's conduct plainly evidences bad faith registration and use of the disputed domain name under the Policy. The Respondent's bad faith is further indicated by the fact that the disputed domain name is listed on one or more block lists indicating previous use in connection with spam, malware, or other domain name abuse. The Complainant also contends that in addition to the disputed domain name, the Respondent has targeted another famous and distinctive trademark, and has been the respondent in another UDRP proceeding where the transfer of infringing domain names was ordered. The presence of a disclaimer on the Respondent's website indicates that the Respondent is fully 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 formally reply to the Complainant's contentions.

6. Discussion and Findings

In the informal submissions made by the Respondent it appears to have consented to the transfer of the disputed domain name. However, given the circumstances of the case, particularly the fact that the Complainant has not asked for the suspension of the proceedings to explore settlement options, hence it appears to have expressed a preference for a recorded decision and also the fact that the Respondent denied bad faith in registration of the disputed domain name, and that the disputed domain name still resolves to an active website, the Panel will proceed to a decision on the merits. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), Section 4.10.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has proved rights over the WHATSAPP trademark.

The disputed domain name incorporates the trademark WHATSAPP in its entirety, in addition to descriptive terms, which does not in the view of the Panel prevent the Complainant's trademark from being recognizable within the disputed domain name. Many UDRP panels have found that a disputed domain name is confusingly similar where the relevant trademark is recognizable within the disputed domain name. See section 1.7 of the [WIPO Overview 3.0](#).

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".app", is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case, the Complainant has established a *prima facie* case that it holds rights over the trademark WHATSAPP and claims that the Respondent has no legitimate reason to acquire and use the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. Rather, according to the unrebutted evidence of the Complainant, the website at the disputed domain name is used as a blog about chat groups, with various links purportedly to join groups on the Complainant's application, likely generating revenue from clickthrough advertising. Such use could incorrectly suggest that the website is operated by an affiliate of the Complainant. Moreover, the disclaimer at the bottom of the website at the disputed domain name might not be entirely clear as it is included after a copyright notice stating: "All Rights Reserved", which allows the Panel to infer that the Respondent was seeking to create a false impression of association with the Complainant. Such use does not amount to a *bona fide* offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name. Furthermore, the nature of the disputed domain name, that includes the Complainant's well-established trademark, carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Moreover, according to the unrebutted evidence by the Complainant, the disputed domain name has been flagged as a security risk for phishing and/or malware which cannot amount to a *bona fide* offering of goods and services or a legitimate non-commercial or fair use.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name.

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because the Respondent did not formally respond to the Complainant's contentions.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, “in particular but without limitation”, be evidence of the disputed domain name’s registration and use in bad faith.

The Complainant’s registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. The disputed domain name resolves to a website reproducing the Complainant’s trademark and logo. Given the distinctiveness and extensive use of the Complainant’s trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant’s trademarks, and to target those trademarks.

As regards the use, the disputed domain name resolves to a website where the Complainant’s trademark and logo were displayed together with various links purportedly to join groups on the Complainant’s application, likely generating revenue from clickthrough advertising. The Panel is of the view that in light of the Respondent’s use of the disputed domain name, paragraph 4(b)(iv) of the Policy applies, in that bad faith registration and use can be found in respect of a disputed domain name, where a 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 a complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location. Also, the combination of the Complainant’s WHATSAPP trademark together with the terms “group” and “link” carries a risk of implied affiliation with the Complainant, which leads the Panel to find it implausible that the disputed domain name could be put to good faith use by the Respondent. Given that the overall circumstances of the case point to the Respondent’s bad faith, the mere existence of the disclaimer on the website at the disputed domain name cannot cure such bad faith. See [WIPO Overview 3.0](#), section 3.7.

According to the unrebutted evidence in the case file, the disputed domain name has been flagged as a security risk for phishing and/or malware which are both indications of bad faith registration and use.

Moreover, the Respondent has not formally participated in these proceedings and has failed to rebut the Complainant’s contentions and to provide any evidence of actual or contemplated good-faith use and indeed none would seem plausible.

In the Panel’s view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. Consequently, the Panel concludes that the condition of paragraph 4(a)(iii) 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, <whatsappgrouplink.app>, be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: October 25, 2022