

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Sunil Digital
Case No. D2022-3617

1. The Parties

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

The Respondent is Sunil Digital, India.

2. The Domain Name and Registrar

The disputed domain name <downloadwhatsappstatus.com> (“Disputed 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 September 29, 2022. On September 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 3, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 4, 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 October 14, 2022.

The Center verified that the 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 October 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 15, 2022.

The Center appointed Peter Wild as the sole panelist in this matter on November 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 owner of the well-known trademark WHATSAPP, which it uses almost worldwide for a messaging and voice over IP service and mobile application. The Complainant is the global leader in these services. One element of the Complainant's services there is a "status" feature which allows users to share text, media *etc.* The Complainant owns a large number of trademarks for WHATSAPP, *e.g.*, United States Registration No. 3,939,463 WHATSAPP files April 1, 2009, registered April 5, 2011, or India Registration No. 2149059 WHATSAPP filed May 24, 2011, registered May 24 2011.

The Disputed Domain Name was registered on December 22, 2021. At the time of writing this decision, the Disputed Domain Name resolves to an error page. Initially it resolved to host a WordPress template page with no significant content.

5. Parties' Contentions

A. Complainant

The Complainant contends that it is the owner of a number of trademarks consisting of its name "WhatsApp" and that it has a strong reputation for the services under this trademark. It has a worldwide presence, in particular as a brand for the most used and known messenger service. The Complainant asserts that the Disputed Domain Name is confusingly similar to the above-mentioned WHATSAPP trademark and that its services include a well-used "status" feature, to which the Disputed Domain Name refers. The Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Name, which was registered and used in bad faith. Finally, the Complainant refers to a number of previous panel decisions where the well-known status of its trademark was confirmed.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant owns registered rights in the trademark WHATSAPP. The trademarks clearly predate the Disputed Domain Name. The trademark is fully integrated in the Disputed Domain Name. The trademark WHATSAPP is recognizable in the Disputed Domain Name. There are however two elements in the Disputed Domain Name which differ from the Complainant's trademark:

- in the beginning, the word "download";

-the term "status" at the end of the WHATSAPP trademark is added.

Further to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8, "[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". Accordingly, the Disputed Domain Name, consisting of the WHATSAPP mark in its entirety, is confusingly similar to the Complainant's trademark regardless of the added terms.

Therefore, the Panel is satisfied that the first element of the Policy is met.

B. Rights or Legitimate Interests

The Complainant must establish a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating its rights or legitimate interests in the Disputed Domain Name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Respondent is not commonly known under the Disputed Domain Name and claims no connection with or authorisation from the Complainant. The Respondent shows no activity at all under the website to which the Disputed Domain Name resolves. The Respondent therefore can not show a *bona fide* offering or use of the Disputed Domain Name. See, e.g., *Instagram, LLC v. Asif Ibrahim*, WIPO Case No. [D2020-2552](#) (March 12, 2020).

Moreover, the construction of the Disputed Domain Name, consisting of the WHATSAPP mark along with terms descriptive of the Complainant's services under the mark, carries a risk of implied affiliation that cannot constitute fair use since it effectively impersonates or suggests sponsorship or endorsement by the Complainant contrary to the fact. [WIPO Overview 3.0](#), section 2.5.1.

In the absence of any explanation by the Respondent, the Complainant's establishment of the *prima facie* case is sufficient.

With the evidence on file, this Panel is satisfied that the second element of the Policy is met.

C. Registered and Used in Bad Faith

The Disputed Domain Name is not used, after it initially resolved to host a WordPress template page with no significant content. However, from the inception of the UDRP, panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding". [WIPO Overview 3.0](#), section 3.3. Taking into account the strength and fame of the Complainant's trademark WHATSAPP, which was confirmed by a number of previous UDRP panels in recent UDRP decisions, e.g., *WhatsApp Inc. v. DomainAdmin, Whois Privacy Corp.*, WIPO Case No. [D2018-1654](#), and the context which the Disputed Domain Name creates, the Panel is convinced that the Respondent was and is aware of the Complainant's famous trademark. In this Panel's view, this establishes bad faith registration of the Disputed Domain Name. Moreover, panels have found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.3.

Furthermore, given the Respondent's lack of participation in this proceeding, use of a privacy service to masks its details, and its provision of false contact information for purposes of registering the Disputed Domain Name, the Panel finds that the non-use of the disputed domain name does not prevent a finding of bad faith under the circumstances of this proceeding.

This Panel therefore comes to the conclusion that the third element of the Policy is met.

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 <downloadwhatsappstatus.com> be transferred to the Complainant.

/Peter Wild/

Peter Wild

Sole Panelist

Date: December 5, 2022