

ADMINISTRATIVE PANEL DECISION

WhatsApp, LLC v. Leonardo Silva, UltraApp
Case No. D2023-1100

1. The Parties

The Complainant is WhatsApp, LLC, United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is Leonardo Silva, UltraApp, Brazil.

2. The Domain Name and Registrar

The disputed domain name <bulkwhatsappsender.net> 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 March 13, 2023. On March 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 17, 2023, 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 March 20, 2023, 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 March 23, 2023.

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 March 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 13, 2023. The Respondent did not submit a formal response, however sent email communications to the Center on March 21, 24 and 30, 2023. The Center informed the Parties that it will proceed to panel appointment on April 18, 2023.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on April 24, 2023. 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 world-famous mobile messaging application provider founded in 2009. The Complainant owns many trademark registrations for WHATSAPP such as United States registration No. 3939463, registered on April 5, 2011, and International registration No. 1085539, registered on May 24, 2011.

The disputed domain name was registered on February 9, 2021, and resolves to a website that offers subscriptions for bulk-messaging services against an annual fee.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has numerous registrations for the trademark WHATSAPP. The disputed domain name incorporates the Complainant's trademark in its entirety. The addition of the terms "bulk" and "sender" does not eliminate confusing similarity. The generic Top-Level Domain ("gTLD") ".net" may be disregarded for the purposes of assessing confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not licensed by the Complainant nor is he affiliated with it. The Complainant did not authorize the Respondent to use its trademark. The disputed domain name is not used in connection with a *bona fide* offering of goods or services as the Respondent is not providing sales or repairs in relation to a product of the Complainant. Instead, the Respondent is making an unauthorized use of the Complainant's trademark to market its own software. The *Oki Data* test requires a disclaimer, which is provided but discretely and only after clicking the question entitled "AVISO LEGAL". In addition, the mere display of a disclaimer cannot legitimize the use of a trademark abusive domain name. Also, featuring the Complainant's color scheme and a variant of its logo creates the impression that the website is affiliated with the Complainant. Additionally, the software promoted by the Respondent can be used for sending spam or for phishing or other unauthorized or illegal activity. The Respondent is not commonly known by the disputed domain name. The Respondent's identity is concealed. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name as the website is clearly commercial in nature.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent must have been aware of the Complainant's trademark particularly given its worldwide reputation. The Respondent targeted the Complainant's trademark at the time of registration as it aims to redirect Internet users to its website for commercial gain through the sale of a software. The Respondent is engaged in a pattern of abusive domain name registration. Using a privacy service is an indication of bad faith. The use of the Complainant's trademark and the nature of the website to which the disputed domain name resolves is likely to mislead Internet users into believing that the Respondent's website is affiliated with the Complainant. The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the Respondent's website in bad faith. Furthermore, the software being promoted can be used for spamming or phishing. The failure to reply to the cease-and-desist letter is indicative of bad faith.

B. Respondent

The Respondent did not submit a formal reply to the Complainant's contentions but replied through an email dated March 24, 2023. In his email, the Respondent consented to transferring the disputed domain name and mentioned he has not made money from it and that it is for educational purposes. In an email dated March 30, 2023, the Respondent reiterated his agreement to transfer the disputed domain name to the Complainant.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant owns trademark registrations for the trademark WHATSAPP. The Panel is satisfied that the Complainant has established its ownership of the trademark WHATSAPP. The disputed domain name incorporates the Complainant's trademark WHATSAPP in its entirety. The addition of the words "bulk" and "sender" does not prevent a finding of confusing similarity. The gTLD ".net" is generally ignored when assessing confusing similarity.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

A complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts that the Respondent does not have rights or legitimate interests and that it does not have any authorization to use the WHATSAPP trademark in the disputed domain name. Therefore, the Complainant has established a *prima facie* case and the burden of production shifts to the Respondent to show that it has rights or legitimate interests.

The Respondent has not provided any evidence to show that it has any rights or legitimate interests in the disputed domain name. The explanation submitted by the Respondent that the disputed domain name was created for educational purposes is not credible for the Panel as the disputed domain name is used in connection with a website that offers a software against a subscription. In other words, it is being used for commercial purposes and not educational ones.

However, the Panel finds it useful to assess whether the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services as it offers a software for bulk messaging services. The Panel does not find such use to constitute a *bona fide* offering of goods or services because the Respondent has targeted the Complainant and its trademark when choosing the disputed domain name. The Respondent must have been aware of the Complainant and its business. Furthermore, a variant of the Complainant's logo is placed on the website and the color combination used is that of the Complainant. The Respondent's website provides a software for bulk-messaging services using the Complainant's application. On this basis, it is clear that the Respondent was targeting the Complainant's trademark when choosing the disputed domain name. Therefore, the Panel is of the view that the Respondent is trying to capitalize on the reputation and goodwill of the Complainant's trademark.

Additionally, prior UDRP panels have found that domain names identical to or comprising a complainant's trademark plus certain additional terms (here, words related to messaging) are seen as tending to suggest sponsorship or endorsement by the trademark owner and carry a risk of implied affiliation (see section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

Consequently, the Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Respondent must have been aware of the Complainant's trademark as it is well-known and the Respondent is using the disputed domain name to promote a messaging service, which is the core business of the Complainant. Furthermore, the website of the Respondent shows the logo of the Complainant, which clearly indicates that the Respondent is trying to pass itself off as being connected with the Complainant. The Respondent is using the disputed domain name in order to sell a software for bulk messaging against a subscription fee. Given the above-mentioned circumstances, the Panel is of the view that the Respondent is using the disputed domain name, to attract Internet users for commercial gain, which falls squarely within the meaning of paragraph 4(b)(iv) of the Policy.

Further, prior UDRP panels have recognized that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Further indication of bad faith is the use of a privacy service and the prior similar conduct of the Respondent.

Accordingly, the Panel finds that the Complainant has satisfied 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 disputed domain name, <bulkwhatsappsender.net> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: May 1, 2023