

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Whatsapp Web

Case No. D2023-1234

1. The Parties

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

The Respondent is Whatsapp Web, Colombia.

2. The Domain Name and Registrar

The disputed domain name <whatsappwebmarketing.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 March 21, 2023. On March 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 23, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

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 March 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 18, 2023.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on April 26, 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 March 29, 2022, and resolves to a website that offers subscriptions for bulk-messaging services against a 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 "web" and "marketing" does not eliminate confusing similarity. The generic Top-Level Domain ("gTLD") ".com" 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 a licensee of the Complainant. 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 services. Furthermore, the *Ok! Data* test requires a disclaimer, which is not provided in this case. In addition, featuring the Complainant's color scheme and a variant of its logo creates the impression that the website is affiliated with the Complainant. The Respondent is attempting to trade off the reputation and goodwill of the Complainant's trademark. 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 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 and its inherent distinctiveness. Actual knowledge is demonstrated through the content of the Respondent's website. The Respondent is attempting to create the misleading impression of association with the Complainant. Additionally, false contact information are provided. 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 reply to the Complainant's contentions.

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 "web" and "marketing" does not prevent a finding of confusing similarity. The gTLD ".com" 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. 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 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 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.

The Panel notes that the name "Whatsapp Web" was provided for the registration of the disputed domain name. The Panel further notes that no evidence has been brought forward of the existence of an entity with such a name. Even if such entity exists, noting the well-known character of the WHATSAPP trademark and the reproduction on the website at the disputed domain name of the Complainant's logo, the Panel finds that it would not be sufficient to give rise to rights or legitimate interests of the Respondent in the disputed domain name, and that it falsely suggests affiliation with the Complainant.

Additionally, prior UDRP panels have found that domain names identical to or comprising a complainant's trademark plus certain additional terms 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 a variant of the Complainant's figurative device mark, 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 offer bulk messaging service against a 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](#).

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, <whatsappwebmarketing.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: May 3, 2023