

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Nayan Borse and Mohd Syazuan Saad, Bix Charity Kb
Case No. D2023-3186

1. The Parties

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

The Respondents are Nayan Borse, India; and Mohd Syazuan Saad, Bix Charity Kb, Malaysia.

2. The Domain Names and Registrar

The disputed domain names <easywasap.com> and <whatsapp-ads.com> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 24, 2023. On July 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 26, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names 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 July 27, 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 July 28, 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 Respondents of the Complaint, and the proceedings commenced on August 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 23, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on August 24, 2023.

The Center appointed Andrea Mondini as the sole panelist in this matter on September 5, 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 provider of one of the world's most popular mobile messaging applications allowing users across the globe to exchange messages for free.

The Complainant owns numerous trademarks for WHATSAPP, *inter alia*, the United States Trademark Registration No. 3939463, registered on April 5, 2011, the European Union Trade Mark Registration No. 009986514, registered on October 25, 2011, and the Indian Trademark Registration No. 2149059, registered on May 24, 2011.

The Complainant also holds several domain names, including the domain name <whatsapp.com>.

The disputed domain names <easywasap.com> and <whatsapp-ads.com> were registered on September 29, 2022, and January 7, 2022, respectively.

The record shows that the disputed domain names <easywasap.com> and <whatsapp-ads.com> resolve to similar websites promoting a tool supposedly allowing users to manage their social media accounts, including bulk messaging using the Complainant's application.

5. Parties' Contentions

A. Complainant

The Complainant contends as follows:

The disputed domain name <easywasap.com> is confusingly similar to the WHATSAPP trademark in which the Complainant has rights, because it consists of "wasap" which is a common abbreviation of the Complainant's WHATSAPP trademark with the addition of the descriptive term "easy" and the generic Top-Level Domain ("gTLD") ".com". The Complainant submits that the term "wasap" is phonetically and visually similar to the Complainant's WHATSAPP trademark and that the addition of the word "easy" is not sufficient to avoid confusing similarity.

With regard to the disputed domain name <whatsapp-ads.com>, the Complainant contends that it is confusingly similar to the WHATSAPP trademark in which the Complainant has rights, because it incorporates this trademark in its entirety, and the addition of the word "ads" is not sufficient to avoid confusing similarity.

The Respondents have no rights or legitimate interests in respect of the disputed domain names. The Respondents have not been authorized by the Complainant to use this trademark, is not commonly known by the disputed domain names, and there is no evidence of the Respondents' use, or demonstrable preparation to use, the disputed domain names in connection with a *bona fide* offering of goods and services. In particular, the Respondents cannot be viewed as a *bona fide* service provider under the criteria set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("*Oki Data* Criteria").

The disputed domain names were registered in bad faith because it is obvious that the Respondents had knowledge of both of the Complainant and its famous trademark WHATSAPP at the time they registered the disputed domain names.

The disputed domain names are being used in bad faith because the Respondents have intentionally attempted to attract, for commercial gain, Internet users to their websites by creating a likelihood of

confusion as to the source, sponsorship, affiliation, or endorsement of the Respondents' websites and the goods and services marketed therein. Furthermore, the disputed domain names are being used to promote software enabling bulk messaging which creates an appreciable risk that such software may be used to send unsolicited electronic communications (spam), for phishing, or for other unauthorized activities.

B. Respondents

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

6. Discussion and Findings

6.1 Procedural Issue – Consolidation of Multiple Respondents

The Complainant requested the consolidation of the Respondents. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2 provides that "Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario."

Based on the available record, the Panel notes that (i) the two disputed domain names resolve to highly similar websites, promoting a tool that supposedly allows users to manage their social media accounts, including sending bulk messages using the Complainant's application; (ii) the websites at the disputed domain names are hosted on the same webhosting server with an IP address which hosts only four domain names in total; and (iii) the disputed domain names were registered with the same Registrar using the same privacy service within a short period of time. The Panel further notes that the Respondents have raised no objection to the Complainant's request for consolidation.

Considering the above, the Panel finds that it is more likely than not that the disputed domain names are subject to the common control, and that consolidation would be fair and equitable to all Parties and enhance efficiency. Therefore, the Panel grants the Complainant's consolidation request.

6.2 Substantive Issues

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has trademark rights by virtue of the registrations it owns for its WHATSAPP trademarks.

The Panel notes that the disputed domain name <whatsapp-ads.com> incorporates the WHATSAPP trademark in its entirety. The addition of the term "ads" does not prevent a finding of confusing similarity under the Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#), section 1.8.

The Panel further notes that also the disputed domain name <easywasap.com> is confusingly similar to the WHATSAPP trademark in which the Complainant has rights, because the term “wasap” is phonetically and visually similar to the Complainant’s WHATSAPP trademark, and the addition of the word “easy” does not prevent a finding of confusing similarity. The Panel further notes that Complainant’s WHATSAPP trademark is displayed on the website associated with this disputed domain name, which reinforces the Panel’s finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.15.

The addition of the gTLD “.com” in the disputed domain names is a standard registration requirement and as such is disregarded under the confusing similarity test under the Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#), section 1.11.1.

For these reasons, the Panel concludes that the disputed domain names are confusingly similar to the Complainant’s mark WHATSAPP.

The first element of paragraph 4(a) of the Policy has been met.

B. Rights or Legitimate Interests

The Complainant states it has not authorized the Respondents to use the trademark WHATSAPP and that before notice of the dispute, there is no evidence of the Respondents’ use, or demonstrable preparation to use, the disputed domain names in good faith. The Panel does not see any contrary evidence from the record.

In particular, the Panel notes that the Respondents’ use of the disputed domain names does not meet the *Ok! Data* Criteria, notably because the Respondents are not providing sales or repairs in relation to products or services provided by the Complainant, and the websites do not accurately and prominently contain any disclaimer about the lack of relationship between the Respondents and the Complainant. Moreover, the website to which the disputed domain name <easywasap.com> resolves features the Complainant’s logo in the same distinctive green-and-white color scheme is likely to give the false impression to Internet users that they have reached a website affiliated with or endorsed by the Complainant.

In the view of the Panel, the Complainant has succeeded in raising a *prima facie* case that the Respondents lack rights or legitimate interests in the disputed domain names, and the burden of production of evidence shifts to the Respondents. For their part, the Respondents did not provide a Response and thus failed to provide any explanations as to any rights or legitimate interests.

Furthermore, the nature of the disputed domain name <whatsapp-ads.com>, comprising the Complainant’s trademark in identical form with the term “ads”, carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

Therefore, the Panel finds that the Respondents do not have any rights or legitimate interests in the disputed domain names.

The second element of paragraph 4(a) of the Policy has been met.

C. Registered and Used in Bad Faith

The Complainant has shown to the satisfaction of the Panel that its WHATSAPP trademark is famous.

In the view of the Panel, noting that the Complainant’s trademark predates the registration of the disputed domain names, the nature of the disputed domain names, and the content displayed on the websites, it is inconceivable that the Respondents could have registered the disputed domain names without knowledge of the Complainant’s famous trademark. In the circumstances of this case, this is evidence of registration in bad faith.

The Respondents used the disputed domain names for websites promoting a tool supposedly allowing users to manage their social media accounts, including bulk messaging using the Complainant's application. Especially it is noted by the Panel the website to which the disputed domain name <easywasap.com> resolves displays a logo which reproduces WhatsApp's speech bubble logo in the same distinctive green-and-white color scheme, thereby creating a misleading impression of association with the Complainant. The Panel thus finds that by using the disputed domain names, the Respondents intentionally attempted to attract, for commercial gain, Internet users to their websites by creating a likelihood of confusion as to the source, sponsorship or affiliation of their website in the sense of paragraph 4(b)(iv) of the Policy.

The Panel thus finds that the disputed domain names were registered and are being used in bad faith.

The third element of paragraph 4(a) of the Policy has been 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 names, <easywasap.com> and <whatsapp-ads.com>, be transferred to the Complainant.

/Andrea Mondini/

Andrea Mondini

Sole Panelist

Date: September 15, 2023