

## **ADMINISTRATIVE PANEL DECISION**

Instagram, LLC, WhatsApp, LLC. v. mohsin khan, oppo  
Case No. D2024-1128

### **1. The Parties**

The Complainants are Instagram, LLC. (First Complainant) and WhatsApp, LLC. (Second Complainant), United States of America (“United States”), represented by Greenberg Traurig, LLP, United States.

The Respondent is mohsin khan, oppo, Pakistan.

### **2. The Domain Names and Registrars**

The disputed domain names <gbwhatsapp.com>, <honista-instagram.com>, and <honistainstagram.com> are registered with GoDaddy.com, LLC (the “Registrar GoDaddy”).

The disputed domain name <honistainstagram.net> is registered with Dynadot Inc. (the “Registrar Dynadot”, together with Registrar GoDaddy being hereafter named the “Registrars”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2024. On March 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On March 18, 2024, the Registrars 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 REDACTED for privacy Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainants on March 18, 2024, providing the registrant and contact information disclosed by the Registrar which notably showed that all disputed domain names were standing in the name of the Respondent. The Center invited the Complainants to potentially submit an amendment to the Complaint by March 23, 2024. The Complainants filed a supplement to the Complaint on March 29, 2024 but chose not to amend the Complaint.

The Center verified that the Complaint together with the supplement to 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 April 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 26, 2024.

The Center appointed Theda König Horowicz as the sole panelist in this matter on May 2, 2024. 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 First Complainant, Instagram, LLC, belongs to the Meta Group of Companies and is incorporated in the United States. The First Complainant has been using the trade mark INSTAGRAM since its launch in 2010 in respect of its well-known online photo and video sharing social networking application. It is the owner common law rights over INSTAGRAM as well as of numerous trademark registrations worldwide including:

- United States Trademark Registration INSTAGRAM No. 4146057 registered on May 22, 2012.

- United States Trademark Registration  No. 5198386 registered on May 19, 2017.

- United States Trademark Registration  No. 5351389 registered on December 5, 2017.

The Second Complainant WhatsApp, LLC, also belongs to the Meta Group of Companies and is incorporated in the United States. The Second Complainant operated the WhatsApp messaging and voice-over-IP service and mobile application. It has been using the WHATSAPP trademark since its launch in 2009 and is the owner of common law rights over WHATSAPP as well of numerous trademark registrations worldwide including:

- United States Trademark Registration WhatsApp No. 3939463 registered on April 5, 2011.

- United States Trademark Registration  No. 4359872 registered on July 2, 2013.

The disputed domain names were registered at the following dates:

- <gbwhatsapp.com> on September 8, 2023;

- <honistainstagram.com> on September 10, 2023;

- <honista-instagram.com> on October 12, 2023;

- <honistainstagram.net> on November 24, 2023.

The disputed domain names are associated with websites reproducing modified versions of Complainants' logos. The said websites invite users to download putative mobile applications called "Honista Instagram" and "GB WhatsApp". The websites for the disputed domain names state:

"honista instagram is an Android social media networking app. It allows you to express yourself by sharing photos and videos. Users can upload pictures and videos using the camera on their phones.

\* \* \* \*

[honista instagram] offers various unique and powerful features unavailable in the original Instagram. Users can customize its entire look and interface with over fifty different colors. The Honesta app for Android is a multi-stage app developed from the Instagram app, as it provides you with many benefits. The Honista app is an updated version with many features, like blocking Instagram ads. Everyone can easily download

videos, images, reels, and posts and share them on another app. It also hides your view of someone's story and many unique features. honista instagram apk enables you to watch unlimited content while offline."

"Honista Instagram is the most famous social media app with millions of active users. Most famous personalities, like politicians, people in business, movie stars, actors. With the modified version of Instagram, you can do many things you can't find in the original Instagram".

"GBWhtsApp, an unofficial modification of the original WhatsApp application, has sparked a digital revolution in instant messaging. With its kaleidoscope of features, GBWhtsApp Apk transcends the boundaries of conventional messaging apps.

Users can revel in the ability to customize their chats with an array of themes, fonts, and styles, giving each conversation a personalized touch. GBWhtsAp also offers enhanced privacy settings, allowing users to hide their online status, blue ticks, and even double-check marks, granting a newfound sense of discretion. Its file-sharing capabilities are equally impressive, with the ability to send larger files and multimedia without compromising quality. What truly sets GB WhatsApp App apart, though, is its flexibility. Users can maintain multiple WhatsApp accounts on a single device, making it a favorite among those with dual SIM phones or those who manage personal and business accounts. Additionally, the app continually evolves with updates, incorporating new features and improvements that keep users engaged and satisfied. While GBWhtsApp's unofficial nature raises questions about security and data privacy, its unparalleled range of customization and functionality has undeniably left an indelible mark on the world of mobile messaging."

Between September and December 2023, the Complainants sought to contact the Respondent directly and through its registrars GoDaddy and Dynadot and proxy hosting provider Cloudflare requesting the disputed domain names be suspended. The Respondent answered two emails with regards to the disputed domain names <honistainstagram.com> and <honistainstagram.net>, from the following email address "[...].@gmail.com", saying:

"hi, I am the owner of honistainstagram.com. I have received the mail from godaddy. they told me that , [...].@enf-meta.com., that mail owner want to contact with you."

and

"I have received gmail from GoDaddy that those people want to chat with you."

No follow up was made by the Respondent thereafter.

## **5. Parties' Contentions**

### **A. Complainants**

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainants contend that the disputed domain names are identical or confusingly similar to their INSTAGRAM and WHATSAPP Trade Marks in which the Complainants have rights, in accordance with paragraph 4(a)(i) of the Policy. More specifically, the disputed domain names <honista-instagram.com>, <honistainstagram.com>, and <honistainstagram.net> comprise the INSTAGRAM Trade Marks of the First Complainant in their entirety as the leading element of the domain name. The addition of the term “honista” in the disputed domain names comprising INSTAGRAM are not sufficient to prevent a finding of confusing similarity having in mind that “honista” is the name of a service that offers a modified version of the official Instagram app. The disputed domain name <gbwhtsap.com> is composed of a deliberate typographical error of the Second Complainant’s highly distinctive and well-known WHATSAPP trademark. Specifically, the Respondent has removed the letter “a” and the letter “p”, and has preceded it by the letters “GB”. The addition of the letters “GB” and the presence of typographical errors do not prevent a finding of confusing similarity with the Complainant’s well-known WHATSAPP trademark, which remains recognizable within the disputed domain name <gbwhtsap.com>.

The Complainants further state that the Respondent has no rights or legitimate interests in the disputed domain names, in accordance with paragraph 4(a)(ii) of the Policy. The Respondent is not using the Domain Name in connection with a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy. The Respondent is not a licensee of the Complainants, is not affiliated with the Complainants in any way, while the Complainants have not granted any authorization for the Respondent to make use of the Trade Marks, in a domain name or otherwise. Moreover, the Complainants contend the following:

- The websites associated with the disputed domain names display a logo that is a modified version of Complainants INSTAGRAM and WHATSAPP design marks.
- To the best of the Complainants knowledge, the Respondent has not acquired, nor applied for a trademark registration for “HONISTA INSTAGRAM” or “GBWHTSAP”, or any variation thereof as reflected in the disputed domain names.
- The Respondent’s use of the disputed domain names does not suggest in any reasonable way that Respondent is commonly known by the disputed domain names.
- The Respondent has configured the disputed domain names to point to Respondent’s website content, which invites users to download putative mobile applications called “Honista Instagram” and “GB WhatsApp”, both unauthorized versions of Complainants Instagram and WhatsApp platforms.
- The Respondent is making unauthorized use of the Complainants INSTAGRAM and WHATSAPP trademarks to market its own, nearly identical, mobile apps in direct competition to the Complainants’. The Respondent is only leveraging the goodwill and fame associated with the Complainants INSTAGRAM and WHATSAPP trademarks to offer a competing service. By misleadingly diverting Internet users to its websites and offering them services misappropriated from Complainants in direct competition with Complainants, the Respondent is demonstrating a clear intent for commercial gain.
- The Respondent’s use of the disputed domain names, which carries a risk of implied affiliation with the Complainants, cannot amount to bona fide use under the Policy.
- The Respondent’s use of the disputed domain names to attract Internet users to its own site, which promotes a modified version of Complainants application and leverages Complainants’ reputation and goodwill attached to its trademarks to do so, cannot be considered as bona fide use.

The Complainants finally assert that the disputed domain names were registered and are being used in bad faith. The Complainants INSTAGRAM and WHATSAPP trademarks are inherently distinctive and well-known throughout the world and the Respondent could thus not have ignored these when registering the disputed domain names. Given the composition of the disputed domain names as highlighted above, and noting the nature of the Respondent’s websites (which make explicit reference to the Complainants trademarks, promote unauthorized mobile applications in direct competition with Complainants, and offer

further services for a fee), Internet users are likely to be misled into believing that the disputed domain names, Respondent's websites and putative services, are affiliated with or somehow otherwise endorsed by the Complainants. By using the Disputed Domain Names in this fashion, 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 websites and the services marketed therein, in bad faith pursuant to paragraph 4(b)(iv) of the Policy. The Complainants also noted that the use of a privacy service for registering the disputed domain names is an indication of bad faith under the Policy.

## **B. Respondent**

The Respondent did not reply to the Complainants' contentions.

## **6. Discussion and Findings**

### **6.1. Consolidation of Complainants**

The Complaint was filed by two Complainants belonging to the same Group (Meta). The Complainants have requested consolidation for this same reason.

Paragraph 10(e) of the Rules provides as follows:

"A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules."

Past UDRP decisions suggest that a complaint may be brought by multiple complainants where (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion; and (ii) it would be equitable and procedurally efficient to permit the consolidation (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.1).

The Panel finds that the Complainants belong to the same group of companies and that they have common grievances against the Respondent who has engaged in common conduct that has affected the Complainants' rights in a similar fashion. The Panel also finds that it would be procedurally efficient and equitable to all the Parties for the Complainants to be consolidated.

In all the circumstances, the Panel therefore determines, under paragraph 10(e) of the Rules, that there be consolidation of the disputed domain names and the Complainants in this proceeding.

### **6.2. Consolidation of Respondents**

The disputed domain names were all registered via the privacy services of the Registrars and the identity of the registrant(s) was thus not known to the Complainants when the Complaint was filed. The Complaint was thus filed against the Registrars providing the privacy service. In their Complaint, the Complainants allege that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainants request the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

After the filing of the Complaint, at the request of the Center, the Registrars disclosed the name of the registrant for all disputed domain names and the said disclosures showed that all disputed domain names were actually registered in the name of the same holder.

In their supplemental brief, the Complainants confirm their request for consolidation and indicate that the Registrar provided registration data represents an identical match and serves strong evidence that each of

the disputed domain names are subject to common control by the same person. While the Complainants did not amend the Complaint to reflect the registrant information disclosed, the Complainants encouraged “the Center to include the subsequently identified registration date in the case caption of the published decision in order to further important public policy interests of notice and accountability”.

The holder of the disputed domain names did not comment on the Complainants’ request.

In light of the disclosures made by the Registrars and in accordance with Paragraph 3(c) of the Rules which states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder, the Panel finds that the consolidation should be granted, as the case file shows that all disputed domain name are owned by the same holder, mohsin khan, oppo (hereinafter “the Respondent”).<sup>1</sup>

Accordingly, the Panel decides to consolidate the proceeding.

### **6.3. Substantive Issues**

#### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name [WIPO Overview 3.0](#), section 1.7.

The Complainants have shown registered rights in respect of the trademarks INSTAGRAM and WHATSAPP for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark INSTAGRAM is reproduced within the disputed domain names <honista-instagram.com>, <honistainstagram.com>, and <honistainstagram.net>. The addition of the term “honista” does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. Accordingly, the disputed domain names <honista-instagram.com>, <honistainstagram.com>, and <honistainstagram.net> are confusingly similar to the mark for the purposes of the Policy.

The Panel also finds that the mark WHATSAPP is recognizable within the disputed domain name <gbwhsap.com>. Indeed, the well-known WHATSAPP trademark remains recognizable despite the misspelling. The addition of the letters “gb” does not prevent a finding of confusing similarity. Accordingly, the disputed domain name <gbwhsap.com> is confusingly similar to the mark WHATSAPP for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7, 1.8. and 1.9.

In the light of these circumstances, the Panel finds the first element of the Policy has been established.

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<sup>1</sup>While the Complaint identifies “Registration Private, Domains By Proxy, LLC” and “REDACTED FOR PRIVACY, Super Privacy Service LTD c/o Dynadot” as the “Respondent”, the Registrars disclosed “Mohsin khan, oppo” as the single underlying registrant. Under paragraph 1 of the Rules, “Respondent” means the holder of a domain-name registration against which a complaint is initiated. Since the Complaint in the present proceeding is initiated against the disputed domain names, and the Registrar has confirmed that Mohsin khan, oppo, is the holder of the registration of the disputed domain names, the Panel accepts that Mohsin khan, oppo is the proper Respondent in this proceeding. The above ruling does not affect the Mutual Jurisdiction under paragraph 3(b)(xii) of the Rules, since the Complainants have agreed to submit, with respect to any challenges that may be made by the Respondent to a decision by the Panel to transfer or cancel the disputed domain name, to the jurisdiction of the courts at the location of the principal office of the Registrars.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent is not affiliated with the Complainant and the Complainant has not granted any license or other authorization for the Respondent to make use of the Trade Marks, in a domain name or otherwise. The Respondent is not using the disputed domain names in connection with a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy notably since it uses without authorization the Complainants’ INSTAGRAM and WHATSAPP trademarks in the disputed domain names and in the websites related thereto to market a mobile app in direct competition to the Complainants’ with the aim to misleadingly divert Internet users to the Respondent’s websites and offering them services in direct competition with Complainants. Such intent to mislead through an inference of association is reinforced given the composition of the disputed domain names and the intentional addition of terms related to the Complainant’s field of services, such as “honista” that references a downloadable app and “gb” that could likely refer to “gigabyte”.

The Respondent has not rebutted the Complainants’ prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

The Panel therefore finds the second element of the Policy has been established.

## **C. Registered and Used in Bad Faith**

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Based on the undisputed information and evidence provided by the Complainants, the Panel finds that the registration is in bad faith. At the time of registration of the disputed domain names, the Respondent must have been aware of the well-known INSTAGRAM and WHATSAPP trademarks of the Complainants. In addition, the fact that the Respondent registered disputed domain names containing both INSTAGRAM and a misspelled version of WHATSAPP shows that the Respondent must have been aware of the said marks when registering the disputed domain names. In any event, a simple trade mark register search, or even an Internet search, prior to registration of the disputed domain Name would have informed the Respondent of the existence of the Trade Marks.

With regard to bad faith use, the Panel finds that the following circumstances taken together warrant a finding of bad faith use of the Domain Name:

- the use on the Website of the Trade Marks, as well as the Device Mark, to offer services competing with those of the Complainants, thereby misleadingly suggesting a connection or relationship with the Complainants which does not exist;
- the lack of a substantiated response to the cease-and desist letters;
- the failure to submit a Response;
- the use of a privacy service when registering the disputed domain names.

The Panel therefore finds that the Complainants have established the third element 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 names <gbwhsap.com>, <honista-instagram.com>, <honistainstagram.com>, and <honistainstagram.net> be transferred to the Complainants.

*/Theda König Horowicz/*

**Theda König Horowicz**

Sole Panelist

Date: May 29, 2024