

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Surrender Kumar, Nexus IT Solution
Case No. D2024-1408

1. The Parties

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

The Respondent is Surrender Kumar, Nexus IT Solution, India.

2. The Domain Name and Registrar

The disputed domain name <whatsappcommunity.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 April 2, 2024. On April 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 3, 2024, 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 April 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 8, 2024.

The Center appointed Tommaso La Scala as the sole panelist in this matter on May 16, 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 Complainant owns a worldwide renown mobile messaging application with two billion users in over 180 countries.

The Complainant owns numerous trademark registrations worldwide for its WHATSAPP mark, including United States of America trademark registration number 3939463 registered on April 5, 2011 and Indian Trademark Registration No. 2149059, registered on May 24, 2011.

The Complainant also owns the domain names <whatsapp.com> and <whatsapp.net> and the equivalent domain names in a wide range of generic and country code extension.

The disputed domain name <whatsappcommunity.com> was registered on June 29, 2022, and currently resolves to a blank page, even though it was previously connected to a website named "Lakshay India" displaying the Complainant's WhatsApp figurative trademark and logo at the center of its homepage, that purported to offer paid entry to a community or group on the Complainant's WhatsApp application that purported to facilitate the socializing of likeminded Internet users and provided access to a training program to obtain career guidance for their child. According to the Complainant, such website was not genuine.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant contends that its WHATSAPP mark is wholly contained in the disputed domain name and that the disputed domain name is therefore confusingly similar to its registered trademark and affirms that the addition of the word "community" does not prevent a finding of confusing similarity.

The Complainant submits that the Respondent is neither a licensee of the Complainant nor is it affiliated with the Complainant in any way. The Complainant says that it has not authorized the Respondent to make any use of its WHATSAPP trademark, whether in a domain name, in a mobile app, in the use of its logos on the website, or otherwise. The Complainant says that there is no evidence to suggest that the Respondent is commonly known by the disputed domain name, as intended under paragraph 4(c)(ii) of the Policy.

The Complainant further notes that the Respondent's website associated with the disputed domain name refers directly to the Complainant's distinctive and well-known WHATSAPP trademark, without any visible disclaimer clarifying the relationship (or lack thereof) with the Complainant.

The Complainant also submits that the Respondent's website did not appear to be genuine, but rather a fake website used to attract Internet users thanks to the Complainant's trademark popularity.

B. Respondent

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

6. Discussion and Findings

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The addition of another term, namely "community", definitely does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

The Complainant has submitted that the Respondent is neither a licensee of the Complainant nor is it affiliated with the Complainant. The Complainant also has affirmed that it has not authorized the Respondent to make any use of its WHATSAPP trademark, whether in a domain name, in a mobile app, in the use of its logos on the website, or otherwise and it has said that there is no evidence to suggest that the Respondent is commonly known by the disputed domain name, as intended under paragraph 4(c)(ii) of the Policy.

The Complainant also contends that the Respondent cannot be viewed as a legitimate reseller or service provider as it purported to provide its own services that go beyond the WhatsApp services provided by the Complainant.

The Complainant claims moreover that there is no evidence to suggest that the Respondent is commonly known by the disputed domain name as contemplated by paragraph 4(c)(ii) of the Policy. "Surender Kumar" and "Nexus IT Solution" bear any resemblance with the disputed domain name.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel 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.

In the present case, the Panel notes that the Respondent registered the disputed domain name many years after WHATSAPP mobile application and trademark became famous worldwide. (see *WhatsApp LLC v. Nayan Borse and Mohd Syazuan Saad, Bix Charity Kb*, WIPO Case No. [D2023-3186](#) and *WhatsApp Inc. v. Sudheer Kumar*, WIPO Case No. [D2019-1632](#)).

Until January 29, 2024, the disputed domain name resolved to a paid entry website that purported to offer entry to a community or group on the Complainant's WhatsApp application, thus making clear that the Respondent was aware of the Complainant's trademark and business activity.

Given the use of the disputed domain name, it is clear that the Respondent was intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's WHATSAPP trademark as to the source, affiliation or endorsement of the website, in bad faith under paragraph 4(b)(iv) of the Policy.

Considering the suspicious nature of the paid entry website connected to the disputed domain name and the complete lack of any disclaimer that could clarify the non-relation between the parties, the Respondent's intentional bad faith conduct seems consistent.

Furthermore, the current non-use of the disputed domain name does not prevent to a finding of bad faith.

Without any reply from the Respondent and taking into account all the circumstances, the Panel finds that the Complainant has 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 name <whatsappcommunity.com> be transferred to the Complainant.

/Tommaso La Scala/

Tommaso La Scala

Sole Panelist

Date: May 28, 2024