

## **ADMINISTRATIVE PANEL DECISION**

WhatsApp LLC v. Haris Niaz, harisniaz Co  
Case No. D2024-1906

### **1. The Parties**

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

The Respondent is Haris Niaz, harisniaz Co, Pakistan.

### **2. The Domain Name and Registrar**

The disputed domain name <gbwhatsappget.com> is registered with Internet Domain Service BS Corp (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 6, 2024. On May 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 8, 2024, 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 (Domain Admin) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 8, 2024, 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 May 18, 2024.

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 May 24, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 13, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 18, 2024.

The Center appointed Dietrich Beier as the sole panelist in this matter on June 24, 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 is a provider of one of the world's most popular mobile messaging applications. Founded in 2009, and acquired by Meta Platforms, Inc., formerly known as Facebook, Inc. in 2014, the application allows users across the globe to exchange messages for free via smartphones. Its main website available at "https://whatsapp.com" and also allows Internet users to access its messaging platform.

The Complainant is the proprietor of several trademark registrations for WHATSAPP (e.g., European Union Trademark Registration No. 009986514, registered on October 25, 2011, in classes 9 and 38; United States Trademark Registration No. 3939463, WHATSAPP, registered on April 5, 2011, in class 42; International Trademark Registration No. 1085539, WHATSAPP, registered on May 24, 2011, in classes 9, 38, as well as a device trademark, the International Registration No. 1109890, registered on January 10, 2012, in classes 9 and 38, showing a telephone receiver in a green bubble with tip at bottom left, all being in effect.

The disputed domain name was registered on May 8, 2023.

Initially, at the time of the filing of the Complaint, the pertinent Whois information identified the Registrant as "Domain Admin, Whois Privacy Corp."

The disputed domain name resolved to the website "https://gbwhatsappget.com", the website of the Respondent that purports to offer for download an application called "GB WhatsApp".

The Respondent's website was entitled "GBWhatsApp", and made prominent references to the Complainant's WHATSAPP trademark, using a variation of its figurative trademark, displayed as a telephone receiver in a green bubble with tip at bottom left. The Respondent's website made use of the same green-and-white colour scheme used by the Complainant.

The homepage of the Respondent's website stated:

"GBWhatsApp APK Download (Official Anti-Ban Version) Download the latest version of GBWhatsApp APK for Android and IOS. Enjoy exciting features of official WhatsApp with Customization; extra privacy, hide Double Ticks, Change Themes, Set Online Status, download status and much more. This 100% working app is available for free and comes with the premium features."

Whereas the initial download of the application was apparently free, the Respondent stated on his website under the disputed domain name that "you can unlock even more by a 'GBWhatsApp Premium subscription'".

The Respondent's website does not disclose its relationship with the Complainant. The Complainant notes that the "Disclaimer" page of the Respondent's website stated the following:

"This website is not affiliated with, endorsed by, or sponsored by GBwhatsapp Corporation, the developer of GBwhatsapp, the video editing and video making app for Android devices. The APK files provided on this website are obtained from third-party sources and are not verified by GBwhatsapp Corporation. Therefore, we do not guarantee the safety, security, functionality, or compatibility of these APK files with your device or the app."

The Complainant's lawyers sent a cease and desist letter to the registrant via the available email addresses on March 5, 2024. No response was received.

## 5. Parties' Contentions

### A. Complainant

The Complainant contends that since its launch in 2009, the application WhatsApp has become one of the fastest growing and most popular mobile applications in the world, with over 2 billion monthly active users worldwide (as of 2023). The Complainant's WHATSAPP mark has acquired considerable reputation and goodwill worldwide. Consistently being ranked amongst Google Play and Apple iTunes 25 most popular free mobile applications and Tech Radar's Best Android Apps, WhatsApp is the 4<sup>th</sup> most downloaded application for iOS phones worldwide.

The Respondent's website offers for download an unauthorized modified version of the WhatsApp application, developed by a third party. According to the Complainant it is more likely than not that the owner of such third party application ultimately derives commercial advantage from the Respondent's unauthorized use of the Complainant's trademark in the disputed domain name and on its website. The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name reproduces in its entirety the mark WHATSAPP as protected by the Complainant's trademarks, adding the letters "gb" at the beginning and the word "get" at the end.

The Complainant has not authorized the use of its trademarks in the disputed domain name or otherwise.

The Complainant and the Complainant's trademarks are so well known that it is inconceivable that the Respondent ignored the Complainant or its earlier rights in the WHATSAPP mark. Prior UDRP panels have repeatedly recognized the strength and renown of the Complainant's trademark (see *WhatsApp, Inc. v. Domain Manager, SHOUT marketing SL, and Gonzalo Gomez Rufino, River Plate Argentina, and Gonzalo Gomez Rufino, SHOUT Marketing SL*, WIPO Case No. [D2018-1581](#)).

### 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 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 Complainant has shown rights in respect of a trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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 the letters "gb" at the beginning and the non-distinctive word "get" at the end do 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.

The Panel finds the first element of the Policy has been established.

## **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 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. This is in particular the case since the Complainant did not grant any permission or consent to the Respondent to use its trademarks. Furthermore, the Respondent has no legitimate interest in the disputed domain name since there is no indication that the Respondent is commonly known by the name “WhatsApp” or “GBwhatsappget.com” nor that the Respondent is using the disputed domain name in connection with a bona fide offering of related goods or services.

The former use of the disputed domain name to resolve to a website using the Complainant’s marks and purportedly offering a non original version of an application not being from the Complainant cannot be considered a bona fide offering of goods and services under the Policy. See also *Instagram, LLC v. dileep Yadav*, WIPO Case No. [D2023-3227](#).

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

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

Due to the intensive use of Complainant’s marks, being well known at the time of the registration of the disputed domain name, the Respondent must have been well aware of the Complainant and its trademarks when registering the disputed domain name. The Complainant had not authorised the Respondent to make use of its mark. The Respondent’s failure to come forward with any explanation for the registration of the disputed domain name, the use of a privacy service to conceal the Respondent’s identity and the content of the website under the disputed domain name indicate that the Respondent targeted the Complainant.

The overall circumstances of this case, inter alia the Respondent’s website offers for downloading an unauthorized modified version of the WhatsApp application and the possibility of “premium subscriptions”, furthermore indicate that the Respondent registered and uses the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to its potential website or other online locations, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location. The Panel therefore considers the disputed domain name to have been registered and used in bad faith in accordance with paragraph 4(a)(iii) of the Policy. While the Respondent’s website includes a disclaimer, the Panel notes that the disclaimer on the Respondent’s website does not alter the Panel’s finding, since the disclaimer is not referring to the Complainant or his application, but to a third party.

## 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 <gbwhatsappget.com> be transferred to the Complainant.

*/Dietrich Beier/*

**Dietrich Beier**

Sole Panelist

Date: July 8, 2024