

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Amir Farid
Case No. D2024-2272

1. The Parties

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

The Respondent is Amir Farid, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <gbwhatsapp.work> (the “Domain Name”) is registered with CloudFlare, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 3, 2024. On June 4, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 5, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 11, 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 June 13, 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”).

On June 14, 2024, the Respondent sent an email communication to the Center. The Center sent an email regarding the possible settlement on June 14, 2024 to the Parties, on the same day, the Complainant requested to continue with the proceeding.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 7, 2024. The Respondent did not submit any formal response. Accordingly, the Center sent the commencement of panel appointment process email on July 8, 2024. On July 25, 2024, the Respondent sent email communications stating the Domain Name has expired.

The Center appointed Nicholas Smith as the sole panelist in this matter on July 25, 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 California-based company, founded in 2009 and acquired by Meta Platforms, Inc. (formerly Facebook, Inc.) in 2014. The Complainant provides, under the trade mark WhatsApp (“WHATSAPP Mark”) one of the world’s most popular mobile messaging applications. The Complainant’s WhatsApp app is available on iPhone and Android products and as of 2023 had over two billion monthly users worldwide.

The Complainant holds a registered trade mark in various jurisdictions for the WHATSAPP Mark including in the United States (registration No. 3939463) for services in Class 42, registered on April 5, 2011, with a first use in commerce of February 24, 2009.

The Domain Name was registered on June 2, 2023. It resolves to a website (“Respondent’s Website”) where the Respondent promotes an unauthorized and modified Android Package Kit (“APK”) version of the Complainant’s WhatsApp app while also using versions of Complainant’s figurative trade mark and a similar colour scheme.

5. Parties’ Contentions

A. Complainant

The Complainant makes the following contentions:

- (i) that the Domain Name is identical or confusingly similar to the Complainant’s WHATSAPP Mark;
- (ii) that the Respondent has no rights nor any legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is subsequently being used in bad faith.

The Complainant is the owner of the WHATSAPP Mark, having registered such mark in numerous jurisdictions around the world. The Domain Name is confusingly similar to the WHATSAPP Mark as the Domain Name wholly reproduces the WHATSAPP mark in its entirety and adds the “gb” element and the “.work” generic Top-Level Domain (“gTLD”).

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Respondent is not commonly known by the Domain Name, has no licence or right to use the Domain Name and has never been granted any permission by the Complainant for the registration of the Domain Name. The use of a domain name corresponding to the Complainant’s trade marks for a website promoting an unauthorized modification to the Complainant’s app that also breaches the Complainant’s terms of service is not bona fide, fair use or an otherwise legitimate noncommercial purpose.

The Domain Name was registered and is being used in bad faith. The Domain Name was registered with awareness of the Complainant's trade marks and is being used in a manner that will mislead users into thinking that the APK offered on the Respondent's Website is authorised or endorsed by the Complainant which is not the case.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. The Respondent made three informal communications during the course of this proceeding to the effect that the Respondent (initially) wanted to negotiate to give up the Domain Name and then later requesting that the proceeding be terminated as the Domain Name had expired.

The Panel notes that as the proceeding commenced before expiry of the Domain Name, the Registrar has confirmed that the Domain Name remains administratively locked and has been renewed such that the administrative proceeding against the Respondent (who remains the registrant of the Domain Name) can continue.

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

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here "gb", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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.

While 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 often impossible 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. 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 record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the 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 Domain Name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

The Respondent's use of the Domain Name to resolve to a webpage reproducing the Complainant's WHATSAPP Mark, figurative trade mark and colour scheme and purporting to offer a modified APK version of the Complainant's app, does not amount to use for a bona fide offering of goods and services. Rather, it appears that the purpose behind the Respondent's Website is to encourage visitors, under the impression that they are dealing with the Complainant, to use the Respondent's APK, which is an unauthorized third-party application that trades off the goodwill and reputation of the Complainant and its mark, such conduct not being bona fide.

Based on the available record, 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.

The Panel finds that the Respondent must have been aware of the Complainant and its significant global reputation in the WHATSAPP Mark at the time the Respondent registered the Domain Name. The Respondent has provided no explanation, and neither it is immediately obvious, why an entity would register a domain name incorporating the WHATSAPP Mark (with the addition of the term "gb") and direct it to a website purportedly offering an unauthorized version of Complainant's product unless there was an awareness of and an intention to create a likelihood of confusion with the Complainant and its WHATSAPP Mark.

The Respondent's Website purports to offer an APK version of the Complainant's product in direct competition with the Complainant. Noting the fame of WHATSAPP Mark, the absence of any explanation for the registration and the use of similar elements in the design and layout of the Respondent's Website and the Complainant's intellectual property, the Panel considers that the most likely explanation is that the Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the WHATSAPP Mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's Website. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 Domain Name <gbwhatsapp.work> be transferred to the Complainant.

/Nicholas Smith/

Nicholas Smith

Sole Panelist

Date: July 29, 2024