

## ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. Aamir Altaf, G11  
Case No. D2024-2579

### 1. The Parties

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

The Respondent is Aamir Altaf, G11, Pakistan.

### 2. The Domain Name and Registrar

The disputed domain name <gbwhatsapp.icu> is registered with NameSilo, LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 25, 2024. On June 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 25, 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 (Redacted for Privacy, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 28, 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 July 2, 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 July 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 31, 2024. The Respondent sent several email communications on June 28, July 1 and July 2, 2024, but did not submit a formal response. Accordingly, the Center informed the Parties that it would proceed to panel appointment on August 5, 2024.

The Center appointed Stefan Bojovic as the sole panelist in this matter on August 23, 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 a mobile messaging application which was founded in 2009 and acquired by Meta Platforms, Inc. (formerly known as Facebook, Inc.) in 2014. The Complainant's WhatsApp application allows users to exchange messages for free via smartphones, including iPhone and Android. According to the Complainant, in 2023 its application had more than 2 billion monthly active users.

The Complainant is the owner of the WHATSAPP trademark which is protected by a trademark registration in many jurisdictions throughout the world, including the following:

- United States trademark registration No. 3939463 for WHATSAPP, registered on April 5, 2011;
- European Union trademark registration No. 009986514 for WHATSAPP, registered on October 25, 2011; and
- International trademark Registration No. 1085539 for WHATSAPP, registered on May 24, 2011.

The disputed domain name was registered on July 3, 2023 and currently resolves to an invalid SSL certificate "Error code 526" page. However, based on the evidence provided by the Complainant<sup>1</sup>, the disputed domain name previously resolved to a website that was titled "GB Whatsapp APK Download Latest Version" and purported to offer or download an unauthorized modified version of the Complainant's WhatsApp application and displayed a modified version of the Complainant's WhatsApp logo, using green and white color scheme that is very similar to the color scheme used by the Complainant for its WhatsApp logo.

#### 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.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its WHATSAPP trademark, which is recognizable within the disputed domain name and the addition of the letters "gb" and the generic Top-Level Domain ("gTLD") ".icu" does not prevent a finding of confusing similarity.

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant contends that the Respondent is not licensee of the Complainant, that it is not affiliated with the Complainant in any way, and that the Complainant has not granted any authorization for the Respondent to make use of its WHATSAPP trademark, in a domain name or otherwise. The Respondent is also not commonly known by the disputed domain name. The disputed domain name has not been used in connection with any bona fide offering of goods or services as the Respondent is making unauthorized use of the Complainant's WHATSAPP trademark to market unauthorized version of its WhatsApp application. Even if such use would be evaluated under *Oki Data* test (as established in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)), the Respondent would fail such test, since the website is used to offer for download a third-party unauthorized version of the WhatsApp application and lack of the relationship with the Complainant is

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<sup>1</sup> The Panel has performed limited factual research in accordance with general powers granted to the Panel under paragraphs 10 and 12 of the Rules (see, in particular, section 4.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition) and has confirmed that, based on the entries in the Internet archive, the disputed domain name indeed resolved to a website described by the Complainant.

not accurately disclosed. Additionally, the Complainant adds that the content on the website to which disputed domain name resolved was in controversy with WhatsApp Brand Assets and Guidelines and WhatsApp Terms of Service.

With reference to the circumstances evidencing bad faith, the Complainant states that its WHATSAPP trademark is inherently distinctive and well known throughout the world in connection with its messaging application and that the Respondent could not credibly argue that it did not have knowledge of the Complainant or its WHATSAPP trademark when registering the disputed domain name. The content of the website to which the disputed domain name used to resolve also indicates that the Respondent was well aware of the Complainant and its trademark. By the use of the disputed domain name for the website that offered for download an unauthorized modified version of the Complainant's WhatsApp application, the Respondent has intentionally attempted to attract Internet users to online location by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the website, in bad faith pursuant to paragraph 4(b)(iv) of the Policy. Such use of the disputed domain name is also in controversy with WhatsApp Terms of Service and as such cannot be observed as a use in good faith.

## **B. Respondent**

The Respondent did not provide a formal response to the Complainant's contentions. The Respondent did, however, send several informal email communications to the Center inquiring about the nature of the dispute and seeking further clarifications and relevant documents. In one of such communications, the Respondent also indicated that he wanted to cancel the disputed domain name.

## **6. Discussion and Findings**

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy stipulates that the complainant must prove each of the following:

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

### **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 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 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.

Although the addition of other terms, here, letters "gb", may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

In addition, it is well established that “.icu”, as a gTLD, can be disregarded in the assessment of the confusing similarity between the disputed domain name and the Complainant’s trademark. [WIPO Overview 3.0](#), section 1.11.1.

The Panel, therefore, finds that 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.

The Panel notes that there seems to be no relationship between the Respondent and the Complainant and that the Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s WHATSAPP trademark. There appears to be no element from which the Panel could infer the Respondent’s rights or legitimate interests in the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The application offered on the website to which the disputed domain name used to resolve is not authorized by the Complainant. Previous panels have held that the use of the disputed domain name for a website using the Complainant’s trademarks and purportedly offering a non-original version of an application not being from the Complainant cannot be considered a bona fide offering of goods or services under the Policy (see, in particular, *WhatsApp, Inc. v. Nasser Bahaj*, WIPO Case No. [D2016-0581](#) and *WhatsApp LLC v. GB Apps, Apps.Pk*, WIPO Case No. [D2024-2770](#)). Nor does such use represent fair use.

Furthermore, the confusing similarity between the disputed domain name and the Complainant’s trademark appears to be designed to mislead Internet users that can mistakenly believe that the Respondent’s website may be associated with or sponsored by the Complainant.

Having in mind the above, 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent must have been well aware of the Complainant and its WHATSAPP trademark at the time of the registration of the disputed domain name. Namely, the Complainant's WHATSAPP trademark should be considered as a well-known trademark due to its widespread use. At the time of the registration of the disputed domain name, the Complainant's WhatsApp application has already surpassed 2 billion users worldwide, making it one of the most popular applications in the world, so it would be rather unlikely that the Respondent was not aware of the Complainant's trademark. Furthermore, the content of the website to which the disputed domain name used to resolve leaves no room for a doubt on the Respondent's knowledge of the Complainant and its WHATSAPP trademark and evidences that the Respondent actually had the Complainant in mind when registering the disputed domain name.

Due to the above, the Panel finds that the disputed domain name has been registered in bad faith.

As previously indicated, based on the undisputed evidence provided by the Complainant (and confirmed by the Panel's own limited factual research), the disputed domain name was used for a website that purported to offer a non-original version of the Complainant's WhatsApp application. Additionally, this website used very similar logo and color pattern to the one used by the Complainant. The Panel considers such use as prima facie evidence of bad faith as it makes it clear that the Respondent has used confusingly similar disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of such website, or of a product or service on such website.

The fact that the disputed domain name no longer resolves to an active website does not impact the above findings. Namely, given the fame of the Complainant's trademark, the composition of the disputed domain name, and the use to which the disputed domain name had been put, the current passive holding of the disputed domain name does not prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.3.

Therefore, the Panel finds that the disputed domain name has been both registered and is being used in bad faith, and consequently 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 <gbwhatsapp.icu> be transferred to the Complainant.

*/Stefan Bojovic/*

**Stefan Bojovic**

Sole Panelist

Date: September 6, 2024