

ADMINISTRATIVE PANEL DECISION

WhatsApp LLC v. GB Apps, Apps.Pk

Case No. D2024-2770

1. The Parties

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

The Respondent is GB Apps, Apps.Pk, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <gbwhatsappup.net> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 8, 2024. On July 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 10, 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, Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 10, 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 12, 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 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 15, 2024.

The Center appointed Masato Dogauchi as the sole panelist in this matter on August 21, 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, which was founded in 2009, is a provider of mobile messaging applications one of which allows over two billion monthly active users across the globe (as of 2023) to exchange messages for free via smartphones. The Complainant's main website available at "www.whatsapp.com" also allows Internet users to access its messaging platform.

The Complainant has registered trademarks such as:

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

The Complainants have owned, for instance, the domain names <whatsapp.com> created on September 4, 2008 and <whatsapp.org> created on February 1, 2010.

The disputed domain name, which was registered on July 16, 2023, resolves to a website using a variation of the Complainant's figurative trademark in a similar color scheme and promoting and offering for downloading an application, called "GB WhatsApp". The Respondent's website states: "GB WhatsApp is a modified version of WhatsApp offering enhanced features like extended privacy options, customization abilities, and more flexibility in message handling, appealing to users seeking more than the standard app functionality."

The Complainant's lawyers also attempted to contact the Respondent by submitting a notice via the Registrar's registrant contact form on May 6, 2024. However, no response was received by the Complainant.

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.

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

Within the disputed domain name, the entirety of the WHATSAPP trademark is reproduced with the addition of the terms “gb” before it and “up” after it. 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 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.

Furthermore, panels have held that the use of a domain name for illegal activity as applicable to this case, allowing users to download an unauthorized modified version of the Complainant’s application, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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, in consideration of the fact that the Complainant has been providing mobile messaging applications for years, it is highly unlikely that the Respondent could have been unaware of the Complainant’s trademarks at the time of the registration of the disputed domain name on July 16, 2023. Given the use of the disputed domain name for a website which has used a variation of the Complainant’s figurative trademark in a similar color scheme, and has promoted and offered for downloading of a modified version of the Complainant’s application without authorization, it is evident that the Respondent knew of the Complainant when registering the disputed domain name. Therefore, it is found that the Respondent registered the disputed domain name in bad faith.

With regard to the requirement of bad faith use, the Panel finds that the Respondent is using the disputed 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.

Moreover, panels have held that the use of a domain name for illegal activity, such as allowing users to download an unauthorized modified version of the Complainant's application, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <gbwhatsappup.net> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: September 4, 2024