

## **ADMINISTRATIVE PANEL DECISION**

WhatsApp LLC, Instagram, LLC v. Fahad Nawaz, ZeeTv, TV Channels Videos, TV Channels Videos  
Case No. DCO2024-0025

### **1. The Parties**

The Complainants are WhatsApp, LLC and Instagram, LLC, United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

The Respondents are Fahad Nawaz, ZeeTv, Pakistan, and TV Channels Videos, TV Channels Videos, Pakistan.

### **2. The Domain Names and Registrars**

The disputed domain name <gbwhatsapp.com.co> is registered with Name.com, Inc. (the “Registrar 1”).

The disputed domain name <instander.com> is registered with Network Solutions, LLC (the “Registrar 2”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 22, 2024. On March 22, 2024, the Center transmitted by email to the Registrar 1 a request for registrar verification in connection with the disputed domain name. On March 25, 2024, the Registrar 1 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 Protection Services, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainants on March 26, 2024, providing the registrant and contact information disclosed by the Registrar 1, and inviting the Complainants to submit an amendment to the Complaint.

The Complainants filed an amended Complaint on April 5, 2024, in which it requested addition of the disputed domain name <instander.com> into the proceeding. On April 9, 2024, the Center transmitted by email to the Registrar 2 a request for registrar verification in connection with additional disputed domain name. On April 18, 2024, the Registrar 2 transmitted by email to the Center its verification response confirming the registrant is listed as the Respondent in the amended Complaint.

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 Respondents of the Complaint, and the proceedings commenced on April 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 8, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on May 17, 2024.

The Center appointed Peter Burgstaller as the sole panelist in this matter on May 27, 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 Complainants are wholly-owned by Meta Platforms, Inc. WhatsApp, LLC provides under the mark WHATSAPP an instant messaging and voice-over IP service; and Instagram, LLC provides under the mark INSTAGRAM and INSTA a web-based mobile application which enables users to share pictures and videos (Annex 1, 2, 6 and 11 to the Complaint).

The Complainants own numerous trademark registrations containing the mark WHATSAPP and INSTAGRAM as well as INSTA around the world, inter alia:

For WHATSAPP:



- United States trademark (word), Registration No. 3939463, registered April 5, 2011;
- Pakistani trademark (word), Registration No. 302143, registered May 27, 2011;
- European Union trademark (word), Registration No. 9986514, registered October 25, 2011;
- International Registration (word), Registration No. 1085539, registered May 24, 2011, designated for various countries around the world (Annex 10 to the Complaint).

For INSTAGRAM:

- United States trademark (word), Registration No. 4146057, registered May 22, 2012;
- European Union trademark (word), Registration No. 14493886, registered December 24, 2015;
- International Registration (word), Registration No. 1129314, registered on March 15, 2012, designated for various countries around the world;

For INSTA:

- United States trademark (word), Registration No. 5061916, registered October 18, 2016;
- European Union trademark (word), Registration No. 14810535, registered May 23, 2018 (Annex 16 to the Complaint).

Further, the Complainants own the figurative trademarks  and  registered in various countries around the word (Annex 10 and 16 to the Complaint) and in use especially as application icon and business logo.

The Complainants have registered several domain names containing the mark WHATSAPP under different Top-Level-Domains, inter alia <whatsapp.com> on September 4, 2008 (Annex 8 to the Complaint) as well as containing the mark INSTAGRAM, inter alia <instagram.com> on June 4, 2004 (Annex 14 to the Complaint).

The disputed domain names were registered February 18, 2023, for <gbwhatsapp.com.co>, and July 25, 2020, for <instander.com> (Annex 3 to the Complaint).

At the time of filing the Complaint the disputed domain name <gbwhatsapp.com.co> redirected to a website at “www.appsgb.net” which purportedly promoted and offered a download of a modified version of WHATSAPP and which stated inter alia: “GB Whatsapp is very famouse Whatsapp Mod Version available here for downloading...” (Annex 17 to the Complaint).

At the time of filing the Complaint the disputed domain name <instander.com> resolved to a website which purportedly promoted and offered a download of a modified version of Instagram called “Instander” and which stated inter alia: “Instander is an InstaMod that brings a whole new level of functionality to Instagram...” (Annex 19 to the Complaint).

Furthermore, the Respondents used the Complainants’ figurative trademarks or variation of them.

The Complainants sent a cease-and-desist letter on February 6, 2024 regarding the disputed domain name <gbwhatsapp.com.co> to the Respondent; the message could not be delivered (Annex 21 to the Complaint). The Respondents’ email address “[...]@gmail.com” was also used in the proceeding *Instagram, LLC v. SEO Ltd*, WIPO Case No. [D2023-3229](#).

## **5. Parties’ Contentions**

### **A. Complainants**

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainants contend that WHATSAPP, INSTAGRAM and INSTA are famous and globally well-known trademarks; the disputed domain names incorporate these famous trademarks. The Complainants submit that the Respondents were aware of the Complainants’ trademarks when registering the disputed domain names and the disputed domain names resolved to websites purporting to offer downloads for unauthorized versions of WHATSAPP and INSTAGRAM applications together with statements about the Complainants’ products and their famous brand logos or variation of them. In doing so, the Respondents used the disputed domain names to prominently display and reproduce - without authorization - the Complainants’ various intellectual properties, including the Complainants’ WHATSAPP, INSTAGRAM and INSTA marks.

There is no legal relationship whatsoever between the Complainants and the Respondents.

### **B. Respondents**

The Respondents did not reply to the Complainants’ contentions.

## **6. Preliminary Procedural Issue: Consolidation of Multiple Respondents**

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainants allege that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainants request the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainants’ request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainants' request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.11.2.

In the present case, the following elements indicate that the two disputed domain names are under common control:

(1) the email addresses of the registrants are identical, and the underlying registrant details for the disputed domain names mention the same country (Pakistan); and

(2) the disputed domain names target the parent company of the Complainants in a very similar manner by resolving to websites which purportedly offer for download unauthorized versions of the Complainants' WHATSAPP and INSTAGRAM applications.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

## **7. Discussion and Findings**

According to paragraph 4(a) of the Policy, the Complainants must prove that:

(i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and

(ii) the Respondent has no rights or legitimate interests with respect to the disputed domain names; and

(iii) the disputed domain names have been registered and are 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 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainants have shown rights in respect of trademarks or service marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Complainants' marks are recognizable within the disputed domain names or at least the distinctive part of them:

Regarding the disputed domain name <gbwhatsapp.com.co>, the mark WHATSAPP is reproduced in its entirety and is clearly recognizable.

Regarding the disputed domain name <instander.com>, both INSTA and INSTAGRAM marks are recognizable in the disputed domain name.

Accordingly, the disputed domain names are confusingly similar to the marks of the Complainants for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names, since they have never assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use their trademarks in any manner.

The Respondent is not an authorized dealer of the Complainants’ products. The disputed domain names resolved/redirected to websites which displayed prominently the Complainants’ trademarks and logos or variation thereof, together with information about the Complainants’ products and a download possibility for unauthorized versions of the Complainants’ WHATSAPP and INSTAGRAM applications.

The Respondent did not show any rights or legitimate interests in the disputed domain names. Furthermore, the “Oki Data test” (see *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)), for showing a right or legitimate interest for the Respondent in the disputed domain names clearly fails: Essential criteria of the test are not met, inter alia, an accurate and prominent disclosure of the relationship with the trademark holder, and the obligation only to sell authorized trademarked goods or services. The Panel notes, that the Respondent’s use of the disputed domain names clearly fails to meet these essential requirements for showing a right or legitimate interest in the disputed domain names.

The Respondent did not reply and has not rebutted the Complainants’ contentions.

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

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

As stated in many decisions rendered under the Policy both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainants must show that:

- the disputed domain names were registered by the Respondent in bad faith; and
- the disputed domain names are being used by the Respondent in bad faith.

(i) The Complainants have established rights in the registered trademarks WHATSAPP, INSTAGRAM, and INSTA, long before the registration of the disputed domain names. Further, the Complainants’ trademarks are not only distinctive but famous and well-known around the world.

Hence, it is inconceivable for this Panel that the Respondent registered and used the disputed domains name without knowledge of the Complainants’ rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain names entirely incorporate the Complainants’ distinctive and famous trademarks which strongly indicates that the Respondent was aware of the Complainants and their marks at the time of registration of the disputed domain names.

Therefore, the Panel is convinced that the disputed domain names were registered in bad faith by the Respondent.

(ii) Further, the Complainants put forward evidence that the disputed domain names resolved/redirected to websites which prominently displayed the Complainants' trademarks and logos together with information about the Complainants' products. Moreover, the Respondent purportedly offered the possibility to download unauthorized versions of the Complainants' applications.

In doing so, the Respondent has intentionally attempted to attract Internet users to its websites, for commercial gain, by creating a likelihood of confusion with the Complainants' trademarks as to the source, sponsorship, affiliation, or endorsement of its websites according to paragraph 4(b)(iv) of the Policy which constitute bad faith registration and use of the disputed domain names.

The evidence and documents produced and put forward by the Complainants together with the fact that the Respondent has failed to present any evidence of any good faith registration and use with regard to the disputed domain names further supports the finding of bad faith.

Based on the available record, the Panel finds that the Complainants have established the third element of the Policy.

## **8. 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 names <gbwhatsapp.com.co> and <instander.com> be transferred to the Complainants.

*/Peter Burgstaller/*

**Peter Burgstaller**

Sole Panelist

Date: June 10, 2024