

**Domain Name Dispute Resolution Center (DNDRC)**

**Arbitration and Mediation Center**

**COMPLAINT PANEL DECISION**

**Case No. C2025-0002**

**Also in PDF C2025-0002**

**1. The Parties**

The Complainant is WhatsApp, LLC having its office at 1601 Willow Road, Menlo Park, California, 94025, United States of America. The Complainant has initiated the complaint vide their authorized representative, David Taylor / Jane Seager, Hogan Lovells (Paris) LLP 17, avenue Matignon, 75008, Paris, France.

The Respondent's name is Asif Ali with their address at Korangi, Karachi.

**2. The Domain Name and Registrar**

The domain name in dispute is <gbwhatsapp.com.pk>, hereinafter referred to as the Disputed Domain Name [“the DDN”]. Vide email dated 04 August 2024, PKNIC has informed DNDRC that the DDN was registered by the Respondent.

**3. Procedural History**

DNDRC was informed of the Complaint against the Respondent as per PKNIC - Internet Domain Registration Policy, by notification from the Complainant on 20 June 2024 after which DNDRC completed its compliance review.

PKNIC provided the details of the Respondent to DNDRC on 04 August 2024.

The Respondent was issued a notification of the dispute along with a copy of the Complaint and a Response Form on 05 August 2024 informing the Respondent that if a Response was not received 10 days from the notification, the dispute would be proceeded ex parte. DNDRC received an amended complaint from the Complainant on 14 August 2024. An email with the

amended complaint was sent to the Respondent on 23 August 2024, with subsequent reminders to file the Response Form on 30 August 2024 and 19 September 2024.

Applying Paragraph 4(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), DNDRC appointed Mr. Rayyan Altaf as the sole Arbitrator who has verified that the Complaint satisfies the formal requirements of the Policy and the Rules.

#### **4. Factual Background**

The DDN upon which the Complaint is based is <gbwhatsapp.com.pk>.

PKNIC has confirmed via their email dated 04 August 2024 that the DDN was registered by the Respondent above-named and that the email address provided at the time of registration is [sodher786@gmail.com](mailto:sodher786@gmail.com). DNDRC awaited the submission by the Complainant of the Complaint as per the prescribed forms also available at [www.dndrc.com/downloads](http://www.dndrc.com/downloads). The Respondent then subsequently provided a response within the required period.

#### **1. Parties Contentions**

##### **A. Complainant**

The Complainant's brief contentions are reproduced below:

- The Complainant, **WhatsApp, LLC** ("**WhatsApp**"), is a provider of one of the world's most popular mobile messaging applications (or "apps"). Founded in 2009 and acquired by Meta Platforms, Inc. (formerly Facebook, Inc.) ("**Meta**") in 2014, WhatsApp allows users across the globe to exchange messages for free via smartphones, including iPhone and Android. Its main website available at [www.whatsapp.com](http://www.whatsapp.com) also allows Internet users to access its messaging platform.*
- Since its launch in 2009, WhatsApp has become one of the fastest growing and most popular mobile applications in the world, with over 2.78 billion monthly active users worldwide (as of 2023). WhatsApp has acquired considerable reputation and goodwill worldwide, including in Pakistan. WhatsApp is the downloaded application in Pakistan and 4<sup>th</sup> in the world as per data.ai's Top Apps Rankings in 2024.*

See **Annex 4** for a screen capture of the Complainant's website and copies of information on the Complainant, including its Wikipedia entry, press articles on Meta's acquisition of WhatsApp in 2014, its application ranking and rapid growth and popularity worldwide, including in Pakistan.

3. Reflecting its global reach, the Complainant is the owner of numerous domain names consisting of or including its WHATSAPP trade mark under a wide range of generic Top-Level Domains (**gTLDs**) as well as under numerous country code Top Level Domains (**ccTLDs**). For instance, <whatsapp.com>, <whatsapp.net>, <whatsapp.org>, <whatsapp.pk> and <whatsapp.com.pk> (**Pakistan**).

Copies of the WhoIs records for selected domain names comprising the Complainant's WHATSAPP trade mark are provided as **Annex 5**.

### **Instagram**

4. Instagram, LLC (**Instagram**), a subsidiary of the Complainant's parent company, Meta, is a world renowned online photo and video sharing social-networking application. Since its launch in 2010, Instagram has rapidly acquired and developed considerable goodwill and renown worldwide. Acquired by Meta in 2012, today Instagram is the world's fastest growing photo- and video-sharing and editing software and online social network, with more than 2.3 billion monthly active accounts worldwide.

Copies of Instagram's company information, including its Wikipedia entry, articles about Meta's acquisition of Instagram in 2012 and mobile application rankings, and Interbrand's Best Global Brands 2023 are provided as **Annex 6**.

### **The Complainant's trade mark**

5. In addition to its strong online presence, the Complainant has secured ownership of numerous trade mark registrations for WHATSAPP in many jurisdictions throughout the world, including in Pakistan, as detailed above.
6. **The Respondent, the Domain Name and the associated website**
7. The Domain Name incorporates the Complainant's WHATSAPP trade mark in its entirety, preceded by the letters "gb", under the ccTLD ".com.pk" by the Respondent on 1

January 2023 (see **Annex 2**).

8. The Domain Name currently points to the website at <https://gbwhatsapp.com.pk/> (the **Respondent's website**) entitled "GB WhatsApp Pro APK2 (v17.70) Download 2024 (WAMOD)", which promotes and offers downloads of unauthorized modified APK versions of WhatsApp and Instagram ("GB WhatsApp Pro", "WhatsApp Mod", "OGWhatsApp", "FMWhatsApp", "YoWhatsApp", "WhatsApp Plus", "JTWhatsApp" and "GB Instagram").
9. In relation to GB WhatsApp Pro APK, the Respondent's website states  
  

"Nothing is perfect, but your WhatsApp messaging app can be. If you want to enjoy some new features, GB WhatsApp is the right option for you. GBWhatsApp Pro APK is the newest version of the official app and is one of the popular mods with new features and user options to make the messaging experience more fun for you. Download GB WhatsApp APK's latest version 2023 on your phone to enjoy its new features."
10. In relation to GB Instagram, the Respondent's website states:  
  

"If you want GB Instagram APK Download, then the APK file is available on this page free of cost to download and install on your android device. [...]"
11. The bottom of the Respondent's website contains a hyperlink entitled "Non-Affiliation and Disclaimer" leading to a separate website and so the full text of the disclaimer<sup>3</sup> can only be seen after Internet users click on the hyperlink.
12. In addition, the Respondent's website uses (i) a logo highly similar to the Complainant's figurative trade mark as well as (ii) Instagram's logo, as follows:

**Screen capture of the  
Respondent's website**



**The Complainant's  
WhatsApp logo**



**Instagram logo**



Screen captures of the Respondent's website are provided as **Annex 7**.

13. As explained in more detail below, the Respondent's registration and use of the Domain Name does not conform to the Complainant's Brand Guidelines (see <https://about.meta.com/brand/resources/whatsapp/whatsapp-brand>), nor does it comply with the WhatsApp Terms of Service (see <https://www.whatsapp.com/legal/terms-of-service>).

Copies of the WhatsApp Brand Guidelines and Terms of Service are provided as **Annex 8**

14. Similarly, the Respondent's use of the Domain Name does not conform to the Developer Policies applicable to Instagram, available at <https://developers.facebook.com/devpolicy>.

A copy of the Meta Developer Policies is provided as **Annex 9** .

15. In addition, a search carried out by the Complainant has revealed that the Respondent's name and email address *sodher786@gmail.com* used to be associated with at least seven other domain names abusive of third parties' rights including:

- <dailymotion.accountant> (DAILYMOTION)
- <dailymotion.cricket> (DAILYMOTION)
- <dailymotion.loan> (DAILYMOTION)
- <dailymotion.press> (DAILYMOTION)
- <dailymotion.racing> (DAILYMOTION)
- <vimeo.press> (VIMEO)
- <vimeo.website> (VIMEO)

Copies of historical WhoIs records of abusive domain names associated with the Respondent are provided as **Annex 12**.

16. The Complainant submits the present Complaint requesting transfer of the Domain Name to protect its rights and legitimate business interests.

Therefore, the Complainant seeks the following remedy:

*In accordance with Paragraph 4(i) of the Policy, the Complainant requests that the Administrative Panel appointed in this administrative proceeding transfer the Domain Name to the Complainant.*

## **B. Respondent**

The Respondent has not submitted any response.

## **5. Jurisdiction**

The Panel's jurisdiction over this dispute between the Complainant and the Respondent is established by virtue of the Internet Domain Registration Policy version 4.4 (2019-08-19) and the Rules.

The Respondent applied for and was granted registration of the DDN on the basis of these regulations, and has submitted to, the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) and the Rules and correspondingly to the arbitral jurisdiction of the DNDRC and its arbitration decisions.

## **6. Discussion and Findings**

In the landmark case of *Standard Chartered PLC v. Hosting Campus Domain* (case no. C2007-0001) available on the DNDRC website ([http://www.dndrc.com/cases\\_resolved/pdf/c2007-0001.pdf](http://www.dndrc.com/cases_resolved/pdf/c2007-0001.pdf)), the Panel laid down the following four heads under which to analyze cases, under the Internet Domain Registration Policy version 4.4 (2019-08-19) and the UDRP:

1. *Illegality, unlawfulness or otherwise invalidity of the Application & Registration (a criteria in terms of the PKNIC - Internet Domain Registration Policy June 20, 2006 version 4.1 in addition to the criteria of the UDRP)*
2. *Identical or confusing similarity to a trademark or service mark in which the Complainant has rights (a UDRP criteria)*
3. *Legitimate interest in Domain Name (a UDRP criteria)*
4. *Registration and use in bad faith (a UDRP criteria)*

The decision of the dispute shall be addressed with respect to the following aspects:

- i. *Illegality, unlawfulness or otherwise invalidity with respect to the Application & Registration (a PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) criteria).*
- ii. *Identical or confusing similarity with a trademark or service in which the Complainant has rights (a UDRP criteria).*
- iii. *Legitimate interest in the domain name (a UDRP criteria).*

- iv. Registration and use of the domain name in bad faith (a UDRP criteria).

**I. Illegality, unlawfulness or otherwise invalidity of the Application & Registration**

The PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19) states that it creates an exception for, and thus excludes the registration of a domain name that:

- a. infringes upon a registered tradename,*
- b. is not bona fide as recognized by international best practice,*
- c. in the opinion of PKNIC, a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law,*
- d. has been declared by a Criminal Court of appropriate jurisdiction to have contravened the latest version of Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/Anti-Terrorism Act, 1997/any applicable criminal law),*  
*or*
- e. in the opinion of PKNIC is not appropriate for registration.*

As per the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19),

*If a party claims that a domain name already registered with PKNIC violates their registered tradename, an obvious derivation of their registered company name is not bona fide as recognized by international best practice, and is a contravention in the opinion of PKNIC to be a contravention of the latest version of the Pakistan Penal Code Act, 1860 (including offences of defamation & blasphemy)/ Anti-Terrorism Act, 1997/any applicable criminal law, PKNIC reserves the right to cancel, or transfer the domain to the claiming party as per the ICANN's Uniform Domain Name Dispute Resolution Policy [UDRP] (with PKNIC amendments) or as per the orders of a court judgment in Pakistan.*

Therefore, for the purpose of assessing illegality, unlawfulness or otherwise invalidity of the Application & Registration of the DDN, the application and registration of the DDN shall be assessed in consideration of the following criteria:

- i. Whether the DDN infringes upon a registered trade name / trade mark?
- ii. Whether the application and/or registration of the DDN is bona fide?
- iii. Whether the application and/or registration of the DDN contravenes the Pakistan Penal Code, 1860 (the "Penal Code") or any applicable criminal law?

The Respondent has not submitted any response.

For the purpose of proving illegality or unlawfulness, it will be considered sufficient if the Complainant is able to prove that they possess rights to a trademark that is wholly incorporated within the DDN. The Complainant has provided a copy of a certificate of registration issued by the Government of Pakistan within Annex 3, which confirms that the trademark “WHATSAPP” has been registered in Pakistan in Class 38.

The Complainant has not provided any supporting arguments to demonstrate whether the addition of the letters “gb” within the DDN will still constitute trademark infringement.

In the absence of any further submissions, the Panel finds that there is insufficient information to determinatively conclude that this PKNIC criteria has been met. Therefore, it is necessary to assess whether each of the UDRP criteria has been met, to establish whether the Complaint can be accepted.

## **II. Identical or confusing similarity to a trademark or service mark in which the Complainant has rights**

The Complainant has stated:

17. *The first element of paragraph 4(a) of the Policy requires a complainant to establish first, that it has rights in a trade mark or service mark, and secondly, that the disputed domain name is identical or confusingly similar to that trade mark or service mark.*
18. *The Complainant owns numerous trade mark registrations for WHATSAPP in jurisdictions throughout the world, including in Pakistan (see Annex 3). The Complainant has therefore established trade mark rights in WHATSAPP for the purposes of paragraph 4(a)(i) of the Policy.*
19. *The Domain Name comprises the Complainant's WHATSAPP trade mark in its entirety with mere addition of the letters "gb" under the ccTLD ".pk" for Pakistan.*
20. *Since the Complainant's WHATSAPP trade mark is clearly recognizable in the Domain Name, it is generally held by prior panels under UDRP that the mere addition of the letters cannot prevent a finding of confusing similarity with the Complainant's trade marks. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition<sup>4</sup> (the "**WIPO Overview 3.0**"), section 1.8 and WhatsApp LLC v. Registration*

*Private, Domains By Proxy, LLC / Muhammad Asif, WIPO Case No. D2022-3170 (gbwhatsappdownload.com).*

21. *The addition of the country code domain extension ".com.pk" may be disregarded for the purposes of assessment under the first element, as it is a standard requirement of registration; see WIPO Overview 3.0, section 1.11.1.*
22. *For reasons set out above, the Complainant submits that the Domain Name is confusingly similar to the Complainant's WHATSAPP trade mark, in accordance with paragraph 4(a)(i) of the Policy.*

The Respondent has not submitted any contention.

The Panel acknowledges that UDRP panels have consistently held that a domain name is identical or confusingly similar to trademarks under the Policy when the Complainant's registered trademark is recognizable within a DDN regardless of the addition of other terms. This principle was upheld in the case of *Government Employees Insurance Company ("GEICO") v. Contact Privacy Inc. Customer 7151571251 / Kendrick Whiteman, geico* WIPO Case No. D2022-3173, alongside several other WIPO and DNDRC cases.

The Panel by applying the test set out under paragraph 1.7 of the UDRP policy and through comparing the DDN to the Complainant's trademark, finds that the DDN incorporates the entirety of the trademark with the addition of the letters "gb", which do not negate confusing similarity.

Furthermore, the Panel takes note of the widely recognized principle that establishes that the inclusion of a ccTLD such as ".pk" does not negate a finding of confusing similarity due to it being a standard requirement of registration, as stated by the Complainant in their contentions as well. This principle can be seen upheld in several DNDRC and WIPO cases (See *H. Lundbeck A/S v. Bkanggara Windarti, My Store* WIPO Case No. D2024-2000).

Therefore, the Panel concludes that the DDN is confusingly similar to a trademark in which the Complainant holds rights.

### **III. Legitimate interests in a domain name**

As per paragraph 4(c), the UDRP requires the Respondent's claim to be of legitimate interest and shall be:

*“proved based on all evidence presented” that “shall demonstrate” the Respondent’s “rights or legitimate interests to the domain name for purposes of [Paragraph 4\(a\)\(ii\)](#). ”*

Paragraph 4(a)(ii) states that:

*“(i) before any notice to you of the dispute, your use of, or 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; or*

*(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or*

*(iii) you are 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.”*

The Complainant has contended the following:

23. *The Complainant asserts that the Respondent is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy that would demonstrate its rights or legitimate interests in the Domain Name.*

***The Respondent is not using the Domain Name in connection with any bona fide offering of goods or services***

24. *The Respondent is not a licensee of the Complainant, nor has the Respondent been authorized by the Complainant to make any use of its WHATSAPP trade mark, in a domain name or otherwise.*
25. *As a preliminary matter, WhatsApp's Brand Guidelines<sup>6</sup> prohibit the registration of domain names that could be confused with WhatsApp. Noting that the Domain Name is confusingly similar to the Complainant's WHATSAPP trade mark, the Respondent's registration of the Domain Name violates WhatsApp's Brand Guidelines (see **Annex 8**).*
26. *As noted above, the Respondent's website purports to offer for download unauthorized modified versions of the WhatsApp and Instagram applications. Prior panels have recognized that resellers or service providers using a domain name containing a third-*

party trade mark may be making a bona fide offering of goods or services and thus have a legitimate interest in such domain name. Whether or not this is the case may be measured against the list of factors set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903 () (the "**Oki Data criteria**");

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trade marked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trade mark holder; and
- (iv) the respondent must not try to "corner the market" in a domain name that reflects the trade mark.

See also WIPO Overview 3.0, section 2.8.

27. As a preliminary matter, the Complainant submits that the Respondent is unable to be viewed as a bona fide service provider as it does not provide sales or repairs in relation to a product provided by the Complainant. Rather, the Respondent is making unauthorized use of the Complainant's WHATSAPP trade mark to offer for download the third-party products. Nevertheless, even if one is to apply the Oki Data criteria, the Complainant submits that the Respondent does not satisfy the Oki Data criteria, as follows:

(i) The Respondent's website purports to offer for download the third-party applications such as "GB WhatsApp Pro". As such, the Respondent cannot be said to be using the Respondent's website to offer the goods or services at issue, namely the WhatsApp and Instagram applications.

(iii) The Respondent's website does not disclose its lack of relationship with the Complainant. Rather, the Respondent's website on its main page prominently displays the Complainant's WHATSAPP trade mark, together with the logo highly similar to the Complainant's figurative trade mark. In addition, the bottom of the Respondent's website contains a hyperlink entitled "Non-Affiliation and Disclaimer" leading to a separate website and so the full text of the disclaimer can only be seen after Internet users click on the hyperlink. The Respondent's website may therefore mislead Internet users into believing that it is operated or authorized

*by the Complainant, when in fact it is not.*

28. *As mentioned above, applications such as "GB WhatsApp Pro" are modified versions of WhatsApp, developed by a third party. The Complainant is committed to maintaining the integrity of its WhatsApp service and does not support such third-party applications. As such, the Respondent is making unauthorized use of the Complainant's trade mark in the Domain Name and on the Respondent's website, to offer services that violate the Complainant's Terms of Service<sup>7</sup>. Such use cannot be considered a bona fide offering of goods or services. See WhatsApp, Inc. v. Nasser Bahaj, WIPO Case No. D2016-0581 (<ogwhatsapp.org> et al.)<sup>8</sup>. See also WhatsApp, Inc. v. Abdallah Almqbali, WIPO Case No. D2016-1287 (<watsabplus.com> et al.)*
29. *Similarly, "GB Instagram" is a modified version of Instagram, developed by a third party. It is not authorized by the Complainant's parent company, Meta, and violates the Meta Developer Policies<sup>10</sup>, available at <https://developers.facebook.com/devpolicy> (see **Annex 9**).*
30. *The Complainant therefore submits that the Respondent is not using the Domain Name in connection with a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy.*

***The Respondent is not commonly known by the Domain Name***

31. *The Respondent cannot legitimately claim that it is commonly known by the Domain Name, in accordance with paragraph 4(c)(ii) of the Policy.*
32. *The Respondent's name, Asif Ali, bears no resemblance to the Domain Name whatsoever.*
33. *To the best of the Complainant's knowledge, there is no evidence of the Respondent having obtained or applied for any trade mark registration or similar right for "whatsapp" or "gbwhatsapp", as reflected in the Domain Name.*
34. *Furthermore, the Respondent's use of the Domain Name to promote unauthorised WhatsApp and Instagram APKs does not support any reasonable claim of being commonly known by the Domain Name, nor does it give rise to any reputation in the Domain Name itself, independent of the Complainant's trade mark rights.*

***The Respondent is not making a legitimate noncommercial or fair use of the Domain Name***

35. *Nor is the Respondent currently making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers within the meaning of paragraph 4(c)(iii) of the Policy.*
36. *The Respondent's use of the Domain Name to offer for download unauthorized modified versions of the WhatsApp and Instagram applications does not amount to legitimate noncommercial or fair use. The provision of services that violate the WhatsApp Terms of Service and the Meta Developer Policies cannot give rise to rights or legitimate interests in the Domain Name. See Lemon Inc. v. saleem abbas, WIPO Case No. D2023-4066 (<ressomodapk.com>)<sup>11</sup>.*
37. *Therefore, the Complainant has established a prima facie showing that the Respondent lacks rights or legitimate interests in the Domain Name. Accordingly, the burden of production shifts to the Respondent to come forward with evidence to rebut the Complainant's case. In the absence of such evidence, the Complainant may be deemed to have satisfied the requirements of paragraph 4(a)(ii) of the Policy; see WIPO Overview 3.0, section 2.1.*

The Respondent has not submitted any response.

For the purposes of this criterion, if the Complainant contends that that the Respondent lacks legitimate interest, it will be sufficient to shift the burden of proof on to the Respondent to prove otherwise (See *MicroBilt Corporation v. Greg J Michalko* WIPO Case No. D2024-2212). The Panel notes that a prima facie case has been established against the Respondent by the Complainant's contention that the Respondent lacks a legitimate interest.

The Respondent had to provide satisfactory evidence that demonstrates otherwise and failing to do so would result in the second element being satisfied by the Complainant. However, due to a lack of any response from the Respondent, the second element is automatically satisfied by the Complainant as the Panel is unable to ascertain whether the Respondent has a legitimate interest in the DDN.

Therefore, the Panel concludes that the Complainant has established a prima facie case that the Respondent lacks legitimate interest in the DDN, and subsequently the Respondent has failed to establish that it has legitimate interest in the DDN.

The Panel therefore finds that the Respondent does not have any legitimate interest in the DDN.

#### **IV. Registration and use in bad faith**

The Complainant has made the following submission:

38. *Paragraph 4(b) of the Policy lists four factors which, in particular but without limitation, may be evidence of registration and use of a domain name in bad faith for the purposes of paragraph 4(a)(iii) of the Policy.*
39. *The Complainant submits that paragraph 4(b)(iv) of the Policy is of particular relevance in the present case, although there are other factors not listed in paragraph 4(b) of the Policy that further indicate bad faith, as explained in more detail below.*

##### ***Registration in bad faith***

40. *The Complainant's WHATSAPP trade mark is inherently distinctive and well known throughout the world in connection with its messaging application, having been continuously and extensively used since the respective launching of its services, and acquiring considerable reputation and goodwill worldwide, including in Pakistan (see **Annex 4**).*
41. *All of the leading search results obtained by typing "WhatsApp" into the Google search engine available at [www.google.com](http://www.google.com) and [www.google.com.pk](http://www.google.com.pk) refer to the Complainant (see **Annex 10**).*
42. *Given the Complainant's renown and goodwill worldwide and particularly its popularity and trade mark rights well established prior to the registration of the Domain Name, it would be inconceivable for the Respondent to argue that it did not have knowledge of the Complainant's WHATSAPP trade mark when it registered the Domain Name in 2023. See, for example, *WhatsApp Inc. v. Francisco Costa*, WIPO Case No. D2015-0909 (<[webwhatsapp.com](http://webwhatsapp.com)>, **registered in 2012**).*
43. *The content of the Respondent's website clearly demonstrates the Respondent's knowledge of the Complainant and its trade marks, as it makes multiple references to the Complainant and offers for download unauthorized versions of the Complainant's application. The Complainant's WHATSAPP trade mark is a coined term, exclusively*

associated with the Complainant and its messaging services. All these factors clearly indicates the Respondent's intent to target the Complainant's trade marks at the time of registration of the Domain Name. See WIPO Overview 3.0, Section 3.2.1 as well as WhatsApp Inc., Facebook, Inc. v. Alex Xu, HKITN, WIPO Case No. D2019-1709, (<whatsapp-marketinghk.com> et al.) and Lemon Inc. v. saleem abbas, supra14 .

44. The Complainant further submits that the registration of multiple domain names targeting the rights of third parties further evidences the Respondent's bad faith. The Respondent, using the email address sodher786@gmail.com, currently is or used to be the registrant of at least eight domain names targeting the rights of third parties (the Domain Name as well as <dailymotion.accountant>, <dailymotion.cricket>, <dailymotion.loan>, <dailymotion.press>, <dailymotion.racing>, (DAILYMOTION), <vimeo.press> and <vimeo.website> (VIMEO) (see **Annex 12**).
45. Having no relationship with the Complainant or authorization to make use of its trademark in a domain name or otherwise, the Respondent has knowingly proceeded to register the Domain Name, being confusingly similar to the Complainant's well known WHATSAPP trade mark and carrying a high risk of implied affiliation with the Complainant, in bad faith.

#### **Use in bad faith**

46. Given the confusing similarity between the Domain Name and the Complainant's trade mark, and the content of the Respondent's website as described above, in the absence of any clearly visible disclaimer regarding the relationship with the Complainant, Internet users are likely to be misled into believing that the Respondent's website is somehow affiliated with or otherwise endorsed by the Complainant, which is not the case.
47. The Respondent's website offers for download unauthorized modified versions of WhatsApp and Instagram applications, developed by a third party. The Complainant therefore submits that by using the Domain Name in this fashion, the Respondent intentionally attempts to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and the goods and services marketed therein, in bad faith pursuant to paragraph 4(b)(iv) of the Policy. See WhatsApp, Inc. v. Nasser Bahaj, supra15 and WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi, WIPO Case No. D2021-0032 (<cyberwhatsapp.com>)

48. *The fact that the Respondent's website does not display any commercial banners or promotional Pay-PerClick (PPC) links does not prevent a finding of bad faith under paragraph 4(b)(iv) as prior UDRP panels have held that commercial gain may include the respondent gaining or seeking reputational and/or bargaining advantage, even where such advantage may not be readily quantified; see WIPO Overview 3.0, section 2.5.3.*
49. *Furthermore, the promotion of unauthorized modified APK versions of WhatsApp and Instagram applications not only violates the WhatsApp Terms of Service and Meta Developer Policies, but also places the security of WhatsApp and Instagram users at risk. The Respondent's use of the Domain Name to offer unauthorized modified APK versions under the Complainant's trade mark disrupts the business of the Complainant and of its related group company Instagram by driving WhatsApp and Instagram users to third-party applications. Prior panels have held that such activities amount to use of a domain name in bad faith. See *Lemon Inc. v. saleem abbas*, supra17.*
50. *Moreover, the Respondent's website displays a modified version of WhatsApp's speech bubble logo (see **Annex 7**), thereby creating a misleading impression of association with the Complainant in bad faith. See *WhatsApp Inc. v. Edwin Lizcano, Inversiones Capira SAS*, WIPO Case No. D2019-1700 (<maswhatsapp.com>).*
51. *In view of the above, the Complainant submits that the Domain Name was registered and is being used in bad faith, in accordance with paragraph 4(a)(iii) of the Policy.*

The Respondent has not submitted any response.

The Panel acknowledges that paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by the Panel to be present, will count towards evidence of the registration and use of a domain name in bad faith. Paragraph 4(b)(iv) of the Policy states that if a Respondent has intentionally attempted to attract for their commercial gain, users of the internet to its website by creating a likelihood of confusion with the Complainant's mark as to the source or affiliation of its website, such use would constitute a registration and use in bad faith.

As stated by the Complainant, the WHATSAPP trademark has worldwide recognition. The Respondent on their site has also made references to the Complainant and has offered users the chance to download unauthorized versions of the application. Since the Respondent has not submitted any response to try and refute such claims, the Panel finds that Respondent while registering the DDN had the intention in mind to attract users of the Complainant's application

through the DDN. It subsequently shows the Respondent's intent to create confusion for users on the internet with the Complainant's mark. The Panel further acknowledges that the Respondent had no prior relationship or authorization from the Complainant yet proceeded to register the confusingly similar DDN demonstrating that the intent was to establish an implied authorization to mislead users.

The Panel takes into consideration the contentions of the Complainant by which they have demonstrated that the absence of any disclaimer on the site under the DDN is likely to mislead users of the internet into thinking that the Respondent is affiliated with the Complainant, which is not true. The unauthorized, APK versions of the Complainant's application on offer for download on the DDN point towards an intent of attracting users for commercial gain by making a likelihood of confusion in bad faith to the sponsorship, affiliation, endorsement or source of the services and goods marketed within the Respondent's website, in line with paragraph 4(b)(iv) of the Policy, as stated by the Complaint as well.

Additionally, the Panel agrees with the Complainant's contention that the lack of any pay per click links will not negate a finding of use in bad faith as commercial gain can also be in the form of reputational or bargaining advantage (*WIPO Overview 3.0, section 2.5.3.*). In addition, the Panel upholds the principle in the case cited by the Complainant (*Lemon Inc. v. saleem abbas, supra*<sup>17</sup>), which held that activities such as making and distributing of unauthorized versions of an application can lead to a disruption in business and will also amount to use in bad faith. Lastly, the Complainant has contended that the Respondent has used an altered version of the Complainant's speech bubble logo, which further adds to a misleading impression of association with the Complainant in bad faith. This can be seen in the cases mentioned in the Complainant's contention *WhatsApp Inc. v. Edwin Lizcano, Inversiones Capira SAS, WIPO Case No. D2019-1700* (<maswhatsapp.com>).

The Panel concludes through the evidence submitted by the Complainant, and the lack of any response by the Respondent, that the conduct satisfies the requirements of paragraph 4(b)(iv) of the Policy, as the DDN lacks any substantial elements that differentiate it from the Complainant's trademark and is evidence of registration and use of the DDN in bad faith.

Therefore, the Panel finds that the DDN was registered and is being used in bad faith by the Respondent.

## **7. Decision**

The Panel, upon reviewing the information provided by the Complainant, acknowledges that the "WHATSAPP" trademark is registered in the Complainant's name, and that the Respondent does not hold any legitimate rights to it. The continued use of the DDN could significantly impair the

Complainant's ability to exercise its trademark rights and may harm the Complainant's reputation by creating confusion regarding the ownership of the DDN.

Keeping in consideration the aforementioned discussion, the Panel finds that:

1. The Respondent's registration of the DDN does not violate the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19);
2. The DDN is confusingly similar to the registered trademark of the Complainant;
3. The Respondent has no legitimate interest in the DDN;
4. The DDN was registered and is being used in bad faith.

Pursuant to Section 4 of the Policy, the Panel, therefore, recommends that PKNIC transfer the registration of the domain name in dispute <gbwhatsapp.com.pk> to the Complainant, as prayed, within 48 hours of receipt of this decision either by email or through the website where it will be uploaded, [www.dndrc.com/cases\\_resolved/](http://www.dndrc.com/cases_resolved/), whichever is earlier. The Complainant shall also be at liberty to contact PKNIC for implementation of this decision.

**Arbitrator: Rayyan Altaf**

**Sole Panelist**

**Date: 06 February 2025**