

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

Case No. C2024-0006

Also in PDF C2024-0006

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 representatives, Jane Seager/ David Taylor, with their address at Hogan Lovells (Paris) LLP 17, avenue Matigon, 75008, Paris, France.

The Respondent's name is GB Plus with their address at Lahore, Pakistan.

2. The Domain Names and Registrar

The domain name(s) in dispute are <downloadgbwhatsapp.pk>, <downloadgbwhatsapp.net.pk>, <downloadgbwhatsapp.org.pk>, <downloadgbwhatsapp.pk> and <gbwhatsapp.org.pk>, hereinafter referred to as the Disputed Domain Names ["the DDNs"]. Vide email dated 8 May 2024, PKNIC has informed DNDRC that the DDNs were all registered by GB Plus with the contact name GB Plus, with their address at Lahore.

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 12 April 2024 after which DNDRC completed its compliance review.

The Respondent was issued a notification of the dispute along with a copy of the Complaint and a Response Form on 10 May 2024 informing the Respondent that if a Response was not received 10 days from the notification, the dispute would be proceeded *ex parte*. Subsequently, DNDRC issued a reminder to the Respondent on 15 May 2024 and a second reminder was issued to the Respondent on 21 May 2024.

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

Factual Background

The domain names upon which the Complaint is based are <downloadgbwhatsapp.pk>, <downloadgbwhatsapp.net.pk>, <downloadgbwhatsapp.org.pk>, <downloadgbwhatsappapk.pk> and <gbwhatsapp.org.pk>.

PKNIC has confirmed via their email dated 8 May 2024 that the DDNs were registered by the Respondent above-named and that the email address provided at the time of registration for each of the DDNs is gbplus.orgapk@gmail.com.

1. Parties Contentions

A. Complainant

The Complainant's brief contentions are reproduced below:

*5. 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 also allows Internet users to access its messaging platform.*

6. 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 1st most downloaded application in Pakistan and 5th in the world as per data.ai's Top Apps Rankings in 2024.

*See **Annex 5** 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.*

7. 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 6**

The Complainant's trade mark

8. The Domain Names incorporate the Complainant's WHATSAPP trade mark in its entirety, with addition of the letters "gb" and "apk" and the term "download", under the extensions "org.pk", ".net.pk", ".pk".

9. The Domain Names redirect to a website at www.gbwhatsapp.org.pk (the "**Respondent's website**") which promotes and offers a download of unauthorised modified APK3 version of WhatsApp called "GB WhatsApp" (see **Annex 3**). The Respondent's website states:

"GB WHATSAPP APK Download Updated (LATEST VERSION).

GB WhatsApp is a modified version of the popular messaging app, WhatsApp, offering additional features and customization options not available in the original. It includes enhanced privacy settings, the ability to use two WhatsApp accounts on the same device, and more freedom to send larger files and media. GB WhatsApp caters to users seeking more control over their messaging experience."

10. The bottom of the Respondent's website contains the following copyright notice: "Copyright © 2023 GbWhatsapp.Org.PK All Rights Reserved"

11. The Respondent's website makes prominent reference to the Complainant's WHATSAPP trade mark, and uses the Complainant's figurative trade mark. The Respondent's website also makes use of the same green-and-white colour scheme used by the Complainant and the Complainant's figurative trade mark is displayed as favicon in the address bar. In addition, the Respondent's website displays multiple advertisement banners.

12. As explained in more detail below, the Respondent's registration and use of the Domain Names 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's Brand Guidelines and the WhatsApp Terms of Service are provided as **Annex 7**.*

13. The Complainant submits the present Complaint requesting transfer of the Domain Names 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 Names to the Complainant.

B. Respondent

The complaint was duly served to the Respondent, but the Respondent did not submit any response. Under section 5(e) of the UDRP, in the absence of a response, the Panel has the authority to commence the proceedings in default and to determine the matter based upon the Complaint. Therefore, the Panel proceeded with the matter ex-parte.

2. 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 DDNs 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.

3. 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), 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 Disputed Domain Names, the application and registration of the DDNs shall be assessed in consideration of the following criteria:

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

The Complainant has stated:

*This Complaint is based on the following trade mark registrations (see **Annex 3**): –*

- *United States Trademark Registration No. 3939463, WHATSAPP, registered on 5 April 2011;*
- *International Registration No. 1085539, WHATSAPP, registered on 24 May 2011;*
- *Pakistan Trade Mark Registration No. 302143, WHATSAPP, registered on 27 May 2011; and*
- *European Union Trade Mark No. 009986514, WHATSAPP, registered on 25 October 2011.*

WhatsApp also holds figurative trade mark registrations for its telephone logo, including:

- *International Registration No. 1109890, , registered on 10 January 2012.*

It is sufficient for the purpose of this criteria for the Complainant to establish that the DDNs infringes the tradename of the Complainant. The Complainant has provided sufficient proof that the Complainant owns numerous trademark registrations for the word “WHATSAPP” around the world, including in Pakistan. The Complainant has further alleged that the Respondent has used the registered trademark “WHATSAPP” and its figurative trademark on the associated website.

For the purpose of this criteria to be satisfied, however, it is the DDNs itself which must infringe upon the registered tradename of the Complainant and the Panel cannot take into consideration any content on the associated website. The Complainant has not taken the position that the DDNs itself infringes the registered trademark of the Complainant, and particularly whether the insertion of the letters/terms “gb”, “download” or “apk” would prevent infringement. Similarly, there is no information to indicate that the remaining elements of the PKNIC criteria can be met.

The Respondent has not provided a substantive response to the Complainant’s contention.

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 contended the following:

14. 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 names are identical or confusingly similar to that trade mark or service mark.

*15. The Complainant owns numerous trade mark registrations for WHATSAPP in jurisdictions throughout the world, including in Pakistan (see **Annex 4**). The Complainant has therefore established trade mark rights in WHATSAPP for the purposes of paragraph 4(a)(i) of the Policy.*

16. The Domain Names were registered under the ccTLD “.pk” and incorporate the WHATSAPP trade mark in its entirety, with the addition of the following terms:

The Domain Names

*<gbwhatsapp.org.pk>
<downloadgbwhatsapp.net.pk>
<downloadgbwhatsapp.org.pk>
<downloadgbwhatsapp.pk>
<downloadgbwhatsappapk.pk>*

Additional letters and/or terms

*“gb”
“download”, “gb”
“download”, “gb”
“download”, “gb”
“download”, “gb”, “apk”*

17. As stated in WIPO Overview 3.0, section 1.7:

"[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

18. The Complainant submits that the presence of its WHATSAPP trade mark in the Domain Names is sufficient to establish confusing similarity between the Domain Names and the Complainant's trade mark.

19. As stated in WIPO Overview 3.0, section 1.8:

"Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

20. Since the Complainant's WHATSAPP trade mark is clearly recognizable in the Domain Names, 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 *WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / Muhammad Asif*, WIPO Case No. D2022-3170 (<**gbwhatsappdownload.com**>).

21. The addition of the extensions ".org.pk", ".net.pk", ".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 Names are confusingly similar to the Complainant's WHATSAPP trade mark, in accordance with paragraph 4(a)(i) of the Policy.

The Complainant has therefore taken the position that the DDNs are confusingly similar to "WHATSAPP", the registered trademark of the Complainant. On the other hand, the Respondent has remained silent.

It is widely recognized that the initial element primarily serves as a standing requirement. The standing (or threshold) test for confusing similarity entails a reasoned but fairly straightforward comparison between the Complainant's trademark and the disputed domain names, as outlined in

section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (WIPO Overview 3.0).

As noted above, the Complainant has established its rights, both in Pakistan and internationally, to the trademark “WHATSAPP”. The question for the Panel to consider is whether the DDNs <downloadgbwhatsapp.pk>, <downloadgbwhatsapp.net.pk>, <downloadgbwhatsapp.org.pk>, <downloadgbwhatsappapk.pk> and <gbwhatsapp.org.pk> are confusingly similar to the trademark “WHATSAPP”. As submitted by the Complainant, it is a well-established principle that the addition of a ccTLD such as “.pk” would not prevent a finding of confusing similarity. This has been upheld in multiple previous DNDRC and WIPO cases, including those relied upon by the Complainant.

With respect to the addition of the letters “gb”, “download” or “apk” the Panel has reviewed the precedent of WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / Muhammad Asif, WIPO Case No. D2022-3170 (<gbwhatsappdownload.com>) submitted by the Complainant. The Panel agrees with the findings of the WIPO Panel that the addition of the letters “gb”, “download” or “apk” (even if considered descriptive, geographical or meaningless) in front of the registered trademark of the Complainant would also not prevent confusing similarity.

The Panel further agrees with the decision set out in WhatsApp, LLC v. Contact Privacy Inc. Customer 7151571251, Contact Privacy Inc. / Gulsher Khan, WIPO Case No. D2023-5230 (<gbwhatsappdownloadpro.net>) where the Panel supported the view that the addition of “GB”, “download”, and “apk” does not prevent a finding of confusing similarity between the disputed domain name and mark for the purposes of this policy.

The Respondent has not submitted any contention. In the absence of any valid explanation of how the DDN is not confusingly similar to the trademark of the Complainant, the Panel finds confusing similarity between the DDN and the Complainant’s trademark under paragraph 4(a)(i) of the Policy.

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:

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 Names.

The Respondent is not using the Domain Names 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 Guidelines⁵ prohibit the registration of domain names that could be confused with WhatsApp. Noting that the Domain Names are confusingly similar to the Complainant's WHATSAPP trade mark, the Respondent's registration of the Domain Names violates WhatsApp's Brand Guidelines (see **Annex 7**).*

*26. As noted above, the Respondent's website purports to offer for download an unauthorized modified version of the WhatsApp app. 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 (<okidataparts.com>) (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 a third-party product. 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 application GBWhatsApp. 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 application.

(iii) The Respondent's website does not accurately and prominently disclose its lack of relationship with the Complainant. Rather, the Respondent's website prominently displays the Complainant's WHATSAPP trade mark, together with the Complainant's figurative trade mark and logo, and makes use of the same green-and-white colour scheme used by the Complainant. In addition, the bottom of the Respondent's website contains a copyright notice ("Copyright © 2023 GbWhatsapp.Org.PK All Rights Reserved"), which exacerbates the confusion. 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, GBWhatsApp is a modified version 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 Names and on the Respondent's website, to offer services that violate the Complainant's Terms of Service. Such use cannot be considered a bona fide offering of goods or services. See WhatsApp, Inc. v. Nasser Bahaj, WIPO Case No. D2016-0581 (et al.). See also WhatsApp, Inc. v. Abdallah Almqbali, WIPO Case No. D2016-1287 (et al.).

29. *The Complainant therefore submits that the Respondent is not using the Domain Names 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 Names

30. *The Respondent cannot legitimately claim that it is commonly known by the Domain Names, in accordance with paragraph 4(c)(ii) of the Policy.*

31. *According to the publicly-available WhoIs record, the identity of the Domain Names owner is unknown.*

32. *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 Names.*

33. *The Respondent's use of the Domain Names to promote a third-party application that seeks to trade off the goodwill and reputation associated with the Complainant's WHATSAPP trade mark, and facilitates use of services in breach of the Complainant's Terms of Service, does not support any reasonable claim of being commonly known by the Domain Names, nor does it give rise to any reputation in the Domain Names themselves, independent of the Complainant's trade mark rights.*

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

34. *Nor is the Respondent currently making a legitimate noncommercial or fair use of the Domain Names, without intent for commercial gain to misleadingly divert consumers within the meaning of paragraph 4(c)(iii) of the Policy.*

35. *The Respondent's use of the Domain Names to purport to offer for download an unauthorized modified version of the WhatsApp app does not amount to legitimate noncommercial or fair use. The provision of services that violate the Complainant's Terms of Services cannot give rise to rights or legitimate interests in the Domain Names. See Lemon Inc. v. saleem abbas, WIPO Case No. D2023-4066 (<ressomodapk.com>).*

36. *Therefore, the Complainant has established a prima facie showing that the Respondent lacks rights or legitimate interests in the Domain Names. 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 failed to respond, and resultantly satisfy the Panel that the Respondent is commonly known by the name of “WhatsApp” or has any legitimate interest in the DDN.

The Panel has reviewed the submissions of the Complainant.

The Panel notes that the Respondent has failed to meet the Oki Data criteria necessary to establish a bona fide offering of goods or services. Based on the information provided by the Complainant, the Respondent appears to be using the Complainant’s WHATSAPP trademark to promote unauthorized modified versions of WhatsApp. This use is not considered bona fide under paragraph 4(c)(i) of the Policy as it violates WhatsApp’s Terms of Service and creates a false impression of affiliation.

The Respondent’s use of the domain name is commercial, incorporating WHATSAPP entirely and falsely suggesting an affiliation with the Complainant. This cannot be considered legitimate use and is further undermined by commercial advertisements on the website. In the view of the Panel, the Complainant has made out a prima facie case that the Respondent does not have a legitimate interest.

The Respondent has not provided evidence to rebut the Complainant's prima facie case that they lack rights or legitimate interests in the domain name. The burden of production shifts to the Respondent, who has failed to meet this burden.

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

IV. Registration and use in bad faith

The Complainant has made the following submission:

37. 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.

38. 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

39. 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 5**).

40. All of the leading search results obtained by typing "WhatsApp" into the Google search engine available at www.google.com and www.google.com.pk refer to the Complainant (see **Annex 8**).

41. 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 Names, 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 Names in 2023. See, for example, *WhatsApp Inc. v. Francisco Costa*, WIPO Case No. D2015-0909 (<webwhatsapp.com> **registered in 2012**)

42. 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 purports to offer for download an unauthorized version 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 indicate the Respondent's intent to target the Complainant's trade marks at the time of registration of the Domain Names. 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*, *supra*.

43. The Complainant further submits that by registering five Domain Names each targeting the Complainant's trade mark, the Respondent has engaged in a bad-faith pattern of abusive domain name registration, further highlighting the Respondent's bad faith.

44. The Complainant submits that the Respondent registered the Domain Names in 2023 not only with full knowledge of the Complainant's rights but also with the intent to attract

Internet users to the Respondent's website for the promotion of an unauthorized version of the Complainant's application, in bad faith.

Use in bad faith

45. Given the confusing similarity between the Domain Names 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.

46. The Respondent's website offers for download an unauthorized modified version of the WhatsApp application, developed by a third party. The Complainant therefore submits that by using the Domain Names 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, supra¹³ and WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi, WIPO Case No. D2021-0032 (<cyberwhatsapp.com>).

47. In addition, the fact that the Respondent's website displays commercial banners – from which the Respondent is likely obtaining financial gain – shows that the Respondent's use of the Domain Names is clearly intended for commercial gain and therefore constitutes additional evidence of bad faith use. See FC2, Inc. v. Host Master, 1337 Services LLC, WIPO Case No. D2019-2669:

"The Respondent's use of the Complainant's trademarks on the associated website could cause confusion to Internet users. Moreover, there is a commercial banner related to a third party on the associated website. Thus, the Panel finds that the Respondent has the intention to attract, for commercial gain, Internet users to the associated website by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its websites or location or of products and services."

48. Furthermore, the promotion of an unauthorized modified APK version of the WhatsApp application not only violates the WhatsApp Terms of Service but also places the security of WhatsApp users at risk. The Respondent's use of the Domain Names to offer an unauthorized APK version under the Complainant's trade mark disrupts the Complainant's

business by driving WhatsApp 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, supra.

*49. Moreover, the Respondent's website displays WhatsApp's figurative trade mark and is using the same distinctive green-and-white colour scheme (see **Annex 3**), thereby creating a misleading impression of association with the Complainant in bad faith. See WhatsApp LLC v. Nayan Borse and Mohd Syazuan Saad, Bix Charity Kb, WIPO Case No. D2023-3186 (<easywasap.com> and <whatsapp-ads.com>)*

50. In view of the above, the Complainant submits that the Domain Names were registered and are being used in bad faith, in accordance with paragraph 4(a)(iii) of the Policy.

The Respondent has failed to submit a response.

At the outset, the Panel finds that the Complainant's WHATSAPP trademark is inherently distinctive and globally well-known in connection with its messaging services. Given its widespread recognition and established presence prior to the registration of the DDNs, it is highly improbable that the Respondent registered the DDNs without knowledge of the Complainant's trademark.

The submissions by the Complainant show multiple references on the Respondent's associated website to the Complainant and also show that the associated website is being used for unauthorized versions of the Complainant's application. This clearly demonstrates knowledge of the Complainant's trademark.

It is clear to the Panel from the Complainant submissions, that the Respondent has no relationship with the Complainant and has not been authorized to use the WHATSAPP trademark. Registering a domain name confusingly similar to a well-known trademark without permission, particularly with a high risk of implied affiliation, is indicative of bad faith.

In this case the Respondent has used the disputed domain names to intentionally attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's WHATSAPP mark and diverting them in each case to a website which offers a directly competing commercial product and which includes references to the Complainant's mark and an unauthorized version of its registered logo. This amounts to conduct that satisfies the requirements of paragraph 4(b)(iv) of the Policy and is evidence of registration and use of the disputed domain name in bad faith.

The Complainant has also provided screenshots which suggest that the Respondent has used, on the associated website, the Complainant's modified speech bubble logo and distinctive green-and-white color scheme, which creates a misleading impression of association with the Complainant. This visual deception has been previously ruled as indicative of bad faith (WhatsApp Inc. v. Edwin Lizcano, Inversiones Capira SAS, WIPO Case No. D2019-1700).

The Panel, therefore, finds that the DDNs was registered and is being used in bad faith by the Respondent.

4. Decision

Analyzing the details provided by the Complainant, the Panel perceives that the "WHATSAPP" mark has been registered by the Complainant, hence the Complainant reserves crucial interest in such mark. Usage of these marks by the Respondent could endanger the reputation that the Complainant has worked hard at building and maintaining and result in confusion as to the registrant of the DDNs.

Taking all the discussion above into consideration, the Panel concludes and decides that:

1. The Respondent's registration of the DDNs does not violate the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19)
2. The Respondent has no legitimate interest in the DDNs.
3. The DDNs is identical to the Complainant's trademark/names and registered domain names.
4. The DDNs was registered and 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(s) in dispute <downloadgbwhatsapp.pk>, <downloadgbwhatsapp.net.pk>, <downloadgbwhatsapp.org.pk>, <downloadgbwhatsappapk.pk> and <gbwhatsapp.org.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/, whichever is earlier. The Complainant shall also be at liberty to contact PKNIC for implementation of this decision.

Arbitrator: Willayat Ali Shah

Sole Panelist

Date: 26 August 2024