



Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

Case No. C2024-0007

Also in PDF C2024-0007

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 Fiaz Rasool with their address at Muhallah Sheikhan Wala, Near Girls High School, Taunsa Sharif, Pakistan.

2. The Domain Names and Registrar

The domain name in dispute is <gbwhatsappdownload.com.pk>, hereinafter referred to as the Disputed Domain Name ["the DDN"]. Vide email dated 17 May 2024, PKNIC has informed DNDRC that the DDN is registered by Fiaz Rasool with the contact name Fiaz Rasool, with their address at Muhallah Sheikhan Wala, Near Girls High School, Taunsa Sharif, Pakistan.

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 15 May 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 21 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 29 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 name upon which the Complaint is based is <gbwhatsappdownload.com.pk>.

PKNIC has confirmed via their email dated 17 May 2024 that the DDN was registered by the Respondent above-named and that the email address provided at the time of registration of the DDN is fiazrasool722270@gmail.com.

4. Parties Contentions

1. Complainant

The Complainant's brief contentions are reproduced below:

1. *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. WhatsApp's main website available at www.whatsapp.com also allows Internet users to access its messaging platform.*
2. *Since launching 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 fourth most downloaded app in Pakistan and the fourth most downloaded app in the world as per data.ai's Top Apps Rankings in 2024.*

*A screen capture of the Complainant's main website and copies of information about 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, are provided as **Annex 4**.*

3. Reflecting its global reach, the Complainant owns numerous domain names consisting of or including its WHATSAPP trade mark under a wide range of generic Top-Level Domains as well as under numerous country code Top-Level Domains (ccTLDs), including <whatsapp.com>, <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**.

The Complainant's trade mark

4. In addition to its strong online presence, the Complainant owns numerous trade mark registrations for WHATSAPP in many jurisdictions throughout the world, including in Pakistan, as detailed above (see **Annex 3**).

The Respondent, the Domain Name and the associated website

5. The Domain Name <gbwhatsappdownload.com.pk> incorporates the Complainant's WHATSAPP trade mark in its entirety, preceded by the letters "gb" and followed by the term "download", under the ccTLD ".com.pk". The Respondent registered the Domain Name on 27 January 2023 (see **Annex 2**).
6. Until 2 February 2024, the Domain Name resolved to a website at <https://gbwhatsappdownload.com.pk> (the "**Respondent's website**"), titled "GBWHATSAPPAPP", that purported to offer for download an unauthorized modified APK version of the Complainant's WhatsApp app.
7. The Respondent's website stated:

***"Free Download Official
GBWhatsApp APK Latest
Version April, 2024***

Get the updated and anti-ban GBWhatsApp - the highly modified version of WhatsApp with tons of extra features!"

8. At the bottom of the Respondent's website was a hyperlink titled "Disclaimer" leading to a separate web page at <https://gbwhatsappdownload.com.pk/disclaimer.php>, and so the full text of the disclaimer was visible only after Internet users click on the hyperlink. Although

the disclaimer stated "WhatsApp Official doesn't permit them [the modifications of the true WhatsApp app] and those applications abuse the term of the administration of WhatsApp", it does not refer to the lack of relationship between the Respondent and the Complainant.

9. *In addition, the Respondent's website featured a green and white colour scheme that is very similar to the Complainant's green and white WhatsApp colour scheme, as well as a logo that is very similar to the Complainant's logo and figurative trade mark, as follows:*

The logo featured on the Respondent's website



The Complainant's WhatsApp logo



*Screen captures of the Respondent's website are provided in **Annex 6**.*

10. *The Complainant's lawyers sent a cease and desist letter to the Respondent on 17 January 2024, seeking amicable resolution.*

*No response was received. A copy of the cease and desist letter is provided as **Annex 7**.*

11. *At the time of filing this Complaint, the Domain Name redirects to an anime TV streaming site at <https://9animetv.pro>.*

*Screen captures of the web page to which the Domain Name currently resolves are provided as **Annex 8**.*

*Proof of redirection of the Domain Name to the web page at <https://9animetv.pro> is provided as **Annex 9**.*

12. *As detailed 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://whatsapp.com/legal/terms-of-service>).*

Copies of the WhatsApp Brand Guidelines and the WhatsApp Terms of Service are provided as Annex 10.

13. *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.

2. 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.

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 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.

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), 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 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 DDN 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.

To satisfy this criterion, it is essential that the DDN itself infringes upon the Complainant's registered trademark. The Panel cannot consider any content on the related website. The Complainant has not claimed that the DDN itself infringes their registered trademark, nor have they addressed whether adding terms like "gb" or "download" would prevent infringement. Additionally, there is no evidence that the other elements of the PKNIC criteria are met.

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

Given the lack of further submissions, the Panel finds there is insufficient information to conclusively determine whether this PKNIC criterion has been satisfied. Consequently, it is necessary to evaluate whether each of the UDRP criteria has been fulfilled to determine if 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 name is 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 3**). The Complainant has therefore established trade mark rights in WHATSAPP for the purposes of paragraph 4(a)(i) of the Policy.*
16. *The Domain Name comprises the Complainant's WHATSAPP trade mark, preceded by the letters "gb" and followed by the term "download", under the ccTLD extension ".com.pk" for Pakistan.*

17. *The Complainant submits that the addition of the letters "gb" and the term "download" does not prevent a finding of confusing similarity with the Complainant's WHATSAPP trade mark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition6 ("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.pk>).*
18. *The addition of the ccTLD 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.*
19. *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 a response.

The Complainant has asserted that the DDN is confusingly similar to their registered trademark, "WHATSAPP." On the other hand, the Respondent has not provided any response.

It is widely accepted that the initial element primarily serves as a standing requirement. The standing or threshold test for confusing similarity involves a reasoned yet relatively straightforward comparison between the Complainant's trademark and the disputed domain name, as detailed 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 Panel must now determine whether the DDN <gbwhatsappdownload.com.pk> is confusingly similar to the trademark "WHATSAPP." The Complainant has argued, and it is a well-established principle, that the addition of a ccTLD like ".pk" does not prevent a finding of confusing similarity. This principle has been upheld in several previous DNDRC and WIPO cases, including those cited by the Complainant.

Regarding the addition of the terms "gb" or "download," the Panel has reviewed the precedent set in WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / Muhammad Asif, WIPO Case No. D2022-3170 (<gbwhatsappdownload.com.pk>), as submitted by the Complainant. The

Panel concurs with the findings of the WIPO Panel that adding the terms "gb," "download," or "apk" (even if considered descriptive, geographical, or meaningless) before the Complainant's registered trademark does not prevent a finding of confusing similarity.

The Panel also concurs with the decision in WhatsApp, LLC v. Contact Privacy Inc. Customer 7151571251, Contact Privacy Inc. / Gulsher Khan, WIPO Case No. D2023-5230 (<gbwhatsappdownloadpro.net>), where it was held that the addition of "GB," "download," and "apk" does not prevent a finding of confusing similarity between the Disputed Domain Name and the trademark 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:

20. *The Complainant asserts that the Respondent cannot 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

21. *As a preliminary matter, the Complainant submits that the Respondent cannot be viewed as a bona fide service provider as it was not offering sales or repairs in relation to a product provided by the Complainant. Prior to being put on notice of the present dispute (see **Annex 7**), the Respondent was making unauthorized use of the Complainant's trade mark to promote a third-party modified version of its WhatsApp application. Nevertheless, even if one is to apply the Oki Data criteria, the Respondent fails to fulfil at least the first and third Oki Data criteria:*
- (i) The Respondent is not a reseller or service provider as the Respondent's website did not actually offer WhatsApp, but rather an unauthorized third-party version of WhatsApp. As such, the Respondent cannot be said to have used the Website to offer the goods or services at issue;*
 - (ii) Although the Respondent's website featured a separate web page titled "Disclaimer" as detailed above, the "Disclaimer" did not refer to the lack of relationship between the Respondent and the Complainant. Moreover, the Website prominently displayed the Complainant's WHATSAPP trade mark, together with a close variation of the Complainant's figurative trade mark and logo, and a very similar green-and-white colour scheme as to that used by the Complainant (see **Annex 6**). The Website was therefore likely to mislead Internet users into believing that it was operated or authorized by the Complainant, which it was not.*
22. *Prior UDRP panels have held that such use of a Domain Name cannot be considered as bona fide use within the meaning of paragraph 4(c)(i) of the Policy, as it is clear that the Respondent deliberately designed the Website to give Internet users the false impression that they have reached a website affiliated with or endorsed by the Complainant and that the modified WhatsApp APK offered on the Respondent's website is authorised by or otherwise connected with the Complainant.*

See WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi, WIPO Case No. D2021-0032 (<cyberwhatsapp.com>) and WhatsApp, Inc. v. Abdallah Almqbali, WIPO Case No. D2016-1287 (<whatsappplus.com> et al.).

23. *Furthermore, the modified version of the WhatsApp application previously promoted via the Domain Name was not authorized by the Complainant and violates the WhatsApp Terms of Service (see **Annex 10**), which provide as follows:*

"Harm to WhatsApp or Our Users.** You must not (or assist others to) access, use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sublicense, [...], or otherwise exploit our Services in impermissible or unauthorized manners, [...] including that you must not directly or through automated means: (a) **reverse engineer, alter, modify, create derivative works from, decompile, or extract code from our Services [...]."

24. *The Complainant is committed to maintaining the integrity of its WhatsApp service and does not support such third-party applications. As such, the Respondent's use of the Domain Name, in breach of the Complainant's Terms of Service, cannot be considered bona fide under the Policy.*

See WhatsApp, Inc. v. Nasser Bahaj, WIPO Case No. D2016-0581 (<ogwhatsapp.org> et al.) and WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi, supra.

25. *Finally, even if the Respondent's website had displayed a disclaimer as to the absence of any relationship with the Complainant, it would not have been sufficient to render the Respondent's use of the Domain Name bona fide under the Policy; see WhatsApp LLC v. Bulk Whatsapp Sender, Ravi Enterprises, WIPO Case No. D2022-0457 (<bulkwhatsappsender.com>).*

See also LinkedIn Corporation v. Contact Privacy Inc. Customer 0138656558 / Scott Offord, Bytes and Sites Inc, WIPO Case No. D2016-1171.

26. *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

27. *The Respondent cannot legitimately claim that it is commonly known by the Domain Name, in accordance with paragraph 4(c)(ii) of the Policy.*
28. *According to the publicly-available WhoIs record, the identity of the Domain Name owner is unknown.*
29. *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", "gbwhatsapp" or "gbwhatsappdownload", as reflected in the Domain Name.*
30. *Furthermore, the Respondent's previous use of the Domain Name to promote an unauthorised modified APK version of the WhatsApp application 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. Nor does the Respondent's current use of the Domain Name to redirect to an anime streaming site give rise to any reputation in the Domain Name itself.*

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

31. *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.*
32. *The Respondent's previous use of the Domain Name to purport to offer for download an unauthorized modified APK version of the WhatsApp application does not amount to legitimate noncommercial or fair use, nor does the Respondent's current use of the Domain Name to redact to an anime streaming site. The provision of services that violate the WhatsApp Terms of Service 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>)*
33. *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 a response.

The Panel has reviewed the submissions of the Complainant.

The Panel observes that the Respondent has not satisfied the Oki Data criteria required to demonstrate a bona fide offering of goods or services. According to the Complainant's evidence, the Respondent was using the WHATSAPP trademark to promote unauthorized modified versions of the app and is currently using the address to redirect the users to an anime website. This use is not deemed bona fide under paragraph 4(c)(i) of the Policy, as it violates WhatsApp's Terms of Service and misleadingly suggests an affiliation with the Complainant.

The Panel further determines that, although the Respondent operates the DDN, they are not commonly known by it. The evidence submitted by the Complainant highlights the global recognition of "WHATSAPP" and its associated trademarks. This indicates that the Respondent is merely exploiting the reputation of the Complainant's established trademark, rather than being known by or having any legitimate association with the Domain Name.

Additionally, the Panel finds that the Respondent is not engaged in a legitimate noncommercial or fair use of the domain name. The Respondent's past use of the domain name to promote an unauthorized modified version of the WhatsApp application, as well as the current use of the domain name to redirect to an anime streaming site, neither establishes any legitimate reputation nor implies a legitimate interest of the Respondent. As a result, the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests in the domain name.

The submission of evidences by the Complainant against the Respondent demonstrates that the Respondent lack rights or legitimate interests in the domain name. The burden of proof therefore, shifted to the Respondent, who has failed to meet this burden.

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 any legitimate interest in the DDN.

IV. Registration and use in bad faith

The Complainant has made the following submission:

34. *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.*
35. *The Complainant submits that paragraph 4(b)(iv) of the Policy is of particular relevance in the present case, although there are factors not listed in paragraph 4(b) of the Policy that further indicate bad faith, as detailed below.*

Registration in bad faith

36. *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**).*
37. *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. Copies of the Google search results are provided as **Annex 11**.*
38. *Given the Complainant's renown and goodwill worldwide and particularly its popularity and trade mark rights established prior to the registration of the Domain Name, the Respondent could not credibly argue that it did not have knowledge of the Complainant's WHATSAPP trade mark when registering the Domain Name in January 2023. See, for example, *WhatsApp Inc. v. Francisco Costa*, WIPO Case No. D2015-0909 (<webwhatsapp.com>).*
39. *The content of the Respondent's website clearly demonstrates the Respondent's actual knowledge of the Complainant and its trade marks, as the website made multiple references to the Complainant and its WHATSAPP trade mark, featured a logo very similar to the Complainant's WhatsApp logo and figurative trade mark, a green and white colour scheme very similar to the Complainant's colour scheme and purported 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. These factors clearly indicate 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, (*et al.*)¹⁷ and *Lemon Inc. v. saleem abbas*, *supra*

40. *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

41. *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 accurate disclaimer regarding the Respondent's lack of 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 it is not.*
42. *As detailed above, the Respondent's website purported to offer for download an unauthorized modified version of the Complainant's WhatsApp application, developed by a third party. As detailed above, the Respondent's website featured the Complainant's WHATSAPP trade mark as well as a modified version of the WhatsApp telephone logo and figurative trade mark and a very similar green and white colour scheme to that used by the Complainant (see **Annex 6**). This creates 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>). The Complainant submits that by using the Domain Name in this fashion, the Respondent has intentionally attempted 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*, *supra*²⁰ and *WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi*, WIPO Case No. D2021-0032 (<cyberwhatsapp.com>).*
43. *The fact that the Respondent's website does not display any commercial banners or promotional Pay-Per-Click (PPC) links does not prevent a finding of bad faith under paragraph 4(b)(iv) of the Policy. 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.*

44. *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 Name in this way also disrupts the Complainant's business by driving WhatsApp users to third-party applications. Prior UDRP panels have held that such activities amount to use of a domain name in bad faith. See Lemon Inc. v. saleem abbas, supra.*
45. *The Complainant submits that the change in pointing does not prevent a finding of bad faith use of the Domain Name; indeed, the change, which occurred after the Complainant put the Respondent on notice of its rights by sending a cease and desist letter on 17 January 2024 (see **Annex 7**), is further evidence of bad faith. See Turner Network Television, Inc. v. Expired Domain Resource****Maybe For Sale on Dynadot Marketplace**** c/o Dynadot, WIPO Case No. D2018-1036 (<tntsuspensecollection.com>).*
46. *As detailed 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 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 extensive reach and established reputation prior to the registration of the domain name, it is highly unlikely that the Respondent registered the domain name without being aware of the Complainant's trademark.

The Complainant's submissions reveal multiple references to the Complainant's trademark on the Respondent's associated website, which is also used to promote unauthorized versions of the Complainant's application. This evidence clearly indicates that the Respondent had knowledge of the Complainant's trademark.

The Panel finds that the Respondent's registration of a domain name that is confusingly similar to a well-known trademark, particularly with no authorization or relationship with the Complainant, is indicative of bad faith. The use of such a domain name with the potential to imply an affiliation or endorsement by the Complainant reinforces this conclusion.

The Panel notes that while the Respondent's use of the domain name does not involve commercial banners or direct promotional activity, mere absence of these commercial elements does not automatically imply fair use or a lack of intent to exploit the Complainant's trademark. In this case, the Respondent's use of the Domain Name appears intended to gain reputational or bargaining advantages by misleading users into thinking the site is affiliated with or endorsed by the Complainant. The Respondent initially diverted users to a website offering a competing product that referenced the Complainant's trademark and an unauthorized version of its logo whereas currently, the DDN redirects to an unrelated anime website. 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 Panel, therefore, finds that the DDN was registered and is being used in bad faith by the Respondent.

7. 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 DDN.

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 DDN.
3. The DDN is identical to the Complainant's trademark/names and registered domain names.
4. The DDN 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 in dispute <gbwhatsappdownload.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: 30 August 2024