

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

Case No. 2024-0010

Also in PDF 2024-0010

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 Apps with their address at District DG Khan, Tehsil Taunsa sharif.

2. The Domain Names and Registrar

The domain name in dispute is <gbwhatsapppro.pk>, hereinafter referred to as the Disputed Domain Name [the DDN"]. Vide email dated 04 August 2024, PKNIC has informed DNDRC that the DDN is registered by GB Apps with the contact's name GB Apps, with their address at District DG Khan, Tehsil Taunsa sharif.

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 19 June 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 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 which warranted a new compliance review.

The Respondent was issued another notification of the dispute along with a copy of the amended Complaint and a Response Form on 23 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 issued two reminders to the Respondent on 30 August 2024 and 19 September 2024 respectively. However, the Respondent failed to submit any response.

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 <gbwhatsapppro.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 of the DDN is gbapps.pk@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. Its main website available at www.whatsapp.com also allows Internet users to access its messaging platform.*
2. *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 3rd most downloaded application for iOS phones worldwide and the 1st most downloaded application for iOS in Pakistan according to applications information company Data.ai.*

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 are provided as **Annex 4**.

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**.

The Complainant's trade mark

4. 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.

The Respondent, the Domain Name and the associated website

5. At the time of submission of the Complaint, the Domain Name resolves to an inactive webpage.

A screen capture of the inactive webpage to which the Domain Name resolves is provided as **Annex 6**.

6. The Domain Name previously redirected to the website associated with the domain name which was entitled "GB WhatsApp Pro". The website promoted and offered for download a modified APK version of WhatsApp called "GBWhatsApp Pro". The website stated:

"GB WhatsApp Pro APK is a modified version of the popular messaging app that offers a wide range of advanced features and customization options. This modified version of WhatsApp provides users with features like enhanced privacy settings, customizable themes, advanced media sharing options, message scheduling, dual account support, and much more. Users can customize their online status, hide read receipts, and restrict access to their profile information for better privacy control. They can also choose from a variety of themes, fonts, and icon packs to personalize the messaging interface. GB WhatsApp Pro allows users

to send larger files, schedule messages, and run multiple WhatsApp accounts simultaneously. GBWhatsApp Pro APK caters to users who seek more flexibility, customization, and advanced features in their messaging app. However, it's important to note that using GBWhatsApp Pro Download is not officially supported by WhatsApp, and there may be potential security risks associated with using third-party applications. Users should exercise caution and download the APK file from trusted sources to mitigate these risks."

The website also stated:

"GB WhatsApp Pro APK is a modified version of the popular messaging app, WhatsApp. Developed by independent developers, GB WhatsApp Download offers a wide range of advanced features and customization options that go beyond the capabilities of the official WhatsApp app."

7. The website made prominent reference to the Complainant's WHATSAPP trade mark and used variations of the Complainant's figurative trade mark:



Complainant's figurative trade mark



GB WHATSAPP



Logos previously appearing on the website to which the Domain Name previously redirected

8. The website also made use of the same green-and-white colour scheme used by the Complainant. Evidence of the prior redirection of the Domain Name to the website at the domain name as well as historical screen captures of the website are provided as **Annex 7**.
9. 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 WhatsApp's Brand Guidelines and WhatsApp Terms of Service are provided as **Annex 8**.

10. On 3 April 2024, the Complainant's lawyers sent a cease and desist letter to the Respondent (to the email address displayed on the website to which the Domain Name previously redirected, help@gbwhatsapppro.app) asserting the Complainant's trade mark rights and requesting the transfer of the Domain Name. 11.
11. The Complainant's lawyers received a delivery failure message further to the sending of the cease and desist letter to the email address help@gbwhatsapppro.app.

A copy of the Complainant's cease and desist letter sent to the Respondent as well a copy of the delivery failure message received in return are provided at **Annex 9**.

12. The Respondent was named as the respondent in the case WhatsApp LLC v. Apps.Pk, WIPO Case No. D2024-2487 (<gbwhatsapppro.app>). In this case, the registrant details disclosed by the registrar listed "GB Apps" and the email address gbapps.pk@gmail.com. In addition, the Respondent was named as the respondent in the case WhatsApp LLC v. GB Apps, .PK Case Number C2024-0004 (<whatsappgb.pk>). In these cases, the Panels ordered the transfer of the WHATSAPP-formative domain names <gbwhatsapppro.app> and <whatsappgb.pk> to the Complainant.

Copies of the Notice of Registrant Information in WIPO Case No. D2024-2487, the email from the DNDRC dated 30 May 2024 confirming the transfer decision in relation to the domain name <whatsappgb.pk> and the email from the DNDRC to the Respondent at the email address gbapps.pk@gmail.com dated 18 April 2024 addressing the Respondent as "GB Apps" are provided as **Annex 13**.

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 Respondent did not submit a 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 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 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**): –*

- *Pakistan Trade Mark Registration No. 302143, WHATSAPP, registered on 27 May 2011;*

- *United States Trademark Registration No. 3939463, WHATSAPP, registered on 5 April 2011;*
- *International Registration No. 1085539, WHATSAPP, registered on 24 May 2011;*
- *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; and*
- *European Union Trade Mark No. 010496602, , registered on 18 May 2012.*

To satisfy this criterion, it is sufficient to prove that the DDN is infringing the registered trademark of the Complainant. In that context, the Complainant has provided numerous proofs that they own several trademark registrations around the world including in Pakistan for the word “WHATSAPP”. The Complainant also contends that the Respondent has been using the registered mark of the Complainant on their website.

It is essential to note that the Panel only considers the infringement of the trademark in the DDN itself and any infringement on the website itself shall not be admissible for the satisfaction of this criterion. The Complainant has not claimed that the DDN itself infringes their registered trademark nor have they discussed whether the addition of terms such as “gb” or “pro” would constitute an infringement.

Pursuant to the lack of further submission, the Panel finds that the information is insufficient for the purpose of satisfying this criterion. Therefore, the Panel finds it imperative to evaluate each of the three UDRP criteria to determine 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 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 in its entirety with mere addition of the letters "gb" and the descriptive term "pro" under the ccTLD ".pk" for Pakistan.*
17. *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 "gb" and the descriptive term "pro" 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 (the "**WIPO Overview 3.0**"), section 1.8 and WhatsApp, LLC v. Contact Privacy Inc. Customer 7151571251, Contact Privacy Inc. / Gulsher Khan, WIPO Case No. D2023-5230 (<gbwhatsappdownloadpro.net>).*
18. *The addition of the country code domain extension ".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.

As mentioned earlier, the Complainant has proven its rights to the “WHATSAPP” trademark both in Pakistan and internationally. The Panel must now assess whether the DDN <gbwhatsapppro.pk> is confusingly similar to the "WHATSAPP" trademark. The Complainant contends, that the addition of the terms “gb” and “pro” would not prevent a finding of confusing similarity in the DDN with the Complainant’s trademark.

The Panel has reviewed the precedent set in WhatsApp, LLC v. Contact Privacy Inc. Customer 7151571251, Contact Privacy Inc. / Gulsher Khan, WIPO Case No. D2023-5230

(<gbwhatsappdownloadpro.net>) as submitted by the Complainant, where it was determined that the inclusion of terms like "GB," "download," and "apk" does not prevent the finding of confusing similarity between the DDN and the trademark under this policy. The Panel agrees with the precedents set in the earlier cases that addition of certain terms such as “gb” or “downloads” (even if considered descriptive, geographical, or meaningless) before the Complainant's registered trademark does not prevent a finding of confusing similarity.

The Panel further agrees with the Complainant and affirms that the Respondent cannot evade the likelihood of confusion simply by using the entirety of the Complainant's trademark and adding descriptive or non-unique elements such as “gb” or “pro” to it. (see *Brittania Building Society v Brittania Fraud Prevention* Case No. D2001-0505 and *Microsoft Corporation v. J. Holiday Co.*, WIPO Case No. D2000-1493).

The Panel acknowledges the widely recognized principle, that the inclusion of a ccTLD such as “.pk” does not negate the finding of confusing similarity due to it being a standard requirement of registration. This principle has also been affirmed in numerous DNDRC and WIPO cases (See *H. Lundbeck A/S v. Bkanggara Windarti, My Store* Case No. D2024-2000).

Based on the assessment above and in the absence of any submission from the Respondent, 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:

20. *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

21. *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.*
22. *As a preliminary matter, WhatsApp's Brand Guidelines prohibit the registration of domain names that comprise any WhatsApp trade mark and 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**).*
23. *As noted above, the Domain Name previously redirected to a website that purported to offer for download unauthorized modified versions of the WhatsApp application, developed by a third party. Such versions of the WhatsApp application are not authorized by the Complainant and violate WhatsApp's Terms of Service.*
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 has made unauthorized use of the Complainant's trade mark in the Domain Name and on the 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, LLC v. GB Apps, DNDRC Case No. 2024-0004 (<whatsappgb.pk>), WhatsApp, Inc. v. Nasser Bahaj, WIPO Case No. D2016-0581 (<ogwhatsapp.org> et al.). See also WhatsApp, Inc. v. Abdallah Almqbali, WIPO Case No. D2016-1287 (<watsabplus.com> et al.)*

*A copy of the decision in the case WhatsApp, LLC v. GB Apps, DNDRC Case No. 2024-0004 (<whatsappgb.pk>) is provided as **Annex 10**.*

25. *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.

26. *As a preliminary matter, the Complainant submits that the Respondent is unable to be viewed as a bona fide service provider as it did not provide sales or repairs in relation to a product provided by the Complainant. Rather, the Respondent was making unauthorized use of the Complainant's WHATSAPP trade mark redirect Internet users to a website offering for download a third-party product. Nevertheless, even if one is to apply the Oki Data criteria, the Complainant submits that the Respondent fails to fulfil the first and third criteria, specifically:*
- (i) The website to which the Domain Name previously redirected purported to offer for download a third-party application named "GBWhatsApp Pro". As such, the Respondent cannot be said to have been using the website to offer the goods or services at issue, namely the WhatsApp application.*
 - (ii) The website did not accurately and prominently disclose its lack of relationship with the Complainant. The website contained disclaimers stating that the "GBWhatsApp Pro" app is not authorized by WhatsApp and was created by independent developers. However these statements were included in lengthy descriptions of the respective services which made them barely visible. In addition the website prominently displayed the Complainant's WHATSAPP trade mark, together with variations of the Complainant's figurative trade mark. The website may therefore have misled Internet users into believing that it was operated or authorized by the Complainant, when in fact it was not.*

27. *At the time of filing, the Domain Name does not resolve to an active webpage. Such passive holding of the Domain Name does not constitute a bona fide offering of goods and services under the policy. In this regard, prior UDRP panels have found that the non-use of a domain name does not amount to use of the domain name in connection with any bona fide offering of goods or services. See WhatsApp Inc. v. Whois Privacy Service / Raj Lakkaraju, Ptechpeople, WIPO Case No. D2020-1291 (<whatsappdeals.com>):*

"Respondent is also not using the disputed domain name in connection with any bona fide offering of goods or services, nor is Respondent making a legitimate noncommercial or fair use of the disputed domain name because the disputed domain name does not resolve to any active website."

28. *In light of the confusing similarity between the Domain Name and the Complainant's WHATSAPP trade mark, the Complainant submits that the Respondent's current passive holding of the Domain Name does not amount to a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy.*
29. *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

30. *The Respondent cannot legitimately claim that it is commonly known by the Domain Name, in accordance with paragraph 4(c)(ii) of the Policy.*
31. *There are no registrant details in the publicly-available WhoIs record for the Domain Name. The identity of the underlying registrant has been disclosed as "GB Apps", which bears no resemblance to the Domain Name whatsoever.*
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 "gbwhatsapppro", as reflected in the Domain Name.*
33. *The Respondent's use of the Domain Name to promote third-party applications that seek to trade off the goodwill and reputation associated with the Complainant's WHATSAPP trade mark, and facilitate 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 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

34. *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.*
35. *The Respondent's use of the Domain Name to redirect Internet users to a website offering for download unauthorized modified versions of the WhatsApp application does not amount to legitimate noncommercial or fair use. 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>).*
36. *The fact that the Respondent does not currently appear to be making any active use of the Domain Name, does not suffice to give rise to any rights or legitimate interests in the Domain Name. See, for example, Guinness World Records Limited v. Solution Studio, WIPO Case No. D2016-0186 (<guinnessworldrecords.xyz>).*
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 a response.

The Panel has reviewed the submissions of the Complainant.

The Panel initially notes that the Complainant has established a prima facie case of the Respondent lacking legitimate interest in the DDN where the burden of proof shifts on the Respondent to demonstrate otherwise. If the Respondent fails to do so, the complainant is deemed to have satisfied the second element (See MicroBilt Corporation v. Greg J Michalko Case No. D2024-2212).

The Panel further acknowledges that legitimate rights in the DDN can be proved if either one of the three criteria are met by the Respondent which includes the use of the DDN for bonafide offering of goods and services, Respondent being commonly known by the DDN or Respondent making a legitimate non-commercial use of the DDN according to Paragraph 4(a)(ii) of UDRP.

The Panel agrees with the previous DNDRC decision of WhatsApp, LLC v. GB Apps, Case No. 2024-0004 (<whatsappgb.pk>) cited by the complainant and finds that the Respondent fails to prove the bona fide offering of goods and services through the DDN. Respondent has also failed to meet the Oki Data criteria necessary to demonstrate a bona fide offering of goods or services. Based on the Complainant's evidence, the Respondent has been using the WHATSAPP trademark to promote unauthorized modified versions of the app which cannot be considered bona fide under paragraph 4(c)(i) of the Policy, as it breaches WhatsApp's Terms of Service and misleadingly implies an affiliation with the Complainant.

Moreover, the Panel finds no evidence that suggests the recognition of the Respondent with the DDN that they have registered and actively have control over. Alternatively, the evidence provided by the Complainant demonstrates that the Respondent is merely exploiting the Complainant's established trademark rather than being known by or legitimately associated with the DDN themselves.

Additionally, the Panel finds the evidence provided by the Complainant to be sufficient to prove that the Respondent's use of the DDN is not legitimate or fair as the promotion of an unauthorized modified version of the Complainant's application does not establish any legitimate reputation or interest.

Consequently, the Complainant has made a prima facie case that the Respondent has no rights or legitimate interests in the domain name and the Respondent failed to meet the burden shifted upon them.

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 and www.google.com.pk refer to the Complainant.

Screen captures of the Google search results for "WHATSAPP" are provided as **Annex 11**.

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> **registered in 2012**).
43. The website to which the Domain Name previously redirected made multiple references to the Complainant and offered 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 prior knowledge of the Complainant as well as its 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*, supra.
44. The Respondent was named as the respondent in cases *WhatsApp LLC v. Apps.Pk*, supra and *WhatsApp LLC v. GB Apps*, supra, in which the Panels ordered the transfer of the WHATSAPP-formative domain names <gbwhatsapppro.app> and <whatsappgb.pk> to the Complainant (see **Annex 13**). The Complainant submits that the Respondent's apparent registration of two additional WHATSAPP-formative domain names amounts to further evidence of bad-faith.

See in this regard *Fieldfisher LLP v. Ruben M*, WIPO Case No. D2023-1263 (<fieldfisherlawsgroup.com>):

"The Respondent has been the subject of an adverse ruling under the UDRP in a previous case (Fieldfisher LLP v. Ruben M Case, WIPO Case No. D2022-4074) involving the Complainant for the almost identical domain name <fieldfisherlawsgroup.com> showing a pattern of bad faith activity acting against the Complainant's interests."

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 previous content of the website to which the Domain Name previously redirected as described above, in the absence of any clearly visible disclaimer regarding the relationship with the Complainant, Internet users were likely to be misled into believing that the website was somehow affiliated with or otherwise endorsed by the Complainant, which is not the case.*
47. *As detailed above, the Domain Name previously redirected to a website that purported to offer for download unauthorized modified versions of the Complainant's WhatsApp application, developed by a third party. It is more likely than not that the owners of such third-party applications ultimately derive commercial advantage from the Respondent's unauthorized use of the Complainant's trade mark in the Domain Name and on its website. 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.*
48. *The website offered for download an unauthorized modified version of the WhatsApp application, developed by a third party. The Complainant therefore submits that by using the Domain Name in this fashion, the Respondent intentionally attempted to attract, for commercial gain, Internet users to the website to which the Domain Name resolved by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the website and the goods and services marketed therein, in bad faith pursuant to paragraph 4(b)(iv) of the Policy. See WhatsApp, LLC v. GB Apps, supra, WhatsApp, Inc. v. Whois Agent, Whois Privacy Protection Service, Inc. / Mohammed Alkalbani, et al., WIPO Case No. D2016-2299 (<download-whatsapp-plus.net> et al.), WhatsApp, Inc. v. Nasser*

Bahaj, supra and WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi, WIPO Case No. D2021-0032 (<cyberwhatsapp.com>).

49. *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. In addition, the Respondent's use of the Domain Name to redirect Internet users to a website offering an unauthorized modified APK version of the Complainant's application under the Complainant's trade mark disrupts the business of the Complainant by driving WhatsApp users to a third-party application. Prior panels have held that such activities amount to use of a domain name in bad faith. See Lemon Inc. v. saleem abbas, supra.*
50. *Moreover, the website displayed modified versions 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. *The fact that the Domain Name no longer resolves to an active website (see **Annex 6**) does not prevent a finding of bad faith. See Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003.*
52. *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 a response.

The Panel first acknowledges the global recognition of the Complainant's "WHATSAPP" trademark in relation to its provision of messaging services. At the outset, the recognition of the Complainant's mark makes it highly unlikely for the Respondent to be unaware of the existence of the mark at the time of the registration of the DDN. The Panel has reviewed *Fieldfisher LLP v. Ruben M*, WIPO Case No. D2023-1263 (<fieldfisherlawsgroup.com>) cited by the Complainant and agrees with the principle of having multiple previous decisions against the Respondent as the basis of showing pattern of bad faith. In consideration of this, the Panel further reviews *WhatsApp LLC v. Apps.Pk, supra* and *WhatsApp LLC v. GB Apps, supra* as cited by the Complainant and finds that previous decisions against the Respondent serves as a clear indication of bad faith.

Therefore, registration of a DDN that closely resembles a well-known trademark without the Complainant's authorization and having multiple similar decisions against them previously establishes the element of registration in bad faith on part of the Respondent.

The Panel notes that while the Respondent's use of the DDN does not involve commercial banners or direct promotional activity, mere absence of these elements does not automatically negate commercial use of the DDN (See WIPO Section WIPO Overview 3.0, section 2.5.3). As asserted by the Complainant, the Respondent's use of the DDN appears intended to gain reputational or bargaining advantages by misleading users into thinking the site is affiliated with or endorsed by the Complainant. The Panel relies on *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003 as cited by the Complainant and finds that the current inactive status of the website would amount to passive holding of a website and would not prevent the finding of bad faith.

The Panel finds that the use of the Complainant's distinctive green-and-white color scheme on the DDN without an indication that the Respondent's website is not operated by or affiliated with the Complainant supports the finding of bad faith (See *WhatsApp Inc. v. Edwin Lizcano, Inversiones Capira SAS* Case No. D2019-1700).

The evidence provided by the Complainant and the lack of submission from the Respondent concludes that the conduct 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

The Panel, upon the review of the information provided by the Complainant, recognizes that the "WHATSAPP" mark is registered to the Complainant and Respondent has no legitimate rights over it. The continuous use of the DDN purporting to the Complainant's registered trademark could seriously hinder the exercise of the rights of the Complainant in the trademark and could also jeopardize the reputation of the Complainant by amounting to confusion regarding the ownership 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 DDN is confusingly similar to the registered trademark of the Complainant;
3. The Respondent does not have a 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 <gbwhatsapppro.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 October 2024