

Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

Case No. 2024-0008

Also in PDF C-2024-0008

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 <gbwhatsappdownloads.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 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 12 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 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 <gbwhatsappdownloads.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. (**Meta** (formerly known as Facebook, Inc.)) 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.*

*Screen captures of the Complainant's website at www.whatsapp.com are provided as **Annex 4**.*

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 most downloaded application in Pakistan and 4th in the world as per data.ai's Top Apps Rankings in 2024.*

*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 5**.*

3. Reflecting its global reach, the Complainant is the owner of numerous domain names, comprising its WHATSAPP trade mark, under various generic Top-Level Domains (gTLDs) as well as under many country code Top-Level Domains (ccTLDs).

Copies of the WhoIs records for selected domain names comprising the Complainant's WHATSAPP trade mark are provided as Annex 6. 4.

4. The Complainant has also made substantial investments to develop a strong presence online by being active on various social-media forums. For instance, WhatsApp's official page on Facebook has over 35 million "likes". In addition, WhatsApp has 5.5 million followers on Twitter. These pages are available at the following URLs:

<https://www.facebook.com/whatsapp/>

<https://twitter.com/whatsapp>

<http://www.youtube.com/whatsapp>

<https://www.linkedin.com/company/whatsapp-inc/about/>

Screen captures of the Complainant's social-media pages are provided as **Annex 7**.

The Complainant's trade mark

5. In addition to its strong online presence, the Complainant has secured ownership of numerous trade mark registrations for WHATSAPP in many jurisdictions throughout the world, including in Pakistan, as detailed above.

The Respondent, the Domain Name and the associated website

6. The Domain Name currently resolves to a website (the **Website**) entitled "GB WhatsApp Download", which purports to offer for download "GB WhatsApp", an unauthorized modified APK2 version of the WhatsApp app.
7. The GB WhatsApp APK claims to provide functionalities that go beyond those offered in the official WhatsApp app, notably including bulk messaging and management of duplicate WhatsApp accounts from a single device.
8. Furthermore, the Website makes prominent reference to the Complainant's WHATSAPP

trade mark, and uses either its figurative trade mark  or the variations of WhatsApp's

telephone logo, displayed as , ,  and  in different sections of the Website. The Website makes use of the same green-and-white colour scheme used by the Complainant.

9. The Website contains tutorials on how to download and install GB WhatsApp APK.
10. The Website does not display any contact details. The "Download" page of the Website includes the following disclaimer-like statement:

"Please note: GB WhatsApp is a third-party application not affiliated with the official WhatsApp app. Proceed at your own risk."

11. The Website includes the following text in the website footer:

"GB WhatsApp is the Modified Version of the Official WhatsApp. You get Extra Features with GB WhatsApp APK instead of WhatsApp."

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

12. As explained in detail below, the Respondent's registration and use of the Domain Name does not conform to the Complainant's Brand Guidelines nor does it comply with the WhatsApp Terms of Service.

Copies of WhatsApp's Brand Guidelines and WhatsApp Terms of Service are provided as **Annex 9**.

13. 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 12**.

14. 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.

5. 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;*
- *United States Trademark Registration No. 4083272, WHATSAPP, registered on 10 January 2012 (first use in commerce on 10 September 2009) (classes 9 and 38);*
- *European Union Trade Mark No. 009986514, WHATSAPP, registered on 25 October 2011.*
- *International Registration No. 1085539, WHATSAPP, registered on 24 May 2011;*
- *International Registration No. 1095940, WHATSAPP, registered on 6 October 2011 (class 38); and*
- *International Registration No. 1109890, , registered on 10 January 2012.*

The establishment of the fact that the DDN infringes the trademark of the Complainant is sufficient to satisfy this criterion. In that context, the Complainant has provided numerous proofs that the Complainant owns several trademark registrations around the world for the word “WHATSAPP” including in Pakistan. The Complainant further contends that the Respondent has been using the registered trademarks along with the figurative trademarks on his website.

For the purpose of this criterion, it is essential that the DDN itself infringes on the Complainant’s trademark and the content available on the Respondent’s website cannot be considered. 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 “downloads” would constitute an infringement.

Pursuant to the lack of further submission, the Panel finds that the information is insufficient for the purposes 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:

15. *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.*
16. *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 purposes of paragraph 4(a)(i) of the Policy.*
17. *The Domain Name comprises the Complainant's WHATSAPP trade mark in its entirety, with the addition of two letters "gb" and the term "downloads", under the ccTLD ".pk" for Pakistan.*
18. *The Complainant submits that the presence of its WHATSAPP trade mark in the Domain Name is sufficient to establish confusing similarity between the Domain Name and the Complainant's trade mark; see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("**WIPO Overview 3.0**"), section 1.7.*
19. *The Complainant submits that the addition of the letters "gb" and the term "downloads" does not prevent a finding of confusing similarity with the Complainant's WHATSAPP trade mark, which remains clearly recognizable in the Domain Name. See WIPO Overview 3.0, section 1.8 and WhatsApp LLC v. Pruthvi Raj, WIPO Case No. D2023-1715 (<gbwhatsappdownloads.com>); WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / Muhammad Asif, WIPO Case No. D2022-3170 (<gbwhatsappdownload.com>); and WhatsApp LLC v. GB Apps, DNDRC Case No. C2024-0004 (<whatsappgb.pk>).*
20. *The addition of the .PK ccTLD may be disregarded for purposes of assessment under the first element; see WIPO Overview 3.0, section 1.11.1.*
21. *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.

It is generally understood that the first element functions mainly as a requirement for establishing standing. The threshold test regarding confusing similarity entails a reasoned but fairly simple comparison between the Complainant's trademark and the contested domain names, 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 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 <gbwhatsappdownloads.pk> is confusingly similar to the "WHATSAPP" trademark. The Complainant contends, and it is a widely recognized principle, that the inclusion of a ccTLD such as ".pk" does not negate a finding of confusing similarity. This principle has been affirmed in numerous DNDRC and WIPO cases, including those referenced by the Complainant.

Regarding the addition of the terms "gb" or "downloads", the Panel has reviewed the precedent set in WhatsApp LLC v. Pruthvi Raj (<gbwhatsappdownloads.com>); WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / Muhammad Asif (<gbwhatsappdownload.com>); and WhatsApp LLC v. GB Apps, (<whatsappgb.pk>), as submitted by the Complainant. 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 also agrees with the ruling in WhatsApp, LLC v. Contact Privacy Inc. Customer 7151571251, Contact Privacy Inc. / Gulsher Khan, WIPO Case No. D2023-5230 (<gbwhatsappdownloadpro.net>), 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.

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:

22. *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

23. *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.*

24. *As a preliminary matter, WhatsApp's Brand Guidelines prohibit the registration of domain names that could be confused with WhatsApp.*

"General Guidelines

Do not use other trademarks, names, domain names, logos, or other content that could be confused with WhatsApp.

[...]

Frequently Asked Questions

Can I use WhatsApp in my domain name or online username?

You may not use any WhatsApp trademarks, or anything similar, in your trademark, domain name, username, or other account name.

[...]

Prohibited Uses

Don't use the WhatsApp trademark, or anything similar, as, or as part of, a second level domain name or platform username."

25. *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 9**).*
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. *The Complainant submits that the Respondent fails to fulfil the first and third Oki Data criteria, specifically:*
 - (i) *The Respondent is not a reseller or service provider as the Respondent is not actually offering WhatsApp services, but rather unauthorized modified versions of the WhatsApp app. As such, the Respondent cannot be said to be using the website to offer the goods or services at issue.*
 - (ii) *The Website does not prominently disclose the Respondent's lack of relationship with the Complainant. The disclaimer-like statement appears in the "Download" page of the Website, accessible via a hyperlink on the homepage. The Website prominently displays the Complainant's WHATSAPP trade mark, together with its figurative trade mark and the variations of its telephone logo, and makes use of the same green-and-white colour scheme used by the Complainant. The Website may therefore mislead Internet users into believing that it is operated or authorized by the Complainant, when in fact it is not. See *Elsevier BV. v. Oleg Klochkov*, WIPO Case No. D2020-0872 (<scopus.today>).*

28. As mentioned above, GBWhatsApp is a modified version of WhatsApp, developed by a third party. It is not authorized by the Complainant, and violates WhatsApp's Terms of Service which provide as follows (see **Annex 9**):

"Harm To WhatsApp Or Our Users. You must not (or assist others to) directly, indirectly, through automated or other means, access, use, **copy, adapt, modify**, prepare derivative works based upon, distribute, license, sublicense, transfer, display, perform, **or otherwise exploit our Services in impermissible or unauthorized manners**, or in ways that burden, impair, or harm us, our Services, systems, our users, or others, 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**[...]."

29. The Complainant is committed to maintaining the integrity of its WhatsApp service and does not support such third-party applications. As such, the Respondent is making unauthorized use of the Complainant's trade mark in the Domain Name to offer services that violate the Complainant's Terms of Service. Such use of the Domain Name therefore cannot be considered as bona fide under the Policy.

See WhatsApp, Inc. v. Nasser Bahaj, WIPO Case No. D2016-0581 (<ogwhatsapp.org> et al.) and WhatsApp, Inc. v. Abdallah Almqbali, WIPO Case No. D2016-1287 (<watsabsplus.com> et al.).

30. The Complainant therefore submits that the Respondent is not using the Domain Name in connection with a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy.

The Respondent is not commonly known by the Domain Name

31. The registrant information for the Domain Name is redacted in the publicly-available WhoIs database (see **Annex 2**). The Website does not display any contact details. The identity of the underlying registrant has been disclosed as **"GB Apps"**, which bears no resemblance to the Domain Name whatsoever.
32. Furthermore, the Respondent's use of the Domain Name to promote unauthorised WhatsApp APK 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.
33. The Respondent therefore cannot legitimately claim that it is commonly known by the Domain Name, in accordance with paragraph 4(c)(ii) of the Policy.

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

34. *Nor can the Respondent assert that it has made or is currently making a legitimate noncommercial or fair use of the Domain Name pursuant to paragraph 4(c)(iii) of the Policy.*
35. *The provision of services that violate the Complainant's 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. *As described above, the content of the Website creates a misleading impression that the modified WhatsApp APK provided on this site is authorised, endorsed or otherwise connected with the Complainant.*
37. *The composition of the Domain Name, which incorporates the WHATSAPP trade mark in its entirety, excludes any fair use as it falsely suggests an affiliation with the Complainant that does not exist; see WIPO Overview 3.0, section 2.5.1.*
38. *Therefore, the Complainant submits that it 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 notes that the Respondent has 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 while also misleading the users into believing the DDN to be owned by the Complainant. This activity is not 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, although the Respondent operates the DDN, there is no evidence available to the Panel that the Respondent is commonly known by it. The evidence provided by the Complainant demonstrates the worldwide recognition of the "WHATSAPP" trademark, showing 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 that the Respondent is not engaging in legitimate non-commercial or fair use of the domain name. The evidence provided by the Complainant proves that the Respondent's promotion of an unauthorized modified version of the Complainant's app 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.

The prima facie case was established by the Complainant through the various evidences provided in and with the Complaint, therefore, the burden of proof shifted 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:

39. *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.*
40. *The Complainant submits that the Domain Name was registered and is being used in bad faith pursuant to paragraph 4(b)(iv) of the policy, as well as for reasons that go beyond the non exhaustive list of circumstances set out in paragraph 4(b) of the Policy.*

Registration in bad faith

41. *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).*
42. *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 10).*
43. *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, the*

Respondent could not credibly 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>). See also Whatsapp Inc. v. Meraart, DNDRC Case No. C2017-0001 (<whatsapp.pk>) and Whatsapp Inc. v. WCL, DNDRC Case No. C2017-0007 (<whatsapp.com.pk>).

44. *The content of the Website demonstrates the Respondent's actual knowledge of the Complainant and its trade marks, as it makes multiple references to the Complainant. 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 Name. See WIPO Overview 3.0, section 3.2.1. See also WhatsApp, Inc. v. Whois Agent, Whois Privacy Protection Service, Inc. / Mohammed Alkalbani, Ops Alkalbani, M. Rashid Alkalbani, WIPO Case No. D2016-2299 (<download-whatsapp-plus.net> et al.), WhatsApp, Inc. v. Abdallah Almqbali, supra and Lemon Inc. v. saleem abbas, supra.*
45. *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 and to the Complainant (see **Annex 12**). The Complainant submits that the Respondent's apparent registration of two additional WHATSAPPformative 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."

46. *The Complainant submits that the Respondent registered the Domain Name 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

47. *The Website offers for download an unauthorized modified version of the WhatsApp app, developed by third party. Given the confusing similarity between the Domain Name and the Complainant's trade mark, and the content of the Website as described above, 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.

48. *It is more likely than not that the owner of such third-party application ultimately derives 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.*
49. *The Complainant submits that by using the Domain Name the Respondent has intentionally attempted to attract Internet users to online locations by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of the website, in bad faith pursuant to paragraph 4(b)(iv) of the Policy. See WhatsApp, Inc. v. Nasser Bahaj, supra and WhatsApp, Inc. v. Whois Agent, Whois Privacy Protection Service, Inc. / Mohammed Alkalbani, Ops Alkalbani, M. Rashid Alkalbani, supra.*
50. *Furthermore, the promotion of an unauthorized modified WhatsApp APK not only violates the Complainant's Terms of Service but also places the security of WhatsApp users at risk. The Respondent's use of the Domain Name to offer an unauthorised APK under the Complainant's trade mark 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 and WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi, WIPO Case No. DMED2021-0032 (<cyberwhatsapp.com>).*
51. *The presence of a disclaimer-like statement on the "Download" page of the Website does not serve to render the Respondent's activities bona fide, as the disclaimer is by no means prominently placed. The Complainant further submits that the mere presence of a disclaimer cannot legitimise activity that violates the Complainant's Terms of Services. See WIPO Overview 3.0, section 3.7. See also Elsevier BV. v. Oleg Klochkov, supra and WhatsApp LLC v. Krishan Gahlot, Krishan Gahlot, WIPO Case No. D2022-2080 (<whatsappchannels.com>).*
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, it becomes highly

unlikely for the Respondent to be unaware of the existence of the Complainant's trademark due to the established recognition of the Complainant's DDN. The evidence provided by the Complainant serves as a clear indication that the Respondent had knowledge of the same since the Respondent's website makes multiple references to the Complainant's trademark and promotes unauthorized versions of the Complainant's app.

Therefore, by registering a domain name that closely resembles a well-known trademark without the Complainant's authorization, the Respondent is clearly acting in bad faith. The use of the DDN, which may mislead users into assuming a connection or endorsement by the Complainant, further supports this finding of registering the DDN in bad faith.

The Panel observes that while the Respondent's use of the DDN does not include commercial banners or direct promotional content, the absence of such elements does not automatically suggest fair use or negate an intent to exploit the Complainant's trademark. As argued by the Complainant, the Respondent's use of the domain name seems designed to create a misleading impression of affiliation or endorsement by the Complainant, thereby seeking to gain reputational or bargaining advantages.

Regarding the disclaimer-like statement on the website, the Panel refers to the assessment in *WhatsApp LLC v. Krishan Gahlot*, *Krishan Gahlot*, suggested by the Complainant, which found that where the overall circumstances indicate bad faith, the mere presence of a disclaimer cannot absolve such conduct. In this case, the disclaimer does not serve as a defense, given that the use of the DDN is designed to mislead and exploit. This conduct satisfies the criteria under paragraph 4(b)(iv) of the Policy and provides clear evidence of both registration and use of the 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

Upon reviewing the information presented by the Complainant, the Panel recognizes that the "WHATSAPP" trademark is registered to the Complainant, which gives them significant rights over it. The Respondent's use of this trademark could jeopardize the hard-earned reputation of the Complainant and lead 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 has no legitimate interest in the DDN;
4. The DDN was registered and is being used in bad faith.

Pursuant to Section 4 of the Policy, the Panel, therefore, recommends that PKNIC transfer the registration of the domain name in dispute <gbwhatsappdownloads.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: 7 October 2024