

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

**Arbitration and Mediation Center**

**COMPLAINT PANEL DECISION**

**Case No. 2024-0009**

**Also in PDF C-2024-0009**

**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 Younus Waqar with their address at Sasti Basti Nearby Noble School Riaz Shopkeeper, Taunsa Sharif

**2. The Domain Names and Registrar**

The domain name in dispute is <gbwhatsapp.pk>, hereinafter referred to as the Disputed Domain Name ["the DDN"]. Vide email dated 12 May 2024, PKNIC has informed DNDRC that the DDN was registered by Younus Waqar with contact name Younus Waqar, with their address at Sasti Basti, Nearby Noble School, Riaz Shopkeeper, 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 20 March 2024 after which DNDRC completed its compliance review. The Complainant filed an amended complaint on 23 May 2024.

The Respondent was issued a notification of the dispute along with a copy of the Complaint and a Response Form on 14 May 2024 informing the Respondent that if a Response was not received 10 days from the notification, the dispute would be proceeded *ex parte*. The Respondent was sent a reminder on 21 May 2024 and subsequently was sent a second reminder on 29 May 2024. The Respondent has failed to submit a response within the stipulated time period.

## 4. Factual Background

The domain name upon which the Complainant is based is <gbwhatsapp.pk> PKNIC has confirmed via their email dated 12 May 2024 that the DDN was registered by the Respondent above-named and that the email address provided at the time of registration is [verify@privatesever.com](mailto:verify@privatesever.com). DNDRC awaited the submission by the Complainant of the Complaint as per the prescribed forms also available at [www.dndrc.com/downloads](http://www.dndrc.com/downloads). The Respondent failed to provide a response within the stipulated time period.

### 1. Parties Contentions

#### A. Complainant

*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.) in 2014, WhatsApp allows users across the globe to exchange messages for free via smartphones, including iPhone, BlackBerry and Android. Its main website available at [www.whatsapp.com](http://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 3<sup>rd</sup> most downloaded application in Pakistan and 5<sup>th</sup> in the world as per data.ai's Top Apps Rankings in 2024. See Annex 4 for a screen capture of the Complainant's website at [www.whatsapp.com](http://www.whatsapp.com) and copies of information on the Complainant, including its Wikipedia entry, press articles on Facebook's acquisition of WhatsApp in 2014, its application ranking and rapid growth and popularity worldwide, including in Pakistan.*

*3. Reflecting its global reach, the Complainant is the owner of numerous domain names consisting of or including its WHATSAPP trade mark under a wide range of generic Top-Level Domains (gTLDs) as well as under numerous country code Top Level Domains (ccTLDs). For instance, , , , and (Pakistan), (Hong Kong), , (India), (Mexico), (Spain), and (United Kingdom). 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 Domain Name and the associated website (the "Website")**

5. The Domain Name currently points to a Website which promotes and offers for download a modified APK2 version of WhatsApp known as "GBWhatsApp".

6. This unauthorized modified version of WhatsApp purportedly provides functionalities that go beyond those offered in the official WhatsApp app, notably including bulk messaging and management of multiple WhatsApp accounts from a single device.

7. Furthermore, the Website prominently displays the Complainant's WHATSAPP trade mark and its figurative trade mark  (as the favicon and at the top center of the screen), together with a variation () of this telephone logo, and features WhatsApp's distinctive green colour scheme.

8. The Website does not display any contact details but provides a contact form. It contains a discreet disclaimer<sup>3</sup>, which states:

*"GB WhatsApp and OG WhatsApp stand as popular alternative versions of the official WhatsApp, commonly referred to as WhatsApp MODs, which are developed and customized by third-party individuals or groups. It's important to note that WhatsApp's official terms of service do not endorse or allow these applications, and using them could potentially lead to temporary or even permanent account restrictions. We strongly advise against associating your primary WhatsApp account or mobile number with MOD WhatsApp. Instead, consider using a temporary or virtual mobile number for your MOD WhatsApp use."*

Screen captures of the Website as described above are provided as Annex 6

9. On 23 January 2024, the Complainant's lawyers sent a cease and desist letter to the Respondent via the contact form on the Website. In this letter, the Complainant asserted its trade mark rights and requested transfer of the Domain Name. The Respondent never replied to this letter. Screen captures of the cease and desist letter sent via the contact form on the Website are provided as Annex 7.

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

Therefore, the Complainant seeks the following remedy:

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

## **B. Respondent**

The Respondent did not submit a response.

## **2. Jurisdiction**

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

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

## **3. Discussion and Findings**

### **1. Discussion and Findings**

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

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

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

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

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

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

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

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

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

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

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

The Complainant has stated:

*This Complaint is based on the following trade mark registrations (see annex 3)*

- Pakistani Trade Mark Registration No. 302143, WHATSAPP, registered on 27 May 2011;
- United States Trademark Registration No. 3939463, WHATSAPP, registered on 5 April 2011;
- European Union Trade Mark No. 009986514, WHATSAPP, registered on 25 October 2011;
- International Trademark No. 1085539, WHATSAPP, registered on 24 May 2011; and
- International Trade Mark No. 1109890, , registered on 10 January 2012.

The Respondent has not submitted a response.

For the purposes of this criteria, it will be considered sufficient if the Complainant establishes that the DDN is infringing the Complainant’s tradename. Sufficient proof has been submitted by the Complainant which proves that the own multiple trademark registrations around the world for the word “WHATSAPP”, including Pakistan. The Complainant also alleged that the Respondent’s associated website makes use of the registered trademark “WHATSAPP” as well as its figurative trademark.

The Complainant has not established a trademark infringement case, as the Complainant has not specifically explained how the use of the trademark “WHATSAPP” within the phrase “GBWHATSAPPSPK” will constitute trademark infringement under the laws of Pakistan.

Due to the lack of any further submissions, the Panel finds that there is insufficient information in order to properly conclude that this PKNIC criteria has been met. Hence, it is to be assessed whether each of the UDRP criteria has been met in order to establish whether the complaint can be accepted.

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

The Complainant has submitted the following:

*11. 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.*

*12. 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.*

*13. The Domain Name comprises the Complainant's WHATSAPP trademark in its entirety, which is prefixed with two letters "gb" and suffixed with the letter "s", under the ccTLD ".pk" for Pakistan.*

*14. As stated in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition<sup>4</sup> ("WIPO Overview 3.0"), section 1.8:*

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

*15. The Complainant submits that the inclusion of the Complainant's WHATSAPP trade mark in the Domain Name is sufficient to establish confusing similarity between the Domain Name and the Complainant's WHATSAPP trade mark.*

*16. Further, the Complainant submits that the mere addition of the prefix "gb" and the suffix "s" in the Domain Name does not prevent a finding of confusing similarity with the Complainant's WHATSAPP trade mark, which remains recognizable in the Domain Name. See WO3, section 1.8 and WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / Muhammad Asif, WIPO Case No. D2022-3170.*

*17. The addition of the .PK ccTLD 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.*

*18. For reasons set out above, the Complainant submits that the Domain Name is confusingly similar to the Complainant's WHATSAPP trade mark, in accordance with paragraph 4(a)(i) of the Policy.*



The Respondent has not submitted any response.

It is widely accepted that the initial element mainly serves as a standing requirement. The test for confusing similarity consists of a reasoned but straightforward comparison between the Complainant's trademark and the DDN. As set out in section 1.7 of the WIPO Overview of the WIPO Panel Views on Selected UDRP Questions, Third Edition (WIPO Overview 3.0).

As observed above, the Complainant has established its rights internationally as well as in Pakistan for the trademark "WHATSAPP". The Panel must consider the question of whether the DDN <gbwhatsapps.pk> is confusingly similar to the Complainant's trademark "WHATSAPP".

As submitted by the Complainant, it is a well-established principle that the addition of a ccTLD such as ".pk" would not prevent a finding of confusing similarity. This has been upheld in several DNDRC and WIPO cases in the past, including those that the Complainant has relied on.

As regards the addition of the letters "gb" and the letter "s", the Panel has reviewed the case precedent of WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / Muhammad Asif, WIPO Case No. D2022-3170 (<gbwhatsappdownload.com> submitted by the Complainant. The Panel is in agreement with the findings of the WIPO Panel, that the addition of the letters "gb" (even if descriptive, geographical or meaningless in nature) in front of the registered trademark of the Complainant would also not prevent confusing similarity. The same principle can be applied to the addition of the letter "s" in the DDN.

Furthermore, the Panel agrees with the precedent in WhatsApp LLC v. Contact Privacy Inc. Customer 7151571251, Contact Privacy Inc. / Gulsher Khan, WIPO Case No. D2023-5230 (<gbwhatsappdownloadpro.net>) where the Panel supported the view that the addition of "GB" is not sufficient to prevent a finding of confusing similarity between the disputed domain name and mark for the purposes of this policy.

As per the assessment above, the Panel finds that the DDN is confusingly similar to a trademark in which the Complainant possesses 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:

*19. 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***

*20. 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.*

*21. As a preliminary matter, the Complainant submits that the Respondent is unable to be viewed as a bona fide service provider, as it is not providing sales or repairs in relation to a product provided by the Complainant. Rather, the Respondent is making unauthorized use of the Complainant's trade marks to promote a third party modified version of WhatsApp. Nevertheless, even if one is to apply the Oki Data criteria<sup>6</sup>, the Respondent at least fails to fulfil the first and third Oki Data criteria:*

*(i) The Respondent is not a reseller or service provider as the Respondent is not actually offering WhatsApp, but rather an unauthorized version of WhatsApp. As such, the Respondent cannot be said to be using the Website to offer the goods or services at issue;*

- (ii) *The Respondent's Website does not clearly disclose its lack of relationship with the Complainant. Rather, the Website contains a discreet disclaimer, which is not located in a prominent position. In addition, it prominently displays the Complainant's WHATSAPP trade mark, together with a variation of the Complainant's figurative trade mark and 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.*

22. *In addition to the absence of a prominent disclaimer, the Website displays a variant of the Complainant's figurative trade mark and highlights the Complainant's WHATSAPP trade mark, along with its distinctive speech bubble logo, for the purposes of promoting a modified WhatsApp APK (  ). Prior panels have held that such use 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 the false impression to Internet users that they have reached a website affiliated with or endorsed by the Complainant and the modified WhatsApp APK provided on this site is authorised by or otherwise connected with the Complainant.*

*See WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi, WIPO Case No. D2021-0032 ( )7 and WhatsApp, Inc. v. Abdallah Almqbali, WIPO Case No. D2016-1287 ( et al.)8.*

23. *Furthermore, the modified WhatsApp APK promoted via the Domain Name is not authorized by the Complainant, and violates the Complainant's Terms of Service (a copy of which is provided as Annex 8) providing 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, 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 [...]"*

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 as bona fide under the Policy.*

*See WhatsApp, Inc. v. Nasser Bahaj, WIPO Case No. D2016-0581 ( et al.)<sup>9</sup>, WhatsApp, Inc. v. Abdallah Almqbali, WIPO Case No. D2016-1287 ( et al.)<sup>10</sup> and WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi, supra.<sup>11</sup>*

*25. Finally, the fact that the Website displays a discreet disclaimer regarding the absence of relationship with the Complainant cannot 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 ()<sup>12</sup> and LinkedIn Corporation v. Contact Privacy Inc. Customer 0138656558 / Scott Offord, Bytes and Sites Inc, WIPO Case No. D2016-117113.*

*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 registrant information for the Domain Name is redacted in the publicly-available WhoIs database (see **Annex 2**). Neither does the Website associated with the Domain Name display any contact details. The Respondent's identity is therefore unknown to the public.*

*28. Furthermore, the Respondent's use of the Domain Name to promote an unauthorized 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.*

*29. 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***

*30. Neither can the Respondent assert that he has made or is currently making a legitimate non-commercial or fair use of the Domain Name pursuant to paragraph 4(c)(iii) of the Policy, notably given the following circumstances:*

- (i) 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;*

- (ii) *As described above, the content of the Respondent's Website creates a misleading impression that the modified WhatsApp APK provided on this site is authorised, endorsed or otherwise connected with the Complainant; and*
- (iii) *The provision of services that violate the Complainant's Terms of Services cannot give rise to rights or legitimate interests in the Domain Name. See **Lemon Inc. v. saleem abbas, WIPO Case No. D2023-4066 (ressomodoapk.com)**<sup>14</sup>.*

*31. 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 Complainant has submitted evidence that the Respondent, through the content on its website, claim and imply that the WhatsApp APK on their website is authorized, and that the Respondent and the Claimant are affiliated with one another. However, we know from **Lemon Inc. v. Saleem Abbas, WIPO Case No. D2023-4066 (ressomodoapk.com)**<sup>14</sup>, that the provision of services that result in a violation of the Complainant's Terms of Services does not give rise to a legitimate interest of a Respondent in a domain name.

Therefore, due to the implied and false affiliation with the Complainant through the websites content and use of the trademark, the Respondent cannot claim or argue that he is using the trademark as fair use. It is clear from the aforementioned facts that the use of the trademark is not Non-commercial and does not fall under fair use.

The Respondent has not provided any evidence to establish legitimate interests in DDN. The Complainant has made a strong prima facie case that the Respondent is not using the DDN in connection with a bona fide offering of goods or services, as required under paragraph 4(c)(i) of the Policy. Instead, the Respondent is promoting an unauthorized version of WhatsApp, which infringes the Complainant's intellectual property rights and violates its Terms of Service. Furthermore, the discreet disclaimer on the Respondent's website is insufficient to negate the misleading impression of an affiliation with the Complainant.

Additionally, the Respondent has not demonstrated that it is commonly known by the DDN under paragraph 4(c)(ii), nor is there any indication of legitimate non-commercial or fair use of the domain name, as required under paragraph 4(c)(iii). The Respondent's use of the Complainant's trademarks, logo, and color scheme further misleads users into believing the

site is associated with the Complainant. As a result, the Respondent cannot claim a legitimate interest in DDN.

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

The Complainant has made the submission below:

*32. 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.*

*33. 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***

*34. 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).*

*35. All top results obtained by typing "WhatsApp" into the Google search engine available at [www.google.com](http://www.google.com) and [www.google.com.pk](http://www.google.com.pk) refer to the Complainant (see Annex 9).*

*36. In light of the above, the Complainant submits that the Respondent could not credibly argue that it did not have knowledge of the Complainant or its WHATSAPP trade mark when registering the Domain Name in 2023.*

*37. The trademark being renowned worldwide and used by millions, in addition to its uniqueness and distinguishable characteristics, further solidify the argument that the Respondent can not credibly argue that it did not have the knowledge of the Complainant or the associated WHATSAPP trade mark.*

*38. The content of the Website clearly demonstrates the Respondent's knowledge of the Complainant and its trade marks, as it makes multiple references to the Complainant and offers for download an unauthorized modified version of the Complainant's application. The Complainant's WHATSAPP trade mark is a coined term, exclusively associated with the Complainant and its messaging services. All*

*these factors clearly indicates the Respondent's intent to target the Complainant's trade marks at the time of registration of the Domain Name. See WIPO Overview 3.0, Section 3.2.1 as well as WhatsApp Inc., Facebook, Inc. v. Alex Xu, HKITN, WIPO Case No. D2019-1709, ( et al.)<sup>15</sup> and Lemon Inc. v. saleem abbas, supra.*

*39. 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, carrying a high risk of implied affiliation with the Complainant, in bad faith.*

***Use in bad faith***

*40. 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 a prominent disclaimer clarifying the lack the relationship with the Complainant, Internet users are likely to be misled into believing that the Respondent's Website is somehow affiliated with or otherwise endorsed by the Complainant, which is not the case (see **Annex 6**).*

*41. The Complainant therefore submits that by using the Domain Name in this fashion, the Respondent intentionally attempts to attract, for commercial gain, Internet users to its 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.*

*42. Although the Respondent's Website does not display any obvious commercial banners or promotional PPC links, the Complainant infers that it is more likely than not that the owner of the promoted WhatsApp modified APK 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.*

*43. 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 unauthorized 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<sup>17</sup> and WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi, supra.<sup>18</sup>*



44. In addition, the mere presence of a disclaimer on the Website regarding the lack of relationship with the Complainant cannot cure the Respondent's bad faith. See *Cable News Network, Inc. v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Vitalii Yuhimyuk, WIPO Case No. D2018-2099 (<cnnlivestream.com>)*19.

45. Finally, the Respondent's failure to respond to the Complainant's explicit cease and desist letter sent prior to the filing of this Complaint may be viewed as an additional indication of the Respondent's bad faith. See *Samsung Electronics Co., Ltd. v. EAO Digital Solutions, WIPO Case No. D2012-0693 (<samsungtienda.com>)*20.

46. In view of the above, the Complainant submits that the Domain Name was registered and is being used in bad faith, in accordance with paragraph 4(a)(iii) of the Policy.

The Respondent has not submitted any contentions.

The Complainant has also provided a supplementary filing with evidence to support its arguments.

The Panel finds that the Complainant's "WHATSAPP" trademark is inherently distinctive and recognized globally in connection with its messaging services. As the trademark is so widely established in terms of recognition and presence, it is highly unlikely that the Respondent registered the DDN without prior knowledge of the existence of the Complainant's trademark.

The Complainant's submissions clearly show numerous references on the Respondent's website associated to the Complainant. The Respondent's website, as mentioned in the Complainant's submissions, also shows that it is being used for unauthorized versions of the Complainant's application. This proves that the Respondent was aware and had knowledge of the Complainant's trademark.

The Panel has clearly understood, from the Complainant's submissions and the Respondent's lack thereof, that the Respondent does not have a relationship of any kind with the Complainant and has not been authorized by the Complainant to use the "WHATSAPP" trademark. The registration of a domain name that is confusingly similar to a well-known trademark without the permission of the owner, especially when there is a risk of an implied affiliation, is indicative of bad faith.

In the current case, the Respondent has made intentional use of the DDN to attract users of the Internet, with the purpose of commercial gain by creating a likelihood of confusion with the Complainant's "WHATSAPP" trademark, in order to divert them to a website which offers a directly competitive commercial product which also includes references to the Complainant's



trademark, as well as an unauthorized version of its registered logo. This specific conduct satisfies the conditions set out in paragraph 4(b)(iv) of the Policy and will be considered evidence of the Respondent's use of the DDN in bad faith.

The Complainant has also stated that even though the website of the Respondent does not show any banners or advertisements or other visual aspects, the Respondent likely derives commercial gain from the unauthorized use of the Complainant's trademark. UDRP panels have in the past, held that commercial gain may include the respondent gaining or seeking reputational and/or bargaining advantage, even where an advantage may not be instant, imminent or "readily quantified". (WIPO Overview 3.0, section 2.5.3.)

The Respondent has failed to provide any submissions or supporting documents, evidence or arguments that support the position that the registration and use of the DDN by the Respondent was in good faith.

In conclusion, the lack of a disclaimer proves that the use of the Complainant's trademark was intentional and was to make commercial gain. The affiliation between the two can be implied by any user on the internet and the Respondent's failure to issue a disclaimer clearly indicates bad faith.

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

#### **4. The Decision**

Taking into consideration and analysis the details provided by the Complainant, the Panel perceives that the "WHATSAPP" mark has been registered by the Complainant, hence the Complainant has the right to reserve a crucial interest in such mark. Usage of these marks by the Respondent could endanger the reputation built and maintained by the Complainant and result in confusion created 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 DDN does not violate the PKNIC - Internet Domain Registration Policy version 4.4 (2019-08-19)
2. The DDN is confusingly similar to the registered trademark of the Complainant;
3. The Respondent does not a legitimate interest in the DDN.
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 <gbwhatsapps.pk> to the Complainant, as prayed, within 48 hours of receipt of this decision either by email or through the website where it will

be uploaded, [www.dndrc.com/cases\\_resolved/](http://www.dndrc.com/cases_resolved/), whichever is earlier. The Complainant shall also be at liberty to contact PKNIC for implementation of this decision.

**Arbitrator: Rayyan Altaf**

**Sole Panelist**

**Date: 15 October 2024**