



Domain Name Dispute Resolution Center (DNDRC)

Arbitration and Mediation Center

COMPLAINT PANEL DECISION

Case No. C2024-0004

Also in PDF C2024-0004

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, Pakistan.

2. The Domain Names and Registrar

The domain name in dispute is <whatsappgb.pk>, hereinafter referred to as the Disputed Domain Name ["the DDN"]. Vide email dated Thursday 4 April 2024, PKNIC has informed DNDRC that the Disputed Domain Name was 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 1 March 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 4 April 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 filed a response on the Response form on 13 April 2024. On 16 April 2024, DNDRC informed the

Respondent to provide complete and accurate details in Part 4 of the Response Form, DNDRC also requested the Respondent to identify the legal basis for the rights being claimed, and provide information to demonstrate that the Respondent has a legitimate interest in the disputed domain name. Subsequently, DNDRC issued a reminder to the Respondent on 22 April 2024. On 24 April 2024, the Respondent requested extension of time for submission of Response form stating “give me 24-48 hours. I will respond to you. I am in some critical condition.” The Panelist granted him time till 26 April to submit his Response. An email was received from the Respondent on 24 April 2024 stating that the Response Form submitted previously was accurate.

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

On 1 May 2024, the Complainant filed a supplemental filing, which was accepted by the Panel. On 10 May 2024, DNDRC provided a copy of the supplemental filing to the Respondent. The Respondent did not submit a response to the supplemental filing.

Factual Background

The domain name upon which the Complaint is based is <whatsappgb.pk>.

PKNIC has confirmed via their email dated 4 April 2024 that the DDN was registered by the Respondent above-named and that the email address provided at the time of registration is gbapps.pk@gmail.com.

1. Parties Contentions

A. 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.) 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 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 in Pakistan and 5th 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 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, <whatsapp.com>, <whatsapp.net>, <whatsapp.org>, <whatsapp.pk> and <whatsapp.com.pk> (Pakistan), <whatsapp.hk> (Hong Kong), <whatsapp.in>, <whatsapp.co.in> (India), <whatsapp.mx> (Mexico), <whatsapp.es> (Spain), <whatsapp.uk> and <whatsapp.co.uk> (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")

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5. The Domain Name currently points to the Website entitled "GBWhatsApp APK 2 ", which promotes and offers downloads of various modified APK versions of WhatsApp, such as "GB WhatsApp Pro", "WhatsApp Plus", "YO WhatsApp" and "FM WhatsApp".

6. These unauthorized modified versions of WhatsApp purportedly provide 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. Instead of providing a disclaimer clarifying its relationship (or absence of relationship) with the Complainant, the Website misleadingly states at the bottom of the homepage:

*"I trust you'll appreciate the GBWhatsApp APK, **an official app variant**. GBWhatsApp ensures the same security and policies as the official WhatsApp."*

9. The Website also displays commercial banner advertisements which link to third party websites. Screen captures of the Website as described above are provided as **Annex 6**.

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's brief contentions are as follows:

WhatsAppGB.PK operates independently and is not associated with WhatsApp, Meta Platforms, Inc., or WhatsApp LLC. It does not use the trademarks, designs, or proprietary information of WhatsApp or any related entity. WhatsAppGB.PK is a separate entity

providing distinct services without any endorsements or permissions from the aforementioned companies.

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

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 Name, 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 stated:

WhatsAppGB.PK operates independently and is not associated with WhatsApp, Meta Platforms, Inc., or WhatsApp LLC. It does not use the trademarks, designs, or proprietary information of WhatsApp or any related entity. WhatsAppGB.PK is a separate entity providing distinct services without any endorsements or permissions from the aforementioned companies.

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

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

In the absence of any further submissions, the Panel finds that there is insufficient information to determinatively conclude that this PKNIC criteria has been met. Therefore, it is necessary to assess

whether each of the UDRP criteria has been met, to establish whether the Complaint can be accepted.

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

The Complainant has contended the following:

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 trade mark in its entirety, with the addition of two letters "gb", under the ccTLD ".pk" for Pakistan.

*14. As stated in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition 3 ("**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 its WHATSAPP trade mark is immediately recognizable in the Domain Name as the leading element, and that the addition of two letters "gb" to the Complainant's trade mark does not prevent a finding of confusing similarity. Prior UDRP panels have found similarly-constructed domain names to be confusingly similar to the Complainant's trade marks. See WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / Muhammad Asif, WIPO Case No. D2022-3170 (<**gbwhatsapp**download.com>) 4 .*

16. 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. 17. 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.

17. 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.

On the other hand, the Respondent has submitted:

WhatsAppGB.PK operates independently and is not associated with WhatsApp, Meta Platforms, Inc., or WhatsApp LLC. It does not use the trademarks, designs, or proprietary information of WhatsApp or any related entity. WhatsAppGB.PK is a separate entity providing distinct services without any endorsements or permissions from the aforementioned companies.

The Complainant has therefore taken the position that the DDN is confusingly similar to “WHATSAPP”, the registered trademark of the Complainant. On the other hand, the Respondent has taken the position that the DDN does not use the trademarks, designs or proprietary information of WhatsApp.

It is widely recognized that the initial element primarily serves as a standing requirement. The standing (or threshold) test for confusing similarity entails a reasoned but fairly straightforward comparison between the Complainant’s trademark and the disputed domain name, as outlined in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (WIPO Overview 3.0).

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

While the Respondent has claimed that it does not use the trademark of the Complainant, this is not the question being considered by the Panel. Under this UDRP criteria, the Panel must limit its assessment to whether the DDN is confusingly similar to the Complainant's registered trademark, "WHATSAPP".

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

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

Based on the assessment above, the Panel finds that the DDN is confusingly similar to a trademark in which the Complainant has 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:

18. 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

19. 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.

*20. Prior UDRP panels have recognized that 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 is typically measured against the list of factors set out in Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903 (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 domain names that reflect the trade mark.

See also WIPO Overview 3.0, section 2.8.

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 third party modified versions of WhatsApp. Nevertheless, even if one is to apply the Oki Data criteria, the Respondent at least fails to fulfil the second and third Oki Data criteria:

(i) The Website purports to offer for download modified WhatsApp APKs developed by third parties without the Complainant's authorisation. As such, the Respondent cannot be said to be using the Website to offer only the trade-marked goods or services;

(iii) In the absence of any disclaimer and noting the misleading statements displayed at the bottom of the homepage (e.g., "I trust you'll appreciate the GBWhatsApp APK, **an official app variant.**"), the Website does not accurately and prominently disclose its relationship with the Complainant.

22. In addition to the lack of a disclaimer, 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, for the purposes of promoting third party modified versions of WhatsApp (see **Annex 6**). 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 APKs provided on this site are authorised by or otherwise connected with the Complainant.

See WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi, WIPO Case No. D2021-0032 (<cyberwhatsapp.com>) 5 and WhatsApp, Inc. v. Abdallah Almqbali, WIPO Case No. D2016-1287 (<whatsappplus.com> et al.) 6 :

23. Furthermore, the modified WhatsApp APKs promoted via the Domain Name are not authorized by the Complainant, and violate the Complainant's Terms of Service which provide as follows:

"Harm to WhatsApp or Our Users. You must not (or assist others to) access, use, copy, adapt, modify, prepare derivative works based upon, distribute, license, sublicense, 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** [...]"*

*A copy of the Complainant's Terms of Service is provided as **Annex 7**.*

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 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.) 7 , WhatsApp, Inc. v. Abdallah Almqbali, WIPO Case No. D2016-1287 (<watsabsplus.com> et al.) 8 and WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi, supra. 9

25. 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.

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

27. Furthermore, the Respondent's use of the Domain Name to promote unauthorised WhatsApp APKs 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.

28. 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

29. 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 Website creates a misleading impression that the modified WhatsApp APKs provided on this site are authorised, endorsed or otherwise connected with the Complainant;

(iii) The Website displays commercial banner advertisements which link to third party websites;

(iv) 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 (<ressomodapk.com>).

30. 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 contended:

WhatsAppGB.PK operates independently and is not associated with WhatsApp, Meta Platforms, Inc., or WhatsApp LLC. It does not use the trademarks, designs, or proprietary information of WhatsApp or any related entity. WhatsAppGB.PK is a separate entity providing distinct services without any endorsements or permissions from the aforementioned companies.

The Panel has reviewed the submissions of the Complainant and Respondent.

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

The Respondent's use of the domain name is commercial, incorporating WHATSAPP entirely and falsely suggesting an affiliation with the Complainant. This is not fair use and is further undermined by commercial advertisements on the website.

The Respondent has itself stated that it does not have any endorsement or permission from the Complainant or any other entity with respect to the use of the DDN. Moreover, the Respondent has not provided evidence to rebut the Complainant's prima facie case that they lack rights or legitimate interests in the domain name. The burden of production shifts to the Respondent, who has failed to meet this burden.

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

IV. Registration and use in bad faith

The Complainant has made the following submission:

31. 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.

32. 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

33. 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**).*

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

*35. 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**).*

36. 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 unauthorized versions 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, (<whatsapp-marketinghk.com> et al.) 12 and Lemon Inc. v. saleem abbas, supra 13 .

37. 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

38. Given the confusing similarity between the Domain Name and the Complainant's trade mark, and the content of the Website as described above, in the absence of any clearly visible disclaimer regarding the relationship with the Complainant, Internet users are likely to be misled into believing that the Respondent's website is somehow affiliated with

or otherwise endorsed by the Complainant, which is not the case. The Website also prominently displays commercial banner advertisements (see **Annex 6**).

39. 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. See *WhatsApp, Inc. v. Nasser Bahaj*, supra 14 and *WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi*, supra. 15.

40. With regard to the display of commercial banners, the Complainant further submits that it is not necessary for the Respondent to have profited directly from these links in order to establish bad faith use; see WIPO Overview 3.0, section 3.5.

41. In addition, the promotion of unauthorized modified WhatsApp APKs 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 unauthorised APKs 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 16 and *WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi*, supra. 17

42. Finally, the Domain Name is pointing to a website displaying a modified version of WhatsApp's speech bubble logo () and using the same distinctive green-and-white colour scheme (see Annex 6), 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>) 18 .

43. 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 contented:

WhatsAppGB.PK operates independently and is not associated with WhatsApp, Meta Platforms, Inc., or WhatsApp LLC. It does not use the trademarks, designs, or proprietary

information of WhatsApp or any related entity. WhatsAppGB.PK is a separate entity providing distinct services without any endorsements or permissions from the aforementioned companies.

In addition, the Complainant has provided a supplementary filing with evidence to support its arguments.

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

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

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

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

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

The Respondent contends that WhatsAppGB.PK operates independently and is not associated with WhatsApp or its parent companies. However, this assertion does not negate the clear evidence of bad faith registration and use. The Respondent's website's content and the unauthorized use of the Complainant's trademark to offer services not endorsed by the Complainant support the finding of bad faith.

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

4. Decision

Analyzing the details provided by the Complainant, the Panel perceives that the "WHATSAPP" mark has been registered by the Complainant, hence the Complainant reserves crucial interest in such mark. Usage of these marks by the Respondent could endanger the reputation that the Complainant has worked hard at building and maintaining and result in confusion as to the registrant of the 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 Respondent has no legitimate interest in the DDN.
3. The DDN is identical to the Complainant's trademark/names and registered domain names.
4. The DDN was registered and being used in bad faith.

Pursuant to Section 4 of the Policy, the Panel, therefore, recommends that PKNIC transfer the registration of the domain name in dispute <whatsappgb.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: Qazi Ghaziuddin Ahmed

Sole Panelist

Date: 30 May 2024