



सत्यमेव जयते

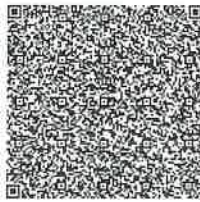
## INDIA NON JUDICIAL

## Government of National Capital Territory of Delhi

₹100

e-Stamp

**Certificate No.** : IN-DL32995376758878X  
**Certificate Issued Date** : 10-Feb-2025 05:41 PM  
**Account Reference** : SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH  
**Unique Doc. Reference** : SUBIN-DL DL-Self09712197912926X  
**Purchased by** : S S RANA AND CO  
**Description of Document** : Article 12 Award  
**Property Description** : AWARD  
**Consideration Price (Rs.)** : 0  
 (Zero)  
**First Party** : VIKRANT RANA  
**Second Party** : VIKRANT RANA  
**Stamp Duty Paid By** : VIKRANT RANA  
**Stamp Duty Amount(Rs.)** : 100  
 (One Hundred only)



₹100

SELF PRINTED CERTIFICATE TO BE  
VERIFIED BY THE RECIPIENT AT  
WWW.SHCIESTAMP.COM

IN-DL32995376758878X

Please write or type below this line

**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE RESOLUTION POLICY**  
(Appointed by the National Internet Exchange of India)  
**ARBITRATION AWARD**

Disputed Domain Name: &lt;GBWHATSAPP.IND.IN&gt;

IN THE MATTER OF

**WhatsApp LLC**  
1601 Willow Road  
Menlo Park, California 94025  
United States of America

..... Complainant

-----versus-----

**GB Apps**  
**Apps.Pk**  
District DG Khan Tehsil Taunsa sharif  
Taunsa Sharif, Punjab 32100, Pakistan

..... Respondent

**Statutory Alert:**

1. The authenticity of this Stamp certificate should be verified at 'www.shciestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

## The Parties

The **Complainant** in this arbitration proceeding is **WhatsApp LLC**, a company with its principal place of business at 1601 Willow Road, Menlo Park, California, 94025, United States of America.

The **Respondent** in this arbitration proceeding is '**GB Apps Apps.Pk**', of the address: District DG Khan Tehsil Taunsa sharif Taunsa Sharif, Punjab 32100 Pakistan, as per the WHOIS records.

### **1. The Domain Name, Registrar and Registrant**

The present arbitration proceeding pertains to a dispute concerning the registration of the domain name <**GBWHATSAPP.IND.IN**> with the .IN Registry. The Registrant in the present matter is '**GB Apps Apps.Pk**' as per the WHOIS records, and the Registrar is **Dynadot LLC**.

### **2. Procedural History**

The arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India (NIXI). The procedural history of the matter is tabulated below:

<b>Date</b>	<b>Event</b>
January 08, 2025	NIXI sought consent of Mr. Vikrant Rana to act as the Sole Arbitrator in the matter.
January 10, 2025	The Arbitrator informed of his availability.
January 13, 2025	Arbitrator provided the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the INDRP Rules of Procedure.
January 14, 2025	NIXI handed over the Domain Complaint and Annexures thereto to the Arbitrator.
January 15, 2025	Arbitrator asked Counsel for the Complainant to:

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	<p><b>A.</b> Provide copy of board resolution or relevant extract of company bylaws, which provides authorization to the authorized signatory to issue the Power of Attorney; and</p> <p><b>B.</b> Provide a duly notarised Power of Attorney under company seal of the Complainant (if available).</p>
January 17, 2025	<p>Complainant's Counsel clarified about the designation of the authorized signatory of the Complainant in the Power of Attorney dated March 14, 2024 and further stated that Company Bylaws or Board Resolution '<i>are not generally available for U.S.-based companies.</i>'</p> <p>Complainant's Counsel further expressed recalcitrance regarding furnishing the requested authority documents and requested the Arbitrator to proceed on the basis of the originally provided Power of Attorney dated March 14, 2024, and further relied upon a non-exhaustive list of past INDRP awards wherein similar Power of Attorneys had been accepted.</p>
January 20, 2025	<p>The Arbitrator informed Complainant's Counsel of the deficiencies in the Power of Attorney dated March 14, 2024, and further directed the Complainant's Counsel to rectify said deficiencies and resubmit the revised POA, within seven (7) days.</p>
January 22, 2025	<ul style="list-style-type: none"> <li>- Complainant's Counsel provided a fresh Power of Attorney dated January 21, 2025.</li> <li>- The Arbitrator directed the Complainant's Counsel to serve a full set of the domain complaint as filed, along with annexures, upon the Respondent by email as well as physical mode (in case Complaint had already not done so) and provide proof of service within seven (7) days.</li> <li>- Thereafter Complainant's Counsel stated to have duly served the complaint upon the Respondent via email on the same date and also that they did not receive any bounce back messages from the</li> </ul>

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	<p>email address <a href="mailto:gbapps.pk@gmail.com">gbapps.pk@gmail.com</a> (of the Respondent). Further, Complainant's Counsel also expressed recalcitrance regarding the requirement of service of the documents upon the Respondent via physical mode, and requested the Arbitrator to waive the said requirement.</p>
January 23, 2025	<ul style="list-style-type: none"> <li>- In consideration of the Complainant's Counsel's request, and the purported difficulties of sending large quantities of paper documents internationally via the postal service, the Arbitrator directed the Complainant's Counsel to provide email delivery receipt(s) in respect of the service of documents effectuated upon the Respondent by email. The Arbitrator further directed the Complainant's Counsel to serve the domain complaint (without the annexures, <i>in light of Complainant's concern regarding sending large quantity of documents</i>), via physical mode, in case email delivery receipt/ report evidencing service by email, is not available, within seven (7) days.</li> <li>- Thereafter, Complainant's Counsel effectuated fresh service of documents upon the Respondent via email, and provided the email delivery receipts to the Arbitrator, evidencing successful service.</li> <li>- Accordingly, the Arbitrator deemed service of soft copy (by email dated January 23, 2025) on the Respondent by Complainant's Counsel as sufficient in respect of the present matter, and accordingly commenced arbitration proceedings in respect of the matter. Respondent was granted time of ten (10) days, to submit a response.</li> </ul>
February 03, 2025	<p>As no response was received from the Respondent within the stipulated time period, in the interest of justice, the Arbitrator granted a final extension of five (5) days to respond to the complaint.</p>
February 10, 2025	<p>As no response was received from the Respondent, Arbitrator concluded proceedings and reserved the present award.</p>


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### **3. Factual Background – Complainant**

Counsel for the Complainant, on behalf of the Complainant in the present matter, has submitted as follows:

- That the Complainant, WhatsApp LLC (previously known as "WhatsApp, Inc.") has recently undergone a change in corporate structure from a corporation to a limited liability company. Thus, certain trade mark certificates and WHOIS records may include reference to "WhatsApp, Inc.". In this regard, the Complainant has provided a copy of the Certificate of Conversion of a corporation to a limited liability company, changing the Complainant's name from "WhatsApp, Inc." to "WhatsApp LLC", as Annex 1.
- Founded in 2009 and acquired by Meta Platforms, Inc. (formerly known as Facebook, Inc.) in 2014, the Complainant is a provider of one of the world's most popular mobile messaging applications. 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](http://www.whatsapp.com) also allows Internet users to access its messaging platform. In this regard, the Complainant has provided screenshots from the aforementioned website as Annex 5.
- That since 2009, WhatsApp has become one of the fastest growing and most popular mobile applications in the world, with over 2 billion monthly active users worldwide (as of 2023). WhatsApp has acquired considerable reputation and goodwill worldwide, including in India and Pakistan (where the Respondent is based). Consistently being ranked amongst Google Play and Apple iTunes 25 most popular free mobile applications and Tech Radar's Best Android Apps, WhatsApp is the 3rd most downloaded application in Pakistan, 5th in the world and 8th in India as per data.ai's Top Apps Rankings in 2024. In this regard, Complainant has provided their Wikipedia entry as well as certain press articles, as Annex 6.
- That Complainant is the owner of numerous domain names, comprising its WHATSAPP trade mark and in this regard, has provided copies of WHOIS records for a selection of domain names as Annex 7.



- That the Complainant has also made substantial investments to develop a strong presence online by being active on various social-media forums. In this regard, Complainant has provided a few screenshots of its social media following, as Annex 8.
- That the Complainant owns numerous trade mark registrations in the term WHATSAPP in many jurisdictions throughout the world, including in Pakistan and India, including [Pakistani Trade Mark No. 302143, WHATSAPP, registered on 27 May 2011]; and [Indian Trade Mark No. 2149059, WHATSAPP, registered on 24 May 2011].
- That the Complainant is also owner of registrations over the logo , including in India vide registration no. 2344423 dated June 07, 2012. In this regard, Complainant has provided copies of trade mark registration certificates as Annex 9.
- That the disputed domain name resolves to the website <https://gbwhatsapp.ind.in/> entitled "GB WhatsApp", which purports to promote and offer for download a modified APK version of WhatsApp developed by third parties.
- That this unauthorized WhatsApp APK 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. Since it is not available on the Google Play Store, Internet users are required to enable "Unknown Sources" in device settings when downloading and installing this APK.
- That the website on the disputed domain name makes use of the same green-and-white colour scheme used by the Complainant and further makes prominent reference to the Complainant's WHATSAPP trade mark and logo, as well as a similar logo:



Complainant's trade mark



Logo associated with the Respondent's Website

- That instead of featuring a prominent disclaimer as to the lack of relationship with the Complainant, the Website discreetly provides the following wording in the section entitled "Differentiating between WhatsApp and GB WhatsApp APK":

*Muhammad Sameer*



*“The official messaging service provided by WhatsApp Inc. is called WhatsApp. It is well known and used all around the world. GBWhatsApp, in contrast, is a customised version of WhatsApp created by independent developers. It is not a WhatsApp Inc. official release.”*

- That in contradiction to the disclaimer cited above, the Website misleadingly states *“Download GBWhatsApp APK 2024 latest version. It’s the BEST way to support OFFICIAL WhatsApp with extra features. Gb WhatsApp is 100% free & Anti-Ban.”*.
- That the website does not contain any contact details. However, it displays a link entitled "Instagram Pro" at the bottom of the homepage, which redirects to a website offering for download a modified version of the Instagram app, which is the app of the Complainant's related company, Instagram LLC ("Instagram"). In this regard, Complainant has provided screenshots from the website hosted on the disputed domain name, as Annex 10.
- That on December 18, 2023, in an attempt to resolve the matter amicably, the Complainant's lawyers submitted an infringement notice to the Respondent via the registrar's domain holder contact request form. No response was received. In this regard, Complainant has provided screenshots evidencing the said communication as Annex 11.
- That the Respondent was named as the respondent in a few other domain disputes, including in India and Pakistan, and in each of these cases, the respective Panels ordered for transfer of the disputed domain names. In this regard, Complainant has provided a copy of the decision passed by a DNDRC panel in the case of WhatsApp LLC v GB Apps [Case Number 2024-0008], as Annex 12.

#### **4. Contentions And Legal Grounds Submitted By The Complainant**

In support of the requirements under the captioned provisions of the INDRP (combined with the relevant Rules of Procedure) the Complainant has submitted that:



**A. The Domain Name is confusingly similar to the Complainant's trade mark (Paragraph 4(a) of the .IN Policy)**

- That the Complainant has established its rights in the mark WHATSAPP;
- That the disputed domain incorporates the Complainant's WHATSAPP trade mark in its entirety with the addition of the letters "gb";
- That the mere addition of the letters "gb" does not prevent a finding of confusing similarity with the Complainant's WHATSAPP trade mark, and in this regard, Complainant has placed reliance on *WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / Muhammad Asif, WIPO Case No. D2022-3170* (<gbwhatsappdownload.com>); *WhatsApp LLC v. Ada Pascal, INDRP/1631* (<whatsappmarketing.in>); and *WhatsApp LLC v. mir malghani, Mirmalghani Firm, INDRP/18526* (<whatsappgb.in>), and has provided copies of these decisions as Annex 12.
- That prior .IN panels have held that the relevant domain extension (which herein is “.IND.IN”) may be disregarded when assessing identity or confusing similarity, as it is a technical requirement of registration. In this regard, Complainant has placed reliance on *Adobe Inc. v. Seeds Provider, INDRP/1255*.


**B. The Respondent has no rights or legitimate interests in respect of the Domain Name. (Paragraph 4(b) and Paragraph 6 of the .IN Policy)**

- That prior .IN panels have held that "where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of proof in this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element." In this regard, Complainant has placed reliance on *Instagram LLC v. Ding RiGuo, INDRP/1183*.

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- That the Respondent is unable to invoke any of the circumstances set out in paragraph 6 of the .IN Policy in order to demonstrate rights or legitimate interests in the Domain Name.
- That the Respondent cannot assert that, prior to any notice of this dispute, it is using, or has made demonstrable preparations to use, the Domain Name in connection with a bona fide offering of goods or services in accordance with paragraph 6(a) of the .IN Policy.
- That the Complainant has not authorised, licensed or otherwise allowed the Respondent to make any use of its WHATSAPP trade mark, in a domain name or otherwise.
- That the Respondent's Website purports to offer for download an unauthorized modified APK version of the WhatsApp application, which purports to provide WhatsApp users with 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.
- That the Respondent cannot be viewed as a bona fide service provider as it does not provide sales or repairs in relation to a product provided by the Complainant. Rather, the Respondent is making unauthorized use of the Complainant's trade mark to market its own ancillary services as detailed above. In this regard, Complainant has placed reliance on *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903 (<okidataparts.com>), to submit that the Respondent fails to qualify for the criteria laid down in the Oki Data case. In this regard, Complainant has also referred to the prior UDRP decisions in *WhatsApp LLC, Instagram, LLC v. Fahad Nawaz, ZeeTv, TV Channels Videos, TV Channels Videos, WIPO Case No. DCO2024-0025* (<gbwhatsapp.com.co> et al.).
- That 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. Reliance herein has been placed on *WhatsApp, Inc. v. Nasser Bahaj, WIPO Case No. D2016-0581* (<ogwhatsapp.org> et al.).



- That the Complainant's WhatsApp Brand Guidelines prohibit the registration of domain names that comprise any WhatsApp trade mark and could be confused with WhatsApp.
- That there is a risk of implied affiliation with the Complainant. Prior UDRP panels have found that the use of modified versions of the WhatsApp telephone logo contributes to a risk of confusion and implied affiliation with the Complainant and does not constitute *bona fide* use. Reliance has been placed on *Adobe Inc. v. Seeds Provider, INDRP/1255 (<adobeind.in>)* and *WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi, WIPO Case No. D2021-0032 (<cyberwhatsapp.com>)*.
- That the Respondent cannot legitimately claim that it is commonly known by the Domain Name in accordance with paragraph 6(b) of the .IN Policy.
- That neither the Respondent's name "GB Apps" nor the organization name "Apps.Pk" bears any resemblance to the Domain Name. To the best of the Complainant's knowledge, the Respondent has not secured or sought to secure any trade mark rights in the term "whatsapp" or "gbwhatsapp".
- That the Respondent's use of the Domain Name to promote an unauthorised WhatsApp APK that seeks to trade off the goodwill and reputation associated with the Complainant's WHATSAPP trade mark, and facilitates use of services in breach of the Complainant's Terms of Service, does not support any reasonable claim of being commonly known by the Domain Name, nor does it give rise to any reputation in the Domain Name itself, independent of the Complainant's trade mark rights. In this regard, Complainant has provided its terms of service, as Annex 13.
- That nor can the Respondent assert that it has made or is making any legitimate non-commercial or fair use of the Domain Name pursuant to paragraph 6(c) of the .IN Policy.
- That the Respondent's use of the Domain Name to resolve to a website implying affiliation with the Complainant and offering for download an unauthorized modified

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version of WhatsApp cannot amount to legitimate non-commercial or fair use. The provision of services that violate the Complainant's Terms of Services cannot give rise to any rights or legitimate interests in the Domain Name either. In this regard, Complainant has placed reliance on *WhatsApp LLC v. Furqan Taunsvi, Buch Executive Villas, WIPO Case No. DCC2024-0012* (<gbwhatsapps.cc> et al.) and *Lemon Inc. v. saleem abbas, WIPO Case No. D2023-4066* (<ressomodapk.com>).

- That in light of the nature of the Domain Name, comprising the Complainant's WHATSAPP trade mark, preceded by the letters "gb" as detailed above, the Complainant submits that the Domain Name carries with it an implied risk of affiliation with the Complainant, which cannot constitute fair use.
  
- That the above factors combined establish a prima facie case that the Respondent has no rights or legitimate interests in the Domain Name. Accordingly, the burden of production under this element shifts to the Respondent to come forward with evidence of its rights or legitimate interests in the Domain Name, in the absence of which the Complainant may be deemed to have satisfied the requirements of paragraph 4(b) of the .IN Policy.

**C. The Domain Name was registered or is being used in bad faith. (Paragraph 4(c) and Paragraph 7 of the .IN Policy)**

- That the Complainant asserts that the Domain Name was registered and is being used in bad faith although the .IN Policy only requires that a complainant demonstrate that the disputed domain name was registered or is being used in bad faith.
  
- That paragraph 7 of the .IN Policy lists three circumstances 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(c) of the .IN Policy.
  
- That paragraph 7(c) of the .IN Policy is of particular relevance in the present case, although there are other factors not listed in paragraph 7 that strongly indicate the Respondent's bad faith.

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- That 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 India and Pakistan.
- That all leading search results obtained by typing "WhatsApp" into the Google search engine at [www.google.com](http://www.google.com), [www.google.co.in](http://www.google.co.in) and [www.google.com.pk](http://www.google.com.pk) refer to the Complainant. In this regard, Complainant has provided a few screenshots of Google searches, as Annex 14.
- That given the Complainant's renown and goodwill worldwide (including in India and Pakistan) and its trade mark rights established long before 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. In this regard, Complainant has placed reliance on the prior INDRP decision in *WhatsApp Inc. v. Warrick Mulder, INDRP/1233* (<[whatsapp.in](http://whatsapp.in)>, registered in 2013).
- That in light of the nature of the Respondent's Website, which makes prominent reference to the Complainant and its WHATSAPP trade mark and features a modified version of the Complainant's WhatsApp logo and figurative trade mark, the Complainant infers that the Respondent had actual knowledge of the Complainant and its trade mark when it registered the Domain Name.
- That the Respondent registered the Domain Name with full knowledge of the Complainant's rights. Prior panels have held that actual knowledge of a well-known trade mark at the time of registration of a domain name constitutes strong evidence of bad faith. In this regard, Complainant has relied on the prior INDRP case of *QRG Enterprises Limited & Havells India Limited v. Zhang Mi, INDRP/852* (<[qrg.co.in](http://qrg.co.in)>).
- That the Respondent was named as the respondent in various domain name dispute resolution cases in relation to each of the domain names <[whatsappgb.pk](http://whatsappgb.pk)>, <[gbwhatsapppro.app](http://gbwhatsapppro.app)>, <[gbwhatsapp.net.co](http://gbwhatsapp.net.co)>, <[instapro.ind.in](http://instapro.ind.in)>, <[instapro.com.in](http://instapro.com.in)>

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and <gbwhatsappdownloads.pk>, in each of which the relevant Panel ordered transfer of the disputed domain name.

- That the Respondent has engaged in a pattern of trade mark abusive registration targeting the Complainant and its related company, Instagram LLC, which amounts to further evidence of the Respondent's bad faith.
- That the Respondent's disclosed postal address (i.e., District DG Khan Tehsil Taunsa sharif, Punjab) appears to be incomplete, and the same is indicative of bad faith. Reliance has been placed on *Miss Universe L.P., LLLP v. Domainsri, WIPO Case No. D2010-1643*.
- That the Respondent's Website contains repeated references to the Complainant and its official application, makes use of the same green-and-white colour scheme used by the Complainant, and features a modified version of the Complainant's figurative trade mark and telephone logo. Noting the unobtrusive disclaimer and the misleading statement prominently displayed on the Website, Internet users are likely to be misled into believing that the Respondent's website is somehow affiliated with or endorsed by the Complainant, which it is not. In this regard, Complainant has referred to the prior UDRP decision in *WhatsApp Inc. v. Edwin Lizcano, Inversiones Capira SAS, WIPO Case No. D2019-1700 (<maswhatsapp.com>)*.
- That the mere existence of a disclaimer displayed on the Website cannot cure the Respondent's illegitimate use of the Domain Name. Reliance has been placed on *Instagram, LLC v. Protection of Private Person / Yurii Shemetilo / Olha Shostak, WIPO Case No. D2022-2832 (<insta-stories.online> et al.)*.
- That the Respondent's Website offers for download an unauthorized modified version of the WhatsApp application, developed by a third party. Although commerciality is not expressly required under paragraph 7(c) of the .IN Policy, the Complainant infers that 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.



- That 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.
- That by using the Domain Name in this fashion the Respondent intentionally attempts to attract Internet users to its Website by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of its website and the goods and services offered therein, in accordance with paragraph 7(c) of the .IN Policy. In this regard, Complainant has referred to *Amazon Technologies Inc. v. Mr. Alex Parker, INDRP/1166* (<amazonemi.in>), *WhatsApp LLC v. Furqan Taunsvi, Buch Executive Villas*, and *WhatsApp LLC v. Apps.Pk*.
- That the Respondent's use of the Domain Name to offer an unauthorized modified APK version under the Complainant's trade mark disrupts the Complainant's business by driving WhatsApp users to third-party applications. In this regard, Complainant has relied on *WhatsApp LLC v. Du chengfu, WIPO Case No. DBZ2024-0001* (<gbwhatsapp.com.bz>) and *Lemon Inc. v. saleem abbas*.
- That the Respondent's failure to respond to the notice submitted by the Complainant's lawyers prior to the filing of the Complaint may be viewed as an additional indication of the Respondent's bad faith. In this regard, Complainant has referred to the prior INDRP decision in *WhatsApp Inc. v. Warrick Mulder, INDRP/1233* (<whatsap.in>).

**5. Reliefs claimed by the Complainant (Paragraphs 10 of the .IN Policy and 3(b)(vii) of the .IN Rules)**

The Complainant has requested that the domain name <GBWHATSAPP.IND.IN> be transferred to them.

**6. Respondent's Contentions**

As already mentioned in the Procedural History of the matter, despite having been duly served with a copy of the Domain Complaint as filed, and thereafter granted adequate time to respond

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to the same, the Respondent had not submitted any response thereto, or in fact any communication of any kind to the Arbitrator during pendency of arbitral proceedings in the matter.

## 7. Discussion and Findings

As mentioned in Paragraph 4 of the .IN Domain Name Dispute Resolution Policy, a Complainant is required to satisfy the below three conditions in a domain complaint:

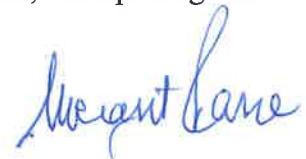
- i. The Registrant's domain name is identical and confusingly similar to a name, trade mark or service mark in which the Complainant has rights; and
- ii. The Registrant has no rights and legitimate interest in respect of the domain name; and
- iii. The Registrant's domain name has been registered or is being used either in bad faith or for illegal/ unlawful purpose.

- i. **The Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights.**  
(Paragraph 4(a) of the INDRP)

Complainant herein has furnished information about their trade mark rights over the mark **WHATSAPP**, including registrations over the said mark in Pakistan (i.e. the jurisdiction wherein the Respondent is located as per the WHOIS records) as well in India, namely:

- o Pakistani Trade Mark No. 302143, dated 27 May 2011; and
- o Indian Trade Mark No. 2344423, dated June 07, 2012

Complainant has also provided details of various domain names, comprising its **WHATSAPP** trade mark.



Complainant has also made submissions and provided evidence in respect of its prior adoption and use, as well as reputation in its **WHATSAPP** trade marks.

Complainant has further submitted that the mere addition of the letters "gb" does not prevent a finding of confusing similarity with the Complainant's **WHATSAPP** trade mark, and the Arbitrator accepts the submission.

Complainant has also established that the Respondent herein has been proceeded against by a DNDRC Panel (in Pakistan), wherein the Panel recognised the trade mark rights of the Complainant and ordered for transfer of the domain name (*WhatsApp LLC v GB Apps [Case Number 2024-0008], as Annex 12*).

Thus, in light of, inter alia, the trademark rights presented by the Complainant, the Arbitrator finds that Complainant has been successful in establishing their rights in the trademark **WHATSAPP**. The Complainant has placed copies of the registration certificates of trademark registrations obtained by it in Pakistan and India on record, all of which pre-date the registration of the disputed domain name. It is well established that trade mark registration is recognized as prima facie evidence of rights in a mark. The Complainant, by filing documents showing its ownership over registered trademarks over the mark **WHATSAPP**, has established that it has prior statutory rights in the mark 'WHATSAPP' in India (the jurisdiction where the disputed domain name is registered) as well as Pakistan (the jurisdiction where the Respondent resides, as per the WHOIS records).

Further, it has been held by prior panels deciding under the INDRP that there exists confusing similarity where the disputed name incorporates the Complainant's trade mark, such as *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*, *Indian Hotel Companies Limited v. Mr. Sanjay Jha, INDRP/148 <Gingerhotels.co.in>*, *Carrier Corporation, USA v. Prakash K.R. INDRP/238 <Carrier.net.in>*, *M/s Merck KGaA v. Zeng Wei INDRP/323 <Merckchemicals.in>*, *Colgate-Palmolive Company & Anr. v. Zhaxia INDRP/887 <Colgate.in>* and *The Singer Company Limited v. Novation In Limited INDRP/905 <singer.co.in>*. More recently, as held by the INDRP Panel in the matter of *Tata Communications Limited v. Chandan [INDRP/1880]* on August 29, 2024 – “It is well established that the full incorporation of a complainant's trademark in a disputed domain name is sufficient for a finding of identical or confusing similarity”.



Accordingly, it may be stated that the disputed domain name <GBWHATSAPP.IND.IN> is confusingly similar to the Complainant's WHATSAPP trade mark, and incorporates the same in entirety.

In view of the aforesaid, the Arbitrator accepts that the Complainant's rights in its trademarks, under Paragraph 4(a) of the INDRP has been established.

ii. **The Registrant has no rights and legitimate interest in respect of the domain name (Paragraph 4(b) and Paragraph 6 of the INDRP)**

As per paragraph 6 of the Policy, a Registrant may show legitimate rights and interests in a domain name, by demonstrating any of the following circumstances:

- (a) before any notice to the Registrant of the dispute, the Registrant's 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;*
- (b) the Registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if the Registrant has acquired no Trademark or Service Mark rights; or*
- (c) the Registrant is making a legitimate non-commercial or fair use of the domain name, without the intention of commercial gain by misleadingly or diverting consumers or to tarnish the Trademark or Service Mark at issue.*

In this regard, in the absence of any rebuttal from the Respondent, and in light of the below assertions of the Complainant, the Arbitrator accepts the Complainant's assertion, that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with Paragraph 4(b) of the INDRP.

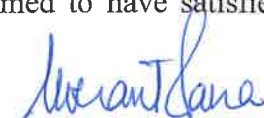
- That the Complainant has not authorized, licensed or otherwise allowed the Respondent to make any use of its WHATSAPP trade mark, in a domain name or otherwise.
- That the Respondent cannot be viewed as a bona fide service provider as it does not provide sales or repairs in relation to a product provided by the Complainant. Rather,

*M. Santano*

the Respondent is making unauthorized use of the Complainant's trade mark to market its own ancillary services.

- 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.
- That the Complainant's WhatsApp Brand Guidelines prohibit the registration of domain names that comprise any WhatsApp trade mark and could be confused with WhatsApp.
- That there is a risk of implied affiliation with the Complainant.
- That the Respondent cannot legitimately claim that it is commonly known by the Domain Name in accordance with paragraph 6(b) of the .IN Policy. That the Respondent cannot legitimately claim that it is commonly known by the Domain Name in accordance with paragraph 6(b) of the .IN Policy
- That the Respondent's use of the Domain Name to promote an unauthorised WhatsApp APK that seeks to trade off the goodwill and reputation associated with the Complainant's WHATSAPP trade mark, and facilitates use of services in breach of the Complainant's Terms of Service, does not support any reasonable claim of being commonly known by the Domain Name, nor does it give rise to any reputation in the Domain Name itself, independent of the Complainant's trade mark rights.
- That the Respondent's use of the Domain Name to resolve to a website implying affiliation with the Complainant and offering for download an unauthorized modified version of WhatsApp cannot amount to legitimate non-commercial or fair use.

As held in the prior panel in *Amundi v. GaoGou (INDRP/776)*, the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests, and once such case is established, then it is the Respondent upon whom there is the burden of proof, to demonstrate rights or legitimate interests in the disputed domain name. In this regard, if the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(b) of the Policy.



In the present domain dispute, the Respondent has not joined the arbitral proceedings, despite being duly served with the domain complaint, and consequently, not come forward with any assertion or evidence to show any bonafides. Thus, as mentioned above, in view of the lack of assertions on part of the Respondent, coupled with the other contentions put forth by the Complainant, the Arbitrator accepts the Complainant's assertion, that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with Paragraph 4(b) of the INDRP.

**iii. The Registrant's domain name has been registered or is being used in bad faith (Paragraph 4(c) and Paragraph 7 of the INDRP)**

In this regard, Complainant has *inter alia* contended the below points regarding Respondent's bad faith:

- That the Respondent had actual knowledge of the Complainant and its trade mark when it registered the Domain Name, which constitutes strong evidence of bad faith.
- That the Respondent was named as the respondent in various domain name dispute resolution cases in relation to each of the domain names <whatsappgb.pk>, <gbwhatsapppro.app>, <gbwhatsapp.net.co>, <instapro.ind.in>, <instapro.com.in> and <gbwhatsappdownloads.pk>, in each of which the relevant Panel ordered transfer of the disputed domain name.
- That the Respondent has engaged in a pattern of trade mark abusive registration targeting the Complainant and its related company, Instagram LLC, which amounts to further evidence of the Respondent's bad faith.

In view of the consolidated submissions of the Complainant, including the above, specifically regarding the relevance of paragraph 7(c) of the .IN Policy in the present domain dispute, the Arbitrator finds that the Respondent's registration and use of the disputed domain name *prima facie* appears to constitute conduct as mentioned in paragraph 7(c) of the Policy, namely "(c) by using the domain name, the Registrant has intentionally

*Merian Kene*

*attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location”.*

In view of the aforesaid, the Arbitrator concludes that the Complainant has satisfactorily proved the requirements of Paragraph 4(c) and Paragraph 7 of the INDRP.

## **8. Decision**

Based upon the facts and circumstances, the Arbitrator allows the prayer of the Complainant and directs the .IN Registry to transfer the domain <GBWHATSAPP.IND.IN> to the Complainant.

The Award is accordingly passed and the parties are directed to bear their own costs.



**Vikrant Rana, Sole Arbitrator**

**Date: February 14, 2025.**

**Place: New Delhi, India.**