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Purchased by : SAISUNDER N V
Description of Document : Article 12 Award
Property Description : NA
Consideration Price (Rs.) : 0
(Zero)
First Party : SAISUNDER N V
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Stamp Duty Paid By : SAISUNDER N V
Stamp Duty Amount(Rs.) : 200
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NV SAISUNDER

NV SAISUNDER
SOLE ARBITRATOR
.IN REGISTRY- INTERNET EXCHANGE OF INDIA
INDRP CASE NUMBER: 1927
DISPUTED DOMAIN NAME: <gbwhatsapp.com.in>

HIF 0032471796

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IN THE MATTER OF ARBITRATION BETWEEN:

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**

ARBITRATION AWARD

DATED: 20/02/2025

1. PARTIES:

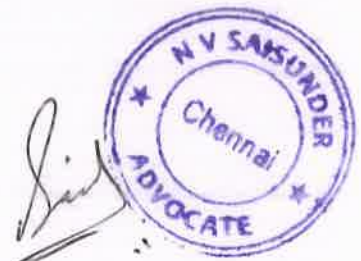
The Complainant in this proceeding WhatsApp LLC, is an American company with its principal place of business at 1601 Willow Road, Menlo Park, California, 94025, United States of America (United States). The Complainant is represented by David Taylor / Jane Seager, Hogan Lovells (Paris) LLP 17 avenue Matignon 75008 Paris France.

The Respondent in this proceeding is GB Apps, Apps.Pk, District DG Khan Tehsil Taunsa Sharif, Punjab 32100 Pakistan, as per the WHOIS details disclosed by NIXI.

2. DOMAIN NAME AND REGISTRAR:

The disputed domain name < gbwhatsapp.com.in> is registered with Dynadot LLC.

3. PROCEDURAL HISTORY:



The Statement of Acceptance and Declaration of Impartiality was submitted by me on 17th January 2025, as required by NIXI and the copy of amended complaint along with Annexures were served to Arbitrator on the 22nd January 2025. In accordance with Rules 3 and 5(b), NIXI appointed me as the sole arbitrator for deciding on the complaint filed in respect of the disputed domain name on 22nd January 2025 to arbitrate the dispute between the Parties in accordance with the Arbitration and Conciliation Act 1996 and accordingly notified the Parties of the appointment of the Arbitrator on 22nd January 2025. In accordance with Rule 5(c), the notice to the Respondent was issued on 23rd January 2025 by the Arbitrator and the Respondent was called upon to submit their response, if any within 10 (ten) days from the date of issue of the notice, which ended on 1st February 2025. The Respondent did not file any response within the said date and nor has this panel received any response even as on the date of this award viz., 20th February 2025. Further, the Arbitrator did not receive any delivery failure notification from the Respondent's email id and hence the complaint is deemed to be served. Therefore the complaint is decided *ex-parte* solely based on the materials and evidence placed before the Arbitrator.

4. FACTUAL BACKGROUND:

The Complainant is a provider of one of the world's most popular mobile messaging applications which was founded in 2009 and acquired by Meta Platforms, Inc. (formerly known as Facebook, Inc.) (Meta) in 2014. Complainant allows users across the globe to exchange messages for free via smartphones, including iPhone and Android. The Complainant's main website available at www.whatsapp.com also allows Internet users to access its messaging platform. Complainant asserts that it has over 2 billion monthly active users worldwide as of 2023. Complainant claims to have acquired considerable goodwill and reputation including in Pakistan.

The Complainant has proven to be the owner of the renowned WHATSAPP mark which enjoys protection through many registrations worldwide.

The Complainant is inter alia the owner of:

- United States Trademark No. 3939463, WHATSAPP, registered on April 5, 2011 (first use in commerce February 24, 2009) (class 42)
- Indian Trademark Registration No. 2149059, WHATSAPP, registered on 24 May 2011;



- Pakistan Trademark Registration No. 302143, WHATSAPP, registered on 27 May 2011

- Indian Trademark Registration No. 2344423,  , registered on 7 June 2012

The aforementioned rights have been supported through evidences submitted by the Complainant.

The Complainant is also the owner of numerous domain names consisting of the WHATSAPP trademark, including <whatsapp.com>, <whatsapp.net>, <whatsapp.org>, <whatsapp.biz> and <whatsapp.info> as well as many others under country code extensions including <whatsapp.co.in>, <whatsapp.pk>, <whatsapp.com.pk>.

The disputed domain name was registered on 20th March 2023. The Complainant's trademark registrations predate the registration of the disputed domain name.

The disputed domain redirects to <https://gbwhatsapp.pk> and a website titled "GBWhatsApp APK Download (Anti-Ban) Updated Version February 2025" purporting to offer for download an APK version of the Complainant's WhatsApp apps. The Respondent's website features a green and white colour scheme with a telephone figurative mark along with the letters "GB".

From the whois details disclosed, the Respondent appears to be GB Apps, having organisation name as "Apps.pk".

The Complainant claims that in an attempt to resolve the matter amicably, On 28th June 2024, the Complainant's lawyers submitted a notice via the Registrar's registrant contact form, but did not receive a response.

5. PARTIES CONTENTIONS:

A. Complainant:

The Complainant has contended that all three elements of the INDRP are applicable to the present case.



The Complainant submits that it has established rights in the trade mark WHATSAPP for purposes of paragraph 4(a) of the .IN Policy. The Complainant submits that the addition of the letters "gb" does not prevent a finding of confusing similarity with the Complainant's WHATSAPP trade mark, which remains clearly recognizable in the disputed domain name and in this regard relies on WIPO Overview 3.0, section 1.8 and *WhatsApp LLC v. Amir Farid*, WIPO Case No. D2024-2272 (<gbwhatsapp.work>) where it was held that:

"While the addition of other terms, here 'gb', may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the Domain Name and the mark for the purposes of the Policy."

With regard to the ".com.in" domain extension, the Complainant submits that it is well established under the .IN Policy that such domain extension may be disregarded when assessing whether a domain name is identical or confusingly similar to a complainant's trade mark and relies on *Canva Pty Ltd. V Jun Yin*, INDRP/1831 (<canva.com.in>):

"It is further observed by this panel that suffix '.com.in' is not sufficient to escape the finding that the domain is confusingly similar to Complainant's trademark."

The Complainant therefore submits that the Domain Name is confusingly similar to the Complainant's trade mark in accordance with paragraph 4(a) of the .IN Policy

The Complainant claims that the Respondent cannot assert that it was using, or had made demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services in accordance with paragraph 6(a) of the .IN Policy, but rather, the Respondent is making unauthorized use of the Complainant's trade mark to market its own ancillary services. Further, 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. With regard to the usage of the same colour scheme and modified version of the Complainant's registered figurative mark, the Complainant submits that the disputed domain is therefore likely to mislead Internet users into believing that it is operated or authorized by the Complainant, which it is not. Also, the Respondent is not commonly known by the disputed domain name or the term "Whatsapp".



That the Complainant's renown and goodwill worldwide and its trade mark rights established long before 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 March 2023. The Complainant submits that the Respondent's registration of several domain names comprising the Complainant's WHATSAPP trade mark alongside various descriptive terms establishes a pattern of registration of domain names comprising the registered trademarks and indicates bad faith. The Complainant submits that through the Respondent's use of the disputed domain name, it has intentionally attempted to attract Internet users to online locations by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of the website, in accordance with paragraph 7(c) of the .IN Policy and relies on *Amazon Technologies Inc. v Mr. Alex Parker*, INDRP/1166 (<amazonemi.in>). In view of the above, the Complainant asserts that the Domain Name was registered and is being used in bad faith in accordance with Paragraph 4(c) of the .IN Policy.

B. Respondent:

The Respondent did not file any response to the submissions of the Complainant.

6. DISCUSSION AND FINDINGS:

Under the INDRP, the following three elements are required to be established by the complainant in order to obtain the remedy of transfer of the disputed domain name to the complainant:

- (i) The disputed domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; and,
- (ii) The Respondent lacks rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered or is being used in bad faith.

A. Identical or confusingly similar:

It is well accepted principle that the first element functions primarily as a standing requirement. The threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. The Complainant has submitted evidence of its trademark



registrations that establish that the Complainant has statutory rights in the mark for the purpose of policy and specifically also holds registration in Pakistan, the country where the Respondent is operating out of. The well-known trade mark of the Complainant has been reproduced within the disputed domain name along with the letters "gb". This addition and the ccTLD extension ".com.in" do not diminish the confusing similarity with the Complainant's trademark.

The Complainant's WHATSAPP trade mark is very well known internationally and is also clear from the evidence before the Panel and as repeatedly recognised in previous decisions under the Policy. In WhatsApp Inc. v. Donald Huen, WIPO Case No. D2020-2331 the panel stated: "The global recognition of the Complainant's trademark is well evidenced in prior UDRP decisions, repeatedly maintaining that "Complainant's trademark WHATSAPP has become well known around the world"; that it is "composed of a coined term that confers to it certain distinctiveness" and that "Respondents must have been aware of the existence of Complainant's trademark WHATSAPP at the time of registration of each disputed domain name.

The Disputed Domain Name is accordingly found to be identical or confusingly similar to the Complainant's mark. The Complainant has successfully fulfilled the first element under paragraph 4(a) of the Policy, that the Disputed Domain Name is identical or confusingly similar to a mark in which the Complainant has rights.

B. Rights or Legitimate interest

Paragraph 6 of the Policy provides a list of circumstances in which the registrant of a domain name may demonstrate rights or legitimate interests in a disputed domain name. While the overall burden of proof in the proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on 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.



The Panel finds the following from the records before it:

- a. The Respondent does not appear to engage in any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services. In fact the Panel has reasonable grounds to believe that the Respondent has made a commercial use of the disputed domain name, with the intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.
- b. the Respondent has not been commonly known by the disputed domain name.
- c. the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Having reviewed the record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name.

Finally, this Panel agrees with the previous panel's finding in *Calvin Klein Trademark Trust and Calvin Klein Inc. v. Wang Yanchao*, [WIPO Case No. D2014-1413](#), that "the Complainant and its CALVIN KLEIN marks enjoy a widespread reputation and high degree of recognition as a result of its fame and notoriety in connection with men's and women's apparel, fragrances, accessories, and footwear products and is a registered trademark in many countries all over the world. Consequently, in the absence of contrary evidence from the Respondent, the CALVIN KLEIN marks [are] not one[s] that traders could legitimately adopt other than for the purpose of creating an impression of an association with the Complainant". The same concept applies to the present case: the WHATSAPP mark is not one that traders could legitimately adopt for commercial use other than for the purpose of creating an impression of an association with the Complainant or diverting the customers to its domain to unlawfully enrich itself.

In the light of the facts and circumstances discussed, it is accordingly found that the Complainant has made out a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. The second element under paragraph 4(b) of the Policy has been met by the Complainant.



C. Registered and/or used in bad faith:

The Panel notes that, for the purposes of paragraph 4(c) of the Policy, paragraph 7 of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Based on the evidence put forward by the Complainant, the Panel is of the opinion that the Respondent ought to have been aware of the Complainant's trademark registrations and rights to the WHATSAPP mark when it registered the disputed domain name. Accordingly, in Panel's view the bad faith is evidently established and hence its very use by the Respondent with no connection to the trademarks suggests opportunistic bad faith.

The Respondent's knowledge of the WHATSAPP mark is particularly obvious, given the worldwide renown it has acquired amongst mobile applications, the impressive number of users it has gathered since the launch of the WhatsApp services in 2009 and the Respondent's use of most of the disputed domain names to offer unauthorized versions of the Complainant's instant messaging "app" giving the false impression that the Respondent is affiliated with the Complainant. It is accepted by the Panel that the APK version of the WhatsApp application may disrupt the Complainant's business by driving users to third-party applications and such activities amount to use of a domain name in bad faith.

Finally, the fact that the Respondent has been engaged in a pattern of trade-mark abusive registration targeting the Complainant and its related company, Instagram LLC, concludes the Respondent's bad faith in the matter.

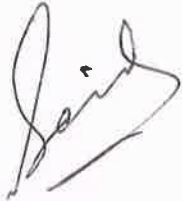
For reasons stated above, it is established that the disputed domain name was registered and used in bad faith and the second element under paragraph 4(c) of the Policy has been met by the Complainant.



7. DECISION:

In view of the above findings it is ordered that:

- a. The Disputed Domain Name <gbwhatsapp.com.in> be transferred to the Complainant.
- b. The Respondent pay the Complainant a sum of INR 1,50,000/- (Indian Rupees One Lakh and Fifty Thousand only) towards costs of these proceedings.



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(SAISUNDER NV)

Arbitrator

Date: 20th February 2025