

## **ADMINISTRATIVE PANEL DECISION**

WhatsApp LLC. v. Love Status

Case No. D2022-0179

### **1. The Parties**

The Complainant is WhatsApp LLC., United States of America (“United States”), represented by Tucker Ellis, LLP, United States.

The Respondent is Love Status, India.

### **2. The Domain Name and Registrar**

The disputed domain name <status-for-whatsapp.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 20, 2022. On January 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 21, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 24, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 25, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 15, 2022. The Center received two email communications from the Respondent on February 14 and February 15, 2022. The Center notified the commencement of Panel appointment process on February 16, 2022.

The Center appointed Alistair Payne as the sole panelist in this matter on February 18, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is the provider of one of the world's most popular mobile messaging applications with users in more than 180 countries and is rated among the top mobile applications in the market. The "WhatsApp" mobile messaging application has a "status" feature, where users share text, photo, video, and GIF updates that other users may view or with which they may interact.

The Complainant own numerous trade mark registrations worldwide for its WHATSAPP mark including Indian trade mark registration number 2149059 registered on May 24, 2011. The Complainant owns the domain name <whatsapp.com> from which it hosts its main website and also owns a number of other domain names that incorporate its WHATSAPP mark in combination with various generic and country code Top-Level Domain extensions, including: <whatsapp.net>, <whatsapp.org>, and <whatsapp.us>.

The Respondent appears to be based in India and the disputed domain name was registered on December 28, 2019. It resolves to a website at which various statuses for use with the Complainant's application are suggested, while directing users to webpages featuring numerous advertisements and displaying links that appear to download files directly to a user's computer.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant submits that the disputed domain name wholly incorporates its WHATSAPP trade mark and adds the phrase "status for". It says that the addition of a descriptive term to a complainant's mark in a domain name fails to distinguish the domain name from the mark and that in this case the addition of the descriptive phrase "status for" does not prevent a finding of confusing similarity.

The Complainant submits that it has not licensed or authorised the Respondent to use its WHATSAPP mark and it says that the Respondent does not have any legal relationship with the Complainant that entitles the Respondent to use its trade mark. It says that neither the Whois data for the disputed domain name nor the corresponding website to which it resolves, suggests that the Respondent is known by the disputed domain name. Further, the Complainant says that it monitors the use of its WHATSAPP mark and is not aware of the Respondent being known by the disputed domain name in any other way.

It says that the Respondent has no legitimate reason for using the WHATSAPP mark within the disputed domain name and that the Respondent is using the disputed domain name to impersonate the Complainant and to direct users to a commercial website featuring numerous advertisements and displaying links that download files directly to a user's computer which it says is not a use in connection with a *bona fide* offering of goods or services. The Complainant notes that the Respondent prominently uses the WHATSAPP mark repeatedly throughout its website, uses the Complainant's registered telephone logo design and claims to provide status suggestions for use with the Complainant's WhatsApp application. Moreover, says the Complainant, the Respondent uses the FACEBOOK and FB marks, which are owned by Meta Platforms, Inc., the parent organization of the Complainant and that such use is likely to confuse or deceive consumers and make them think that there is an affiliation where in fact there is not one and is not consistent with *bona fide* use of the disputed domain name under the Policy. The Complainant notes that under its online brand guidelines it expressly prohibits the use of the WHATSAPP Mark in this manner and that the Respondent's use of the WHATSAPP Mark within the disputed domain name and in connection with its application is unauthorised and clearly a violation of these terms.

The Complainant submits that the Respondent does not appear to be commonly known by the disputed domain name. The Whois data for the disputed domain name does not identify a person or company commonly known by the disputed domain name and the Respondent was identified by the registrar in its verification process as being called "Love Status" which, says the Complainant, does not resemble the disputed domain name in any way. It also contends that the disputed domain name is clearly used to misdirect users into navigating to Respondent's website, presumably to generate advertising revenue for Respondent, and to download files onto users' devices. According to the Complainant, such use is not a legitimate, noncommercial, or fair use as the disputed domain name is being used to misdirect users to the Respondent's website, presumably to generate advertising revenue for Respondent, and to download files onto users' devices.

As far as bad faith is concerned, the Complainant submits that that the registration of a confusingly similar domain name that is obviously connected with a particular trade mark owner by someone with no connection with the trade mark owner, suggests bad faith. *WhatsApp Inc. v. Alan Frei*, WIPO Case No. [D2020-1488](#) ("the Panel is of the opinion that the Complainant's WHATSAPP trademark is distinctive and widely used, which makes it difficult to conceive any plausible legitimate future use of the Disputed Domain Name by the Respondent"); *WhatsApp Inc. v. Michael Nelson, Grey Matter Strategies*, WIPO Case No. [D2020-1242](#) ("It is not obvious what other use could be intended by the disputed domain name, as WHATSAPP does not appear to have any meaning independent of Complainant's mobile application").

The Complainant says that the circumstances here support a finding of bad faith under paragraph 4(b)(iv) of the Policy. It says that the Respondent has registered the confusingly similar disputed domain name and uses it to direct users to a website with various status suggestions for use with the Complainant's WhatsApp application. It notes that this website displays advertisements which it presumes generate click-through revenue for the Respondent. It says also that some of the links download files directly onto consumers' computers which consumers will be likely to believe are affiliated with the Complainant. The Complainant notes that in order to further create a likelihood of confusion, the Respondent repeatedly uses the WhatsApp mark throughout its website and also uses the Complainant's registered telephone logo mark. It says that the only reason for the Respondent's registration of the disputed domain name, which includes the exact WHATSAPP Mark, is to create a likelihood of confusion with the Complainant and its mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website with the Complainant.

## **B. Respondent**

The Respondent did not formally reply to the Complainant's contentions other than to send an email to the Center together with several attachments showing the disputed domain name appearing in Google searches. In his emails, the Respondent said that his website had been present on the Internet for many years and that his website and the "WhatsApp" website "are far and wide mismatched". The Respondent notes that he was never told by the domain name registrar that it contains the Complainant's trade mark and cannot be used by the Respondent and that in circumstances that he was not told then "any person can use it". He alleges that he only has this website and that it is being used for educational purposes and that he never intended to "mistreat any website or its trademarks".

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Complainant has demonstrated that it owns various registered trade mark rights internationally for its WHATSAPP mark, including Indian trade mark registration number 2149059 registered on May 24, 2011. The disputed domain name wholly incorporates this mark and therefore is confusingly similar to it. The addition in the disputed domain name of the English expression including hyphens of "status-for-" before the inclusion of the Complainant's WHATSAPP mark does not prevent a finding of confusing similarity.

As a result, the Complaint succeeds under this element of the Policy.

## **B. Rights or Legitimate Interests**

The Complainant has submitted that the Respondent has no legitimate reason for using the WHATSAPP mark within the disputed domain name and instead that the Respondent is using the disputed domain name to impersonate the Complainant and to direct users to a commercial website featuring numerous advertisements and displaying links that download files directly to a user's computer. It is apparent based on the evidence submitted that the Respondent uses the WHATSAPP mark on its website. The Complainant submits that the Respondent also uses the Complainant's registered telephone logo design on its website. Moreover, says the Complainant, the Respondent uses on its website the FACEBOOK and FB marks, which are owned by Meta Platforms, Inc., the parent organization of the Complainant and that such use is likely to confuse or deceive consumers and make them think that there is an affiliation where in fact there is not one. The Complainant has noted that its brand guidelines expressly prohibit the use of the WHATS APP mark in this manner and has alleged that the Respondent's use of the WHATS APP mark within the disputed domain name and in connection with its application is unauthorised and a violation of these terms.

The Complainant has also submitted that the Respondent does not appear to be commonly known by the disputed domain name. It has noted that the Whois data for the disputed domain name does not identify a person or company commonly known by the disputed domain name and that the Respondent was identified by the registrar in its verification process as being called "Love Status" which does not resemble the disputed domain name in any way. The Complainant has also contended that the disputed domain name is being used to misdirect users towards the Respondent's website in order to generate advertising revenue for the Respondent and to download files onto users' devices which is not a legitimate, noncommercial, or fair use of the disputed domain name.

It is apparent from the Respondent's email that it considers that it entitled to use and register the disputed domain name containing the Complainant's registered WHATSAPP mark even though its use has never been so authorised by the Complainant. Unless such use is purely descriptive use and for noncommercial purposes this assertion cannot be correct. The Respondent however asserts that it is using the website for "educational purposes", although it has failed to explain or provide any evidence as to what those purposes might be and the Panel cannot see from the screen shots submitted in evidence what educational purpose the website could possibly serve. In fact, the website at the disputed domain name appears to suggest various statuses for use with the Complainant's application but also features a range of advertising for products as diverse as skincare, subscriptions to a well-known entertainment website, and also for products featured on a major shopping platform. As a result, it appears to the Panel that it is most likely ultimately being used for commercial purposes and that the Respondent earns click-through revenue from it.

In all these circumstances, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. As the Respondent has failed to rebut this case, the Panel finds that the Complainant has successfully made out its case and that the Complaint also succeeds under this element of the Policy

## **C. Registered and Used in Bad Faith**

The disputed domain name was registered by the Indian based Respondent in 2019, some eight years after the registration of the Complainant's Indian mark for WHATSAPP. The Panel accepts that WHATSAPP is an extremely well reputed mark as previously noted by other panels in cases such as *WhatsApp Inc. v. Alan Frei*, WIPO Case No. [D2020-1488](#). In circumstances that the point of the website at the disputed domain to be directly concerned with "statuses" on the Complainant's "WhatsApp" service, it is apparent that the Respondent must have been aware of the Complainant's use of the WHATSAPP mark and of its associated service when it registered the disputed domain name.

Under paragraph 4(b)(iv) of the Policy, there is evidence of registration and use of the disputed domain name in bad faith where a respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

The Respondent uses the disputed domain name to direct users to a website with various status suggestions for use with the Complainant's "WhatsApp" application. The website displays advertisements which most likely generate click-through revenue for the Respondent. It also features links to facilitate the downloading of files directly onto consumers' computers which consumers are likely to be confused into thinking are associated or affiliated with the Complainant. It is notable that the WHATSAPP mark is used obviously on the website.

In these circumstances, the Panel finds that the Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website and that as the Respondent most likely earns click-through revenue from the numerous advertisements on the website, that it is using the disputed domain name for commercial purposes as described under Part B above.

Accordingly, the Panel finds that the disputed domain name has both been registered and used in bad faith and that the Complaint also succeeds under this element of the Policy.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <status-for-whatsapp.com> be transferred to the Complainant.

*/Alistair Payne/*

**Alistair Payne**

Sole Panelist

Date: March 3, 2022