

## **ADMINISTRATIVE PANEL DECISION**

Meta Platforms, Inc., and WhatsApp, LLC v. Witsanu Sunthonchot  
Case No. D2023-0410

### **1. The Parties**

The Complainants are Meta Platforms, Inc., and WhatsApp, LLC, United States of America (“United States”), represented by Hogan Lovells (Paris) LLP, France.

The Respondent is Witsanu Sunthonchot, Thailand.

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

The disputed domain names <descargarwhatsappplusgratis.net> and <unblockfacebookknow.com> are 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 28, 2023. On January 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 31, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 February 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 21, 2023.

The Center appointed Tuukka Airaksinen as the sole panelist in this matter on March 29, 2023. 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 Meta is a social technology company and operates, *inter alia*, Facebook, Instagram, WhatsApp and Meta Quest. The Complainant WhatsApp is a provider of a mobile messaging application founded in 2009 and acquired by Meta in 2014. WhatsApp has some 2 billion monthly users worldwide as of 2023. The Complainants are the owners of trademarks FACEBOOK and WHATSAPP, which have been registered in many countries all over the world, for example as follows:

- United States Trademark No. 3041791, FACEBOOK, registered on January 10, 2006; and
- United States Trademark No. 3939463, WHATSAPP, registered on April 5, 2011.

The disputed domain name <descargarwhatsappplusgratis.net> was registered on June 12, 2022, and resolves to a website in Thai language displaying the Complainant's trademark WHATSAPP and containing links offering online gambling and betting services.

The disputed domain name <unblockfacebookknow.com> was registered on February 24, 2022, and also resolves to a website in Thai language displaying the Complainant's trademark FACEBOOK and containing links offering online gambling and betting services.

#### 5. Parties' Contentions

##### A. Complainants

The Complainants' trademarks are immediately recognizable in the disputed domain names as the leading elements and the addition of other elements does not prevent a finding of confusing similarity.

The Respondent has no rights or legitimate interests in the disputed domain names, is not using them in connection with any *bona fide* offering of goods or services and is not commonly known by the disputed domain names.

The Complainants' trademarks are highly distinctive and famous throughout the world and have been continuously and extensively used since 2004 and 2009, respectively. It is inconceivable that the Respondent would not have been aware of the Complainants' trademarks when registering the disputed domain names in 2022.

The Complainants use the disputed domain names to intentionally attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainants' trademarks. The Respondent's websites contain links to online gambling and betting sites.

##### B. Respondent

The Respondent did not reply to the Complainants' contentions.

#### 6. Discussion and Findings

##### 6.1. Procedural issue: Multiple Complainants

The Complaint was filed by two separate Complainants. While the Policy and Rules do not directly contemplate the consolidation of multiple complainants in a single administrative complaint, numerous panels have found that in certain circumstances such a consolidation may be permitted.

In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or

the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation (see section 4.11.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

In the case at hand, it is clear from the evidence provided by the Complainants that the Complainant WhatsApp is a wholly owned subsidiary of the Complainant Meta and that the Complainants therefore belong to the same corporate group with some sort of common control and management.

The Panel therefore finds that it is sufficiently established that the Complainants have a specific common grievance against the Respondent and that it would be equitable and procedurally efficient to consolidate the Complainants. The Panel will refer to the Complainants as "the Complainant".

## **6.2. Substantive Elements of the Policy**

In order to obtain the transfer of a domain name, a complainant must prove the three elements of paragraph 4(a) of the Policy, regardless of whether the respondent files a response to the complaint or not. The first element is that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The second element a complainant must prove is that the respondent has no rights or legitimate interests in respect of the domain name. The third element a complainant must establish is that the domain name has been registered and is being used in bad faith.

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

Paragraph 4(a)(i) of the Policy requires that the Complainant establish that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Consequently, the Complainant must prove that it has rights to a trademark, and that the disputed domain names are identical or confusingly similar to this trademark.

According to section 1.11 of the [WIPO Overview 3.0](#), "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test".

Furthermore, "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". See section 1.8 of the [WIPO Overview 3.0](#).

The disputed domain names are confusingly similar to the Complainant's trademark as they include the Complainant's trademark in its entirety combined with words "descargar" (download), "plus" and "gratis" (free) in the disputed domain name <descargarwhatsappplusgratis.net>; and "unblock" and "now" in the disputed domain name <unblockfacebooknow.com>. These additions do not prevent confusing similarity between the Complainant's trademark and the disputed domain names.

This means that the disputed domain names are confusingly similar to the Complainant's trademark and hence the first element of the Policy has been fulfilled.

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

Paragraph 4(a)(ii) of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests to the disputed domain names.

It is widely accepted among UDRP panels that once a complainant has made a *prima facie* showing indicating the absence of the respondent's rights or legitimate interests in a disputed domain name the burden of production shifts to the respondent to come forward with evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of

the Policy. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#), and section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain names, that the Respondent has no rights or legitimate interests in the disputed domain names, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain names and is not commonly known by the disputed domain names in accordance with paragraph 4(c)(ii) of the Policy.

Moreover, the Panel finds that the nature of the disputed domain names carries a risk of implied affiliation with the Complainant's trademark. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that has not been rebutted by the Respondent. Considering the Panel's findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain names. Therefore, the Panel finds that the second element of the Policy is fulfilled.

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

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain names have been registered and are being used in bad faith. Paragraph 4(b) of the Policy provides that the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that [the respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business or competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location.”

Considering that the Complainant's trademarks are clearly well-known, the Respondent knew of the Complainants and its trademark when registering the disputed domain names. See section 3.1.4 of the [WIPO Overview 3.0](#).

The disputed domain names resolve to websites containing links to other websites offering online gambling and betting services. Therefore, the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark as to the source of the products on the Respondent's website.

Therefore, the Panel finds that the third element of the Policy is fulfilled.

## **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 names, <descargarwhatsappplusgratis.net> and <unblockfacebooknow.com> be transferred to the Complainant.

*/Tuukka Airaksinen/*

**Tuukka Airaksinen**

Sole Panelist

Date: April 13, 2023