

ADMINISTRATIVE PANEL DECISION

WhatsApp, LLC. v. ERSIN HACIOGLU, vatansoft.net
Case No. D2023-4176

1. The Parties

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

The Respondent is ERSIN HACIOGLU, vatansoft.net, Türkiye.

2. The Domain Names and Registrars

The disputed domain name <whatsappbulk.app> is registered with GoDaddy.com, LLC.

The disputed domain name <whasapptoplumesaj.com> is registered with Isimtescil Bilisim A.S. (the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 6, 2023. On October 9, 2023, the Center transmitted by email to the Registrars requests for registrar verification in connection with the disputed domain names. On October 9 and 10, 2023, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (REGISTRATION PRIVATE, Domains By Proxy, LLC and Domain Admin Isimtescil.net / Whoisprotection.biz) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 10, 2023, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on the same day.

On October 10, 2023, the Center informed the parties in Turkish and English, that the language of the registration agreement for the disputed domain name <whasapptoplumesaj.com> is Turkish. On October 10, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondent sent an email to the Center in English on October 11, 2023.

The Center verified that the Complaint together with the amendment to 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 both in Turkish and in English, and the proceedings commenced on October 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 8, 2023. The Respondent sent another email communication to the Center on October 20, 2023. Accordingly, the Center notified the Parties of the Commencement of panel appointment process on November 9, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on November 13, 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 is a United States-based company, which provides a service to exchange messages via smartphones. Based on uncontested information provided in the case record, the Complainant has over 2 billion users worldwide.

The Complainant is the owner of the word and figurative mark WHATSAPP, which is registered in a large number of jurisdictions, including in Türkiye, where the Respondent is reportedly located. For instance, and among many others, the Complainant is the owner of the United States Trademark Registration No. 3939463 for WHATSAPP, registered on April 5, 2011, and the Turkish Trademark Registration No. 2015 103320 for WHATSAPP on April 24, 2017, both covering protection particularly for services as protected in class 42 (Annex 11 to the Complaint).

The Complainant further holds and operates various domain names consisting of or including the WHATSAPP trademark, such as “whatsapp.com” (Annex 5 to the Complaint).

The disputed domain name <whatsappbulk.app> was registered on April 14, 2023.
The disputed domain name <whatsapptoplumesaj.com> was registered on January 19, 2023.

According to the documents provided by the Complainant, the disputed domain name <whatsappbulk.app> resolved to a website in English language that prominently used the WHATSAPP trademark to offer bulk messaging software and services, without any visible disclaimer describing the (lack of) relationship between the Parties (Annex 14 to the Complaint).

At the time of the decision, the disputed domain name <whatsappbulk.app> no longer resolves to an active website.

The disputed domain name <whatsapptoplumesaj.com> has so far not been linked to an active website.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

B. Respondent

The Respondent did not formally reply to the Complainant’s contentions. The Center only received two informal email communications from the Respondent on October 11 and 20, 2023. In these short email

communications to the Center, the Respondent asserted that he bought both disputed domain names by mistake and already tried to delete them.

6. Discussion and Findings

6.1. Language of the Proceeding

Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement. The language of the Registration Agreement for the disputed domain name <whatsappbulk.app> is English, while the language of the Registration Agreement for the disputed domain name <whatsappplumesaj.com> is Turkish.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, including the fact that the Respondent appears to be capable of reading, writing and understanding the English language. The Complainant further argues that allowing the Respondent to dictate the language of a proceeding covering more than one disputed domain name by selecting a single Turkish language registrar would contravene the spirit of the UDRP to the disadvantage of the Complainant, which is not familiar with the Turkish language.

The Respondent did not make any specific submissions with respect to the language of the proceeding. However, the Panel notes that the Respondent sent his informal email communications to the Center in English, which demonstrates that the Respondent is capable to read, write and understand English.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel is convinced that the Respondent will not be prejudiced by a decision being rendered in English and, hence, determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2. Substantive Issues

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel might, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the [WIPO Overview 3.0](#).

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the WHATSAPP mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the WHATSAPP mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here respectively "bulk" and "toplu mesaj" (which is Turkish and means "bulk message" in English) 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 disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP 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. [WIPO Overview 3.0](#), section 2.1.

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 names. The Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise. Quite the opposite, the Respondent expressly indicated in its informal email communications to the Center that he registered the disputed domain name "by mistake" and that he is willing to delete them.

Accordingly, and based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent must have had the Complainant and its widely-known WHATSAPP trademark in mind when registering the disputed domain names. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain names with the purpose of targeting the Complainant and generating traffic to its own website. Consequently, the Panel is convinced that the Respondent has registered the disputed domain names in bad faith.

With respect to the use of the disputed domain name <whatsappbulk.app> in bad faith, the Panel notes that the associated website was featuring the Complainant's WHATSAPP trademark and offering bulk messaging services which directly compete with the Complainant's business service offerings, without explaining that there is no existing relationship between the Respondent and the Complainant. Rather, the prominent use of the Complainant's WHATSAPP trademark as well as the inherently misleading nature of the disputed domain name is, in view of the Panel, sufficient evidence that the Respondent intentionally tries to attract, for illegitimate commercial gain, Internet users by creating a likelihood of confusion with the Complainant.

The fact that the disputed domain name <whatsappbulk.app> currently does no longer resolve to an active website does not prevent a finding of bad faith.

With respect to the use of the disputed domain name <whatsappplumesaj.com> in bad faith, the Panel notes that this disputed domain name has apparently not been actively used so far.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3.

Having reviewed the record, the Panel notes the reputation of the Complainant's WHATSAPP trademark, and the composition of the disputed domain name <whatsappplumesaj.com>, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <whatsappbulk.app> and <whatsappplumesaj.com>, be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: November 27, 2023