



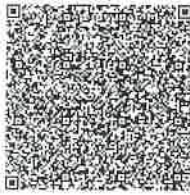
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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

Certificate No.	: IN-DL31439630432057X
Certificate Issued Date	: 07-Feb-2025 11:14 AM
Account Reference	: IMPACC (SH)/ dlshimp17/ HIGH COURT/ DL-DLH
Unique Doc. Reference	: SUBIN-DLDSLHIMP1706645656345048X
Purchased by	: BHARAT S KUMAR
Description of Document	: Article 12 Award
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: BHARAT S KUMAR
Second Party	: Not Applicable
Stamp Duty Paid By	: BHARAT S KUMAR
Stamp Duty Amount(Rs.)	: 100 (One Hundred only)

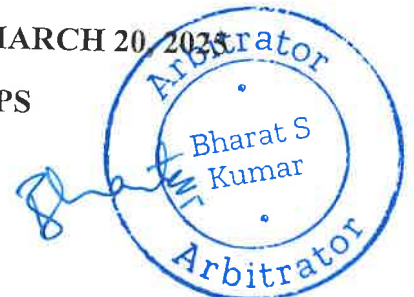


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BEFORE BHARAT S KUMAR, SOLE ARBITRATOR
NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)
INDRP Case No. 1909
DISPUTED DOMAIN NAME: <FMWHATSAPP.NET.IN>

ARBITRATION AWARD DATED MARCH 20, 2025

WhatsApp, LLC Vs. GB APPS



Stamp Duty Alert

All e-Stamp certificates should be verified at www.stampsamp.com or any of the Stamp Machine app. The details on this Certificate are available on the website www.nixi.org and www.in.gov.in. The details on this Certificate are also available on the website www.nixi.org and www.in.gov.in. The details on this Certificate are also available on the website www.nixi.org and www.in.gov.in. The details on this Certificate are also available on the website www.nixi.org and www.in.gov.in.

BEFORE BHARAT S KUMAR, SOLE ARBITRATOR
.IN REGISTRY
NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)
INDRP ARBITRATION
INDRP Case No. 1909
DISPUTED DOMAIN NAME: <FMWHATSAPP.NET.IN>
ARBITRATION AWARD DATED MARCH 20, 2025

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,

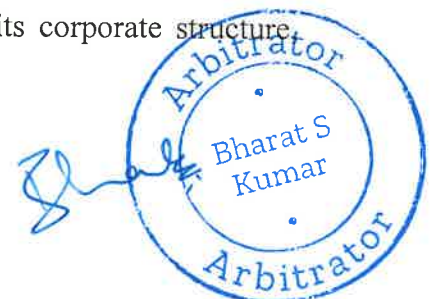
Punjab 32100

Pakistan

Respondent

1. **The Parties in the proceeding:**

The complainant in this administrative proceeding is WhatsApp, LLC, 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 states that it had undergone a change in its corporate structure



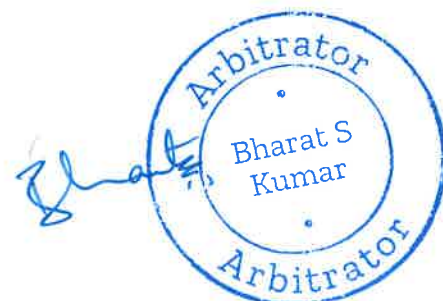
recently. Throwing light on the change in the corporate name history, the complainant submits that from January, 01, 2021, the complainant's company name changed from WhatsApp, Inc to WhatsApp LLC. A copy of the Certificate of Conversion of a corporation to a limited liability company, changing the complainant's name from "WhatsApp, Inc." to "WhatsApp LLC" is filed with the complaint as **Annexure 2**.

The complainant has authorized Mr. David Taylor /Ms. Jane Seager from Hogan Lovells (Paris) LLP, 17 Avenue Matignon, 75008 Paris, France as its authorized representative in the present proceedings. In support of the same, the complainant has placed a Power of Attorney dated March 14th, 2024 from Mr. Scott Minden, the authorized representative of the complainant. No resolution affirming the authority of Mr. Minden has been placed on record. It is noteworthy that the Power of Attorney also does not bear the seal of the complainant company. A copy of the Power of Attorney has been filed with this present complaint as **Annexure 3**.

The Respondent in the present proceedings is **GB APPS**, having its address at District DG Khan, Tehsil Taunsa Sharif, Punjab, Pakistan – 32100. The complainant has also filed the publicly-available WHOIS record, dated September 2nd, 2024, for the domain name <fmwhatsapp.net.in>, as **Annexure 4**.

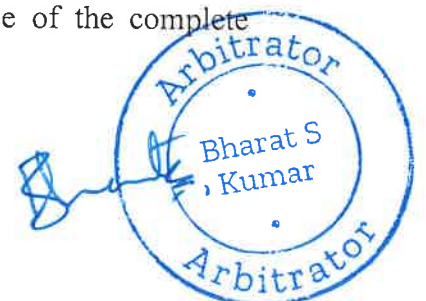
2. **Domain Name and Registrar:-**

The disputed domain name is <fmwhatsapp.net.in>. The domain name was registered on September 1st, 2023. The registrar with which the domain name is registered is Dynadot LLC: P.O. Box 345, San Mateo CA 94401, United States Telephone: +16502620100. The email address of the registrar is, info@dynadot.com.



3. Procedural History:

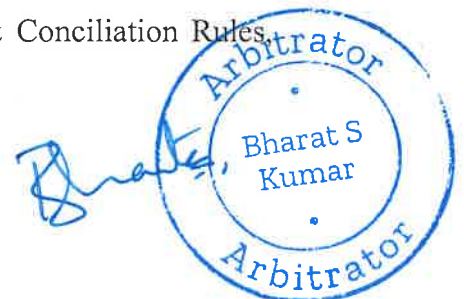
- 3.1 This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy") adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules"). The arbitration proceeding is approved in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with a NIXI accredited Registrar, the respondent agreed to the resolution of disputes pursuant to the said Policy and the Rules.
- 3.2 The complaint was filed by the complainant with NIXI against the respondent. On 11.01.2025, to ensure compliance, I had submitted statement of acceptance and declaration of impartiality and independence as required by the Arbitrator's Empanelment Rules (Rule 5). On 20.01.2025, I was appointed as the sole arbitrator to decide the disputes between the parties. NIXI notified both the parties of my appointment as arbitrator *via* email dated 20.01.2025. NIXI had also served by email an electronic copy of the complainant with annexures, on the respondent at the email address of the respondent, gbapps.pk@gmail.com, whilst appointing me as an arbitrator.
- 3.3 On 20.01.2025, I had issued notice to the respondent and directed the complainant to serve the complete paperbook on the respondent, i.e. the amended complaint which was filed by the complainant and the complete annexures (annexures 1 to 15). The service was done by the complainant's counsel, Ms. Eliza Parr, through two emails on 20.01.2025, on the email address present through a WHOIS lookup, i.e. gbapps.pk@gmail.com. Ms. Parr had also shared the email confirmation of the service on the respondent with me on 21.01.2025. It may be noted that I had on 20.01.2024 also granted the respondent a time period of 15 days, to file a response to the complaint, from my email and the delivery of service of the complete paperbook.



- 3.4 That pursuant to no response from the respondent for 15 days after service of the complaint and the documents(annexures), I had on 05.02.2025 sent an email to the respondent apprising it of its rights to file a defence (response), being closed. That in the same email, I had also asked the complainant's counsel whether they wish to seek any personal hearing, to which they declined the same and requested that the complaint further proceed on merits.
- 3.5 That, all the communications to the complainant, respondent and NIXI by this tribunal have been through email. None of the emails sent on gbapps.pk@gmail.com have bounced or returned. I therefore hold that the service is complete as per the INDRP rules as all correspondences effectively took place on gbapps.pk@gmail.com.

Respondent being proceeded ex-parte:

- 3.6 I wish to highlight Clause 13(b) of the INDRP Rules of procedure requires that the arbitrator shall at all times treat the parties with equality and provide each one of them with a fair opportunity to present their case. Clause 17 of the INDRP Rules of procedure grant the power to an arbitrator to proceed *ex-parte*, in the event any party breaches the provisions of INDRP rules and/or directions of the arbitrator.
- 3.7 The respondent has been given a fair opportunity to represent itself, respond to the complainant's assertions & contentions and counter the same, if it so wishes to. However, there has been no response by the respondent, despite effective service. It is noteworthy that Clause 18 of the INDRP Rules of procedure mandate that an arbitrator shall decide a complaint on the basis of the pleadings submitted and in accordance with the Arbitration & Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2015 read with the Arbitration & Conciliation Rules.



Dispute Resolution Policy, the Rules of Procedure and any by-laws, and guidelines and any law that the arbitrator deems to be applicable, as amended from time to time. In these circumstances this tribunal proceeds to decide the complaint on merits, in accordance with said act, policy and rules on respondent's failure to submit a response, despite having been given sufficient opportunity and time to do so and represent itself. As a result of the aforementioned, the respondent is proceeded *ex-parte*.

4. **Legitimate rights under which a complainant can approach NIXI:**

4.1 The complainant has invoked Clause 4 of the INDRP policy to initiate the arbitration proceeding. Clause 4 reads as under:

4. Any Person who considers that a registered domain name conflicts with his/her legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

- (a) the Registrant's domain name is identical and/or confusingly similar to a Name, Trademark or Service Mark etc. in which the Complainant has rights; and*
- (b) the Registrant has no rights or legitimate interests in respect of the domain name; and*
- (c) the Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose.*

The complainant therefore has to satisfy this arbitral tribunal on all the three aforementioned clauses/conditions, i.e 4 (a), (b) and (c).

5. **Case of the complainant**

5.1 The complainant avers that it is a provider of one of the world's most popular mobile messaging applications (or "apps"). Founded in 2009 and acquired



by Meta Platforms, Inc. (formerly known as Facebook, Inc.) (Meta) in 2014, WhatsApp 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. In support of its contentions, the complainant has attached a screen capture of the homepage of the complainant's website at www.whatsapp.com , as **Annexure 5**. The complainant also avers that since its launch in 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 Pakistan where the respondent appears to be based. It further states that, 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 4th most downloaded application for iOS phones worldwide. Further, the complainant has also attached copies of its company information, including its Wikipedia entry, articles about Meta's acquisition of WhatsApp in 2014 and WhatsApp's rankings, and its rapid growth and popularity as **Annexure 6**.

5.2 The complainant further avers that reflecting its global reach, the complainant is the owner of numerous domain names, comprising its WHATSAPP trade mark, under various generic Top-Level Domains (gTLDs) as well as under many country code Top-Level Domains. In support of the same, the complainant has also filed copies of the WhoIs records for a selection of domain names comprising the Complainant's WHATSAPP trade mark are provided as, as **Annexure 7**.

5.3 In support of its endeavours to affirm a strong presence online, the complainant avers that it has also made substantial investments and by being active on various social-media forums. For instance, WhatsApp's official page on Facebook has over 35 million "likes". In addition, WhatsApp has



5.5 million followers on X (formerly Twitter). These pages are available at the following URLs:

<https://www.facebook.com/WhatsApp>

<https://x.com/WhatsApp>

<http://www.youtube.com/whatsapp>

<https://www.linkedin.com/company/whatsapp-inc/about>

In support of the same, the complainant has also filed screen captures of its social-media pages as **Annexure 8**.

The complainant's statutory claims pertaining to trademark "WhatsApp":

5.4 The Complainant claims that it has secured ownership of numerous trade mark registrations for WHATSAPP, including but not limited to the following:

- United States Trademark Registration No. 3,939,463, WHATSAPP, registered on 5 April 2011;
-
- European Union Trade Mark No. 009986514, WHATSAPP, registered on 25 October 2011;
- International Trademark No. 1085539, WHATSAPP, registered on 24 May 2011;
- Indian Trademark Registration No. 2149059, WHATSAPP, registered on 24 May 2011; and
- Pakistani Trademark Registration No. 302143, WHATSAPP, registered on 27 May 2011.
-
- European Union Trade Mark No. 010496602, , registered on 18 May 2012; and
- Indian Trademark Registration No. 2344423, , registered on 7 June 2012.

In support of the aforementioned averments, the complainant has also filed trademark registrations at **Annexure 9**.








6. The dispute raised before this tribunal – case of the complainant:

The Domain Name and associated website

6.1 The complainant claims that it was recently made aware of the domain name, comprising its WHATSAPP trade mark preceded by the letters "fm" under the domain extension ".net.in", registered on September 01, 2023. It further avers that the domain name resolves to a website titled "FM WhatsApp/FM WhatsApp APK Download (Latest) Version OFFICIAL 2024" that purports to offer for download an unauthorized modified APK (Android Package Kit) version of the complainant's WhatsApp application (the respondent's website). The complainant has also filed screen captures of the respondent's website as **Annexure 10**.

6.2 The complainant in the complaint states that the Respondent's website features a green and white colour scheme that is very similar to the green and white colour scheme of the complainant's WhatsApp platform. For the same, the complainant draws the attention of this tribunal to annexures 5 and 10. The complainant states, that the respondent's website also features a modified version of its WhatsApp figurative telephone trade mark and logo and a favicon that is very similar to the complainant's WhatsApp figurative telephone trade mark, as follows:

Complainant's figurative trade mark and logo	Image and favicon on the Respondent's website
	 

6.3 The complainant also avers that the respondent's website features a step-by-step guide on how to install FM WhatsApp on a mobile phone, as well as the following wording:

"FM WhatsApp stands out as a revamped version of the classic WhatsApp [...] [with] intuitive design, outstanding features and an encryption system that safeguards users' privacy."

The complainant further avers that the respondent's website also features a list of the additional features offered by FM WhatsApp that are "not found in the official WhatsApp app".

Complainant's notice to the respondent:

6.4 The complainant states that on 28 June 2024, its lawyers submitted a notice via the Registrar's registrant contact form inviting the respondent to contact the complainant. The complainant's lawyers received no response. In support of its assertions, it has filed screen captures of the Registrar's registrant contact form notice as submitted by the its lawyers as **Annexure 11**. To further its case, the complainant has at paragraph 24 also mentioned of similar of its cases against the same respondent. Furthermore, it has also filed a copy of the decision *Instagram LLC v GB APPS*, INDRP Case No. 1890 (<instapro.com.in>) as **Annexure 12** to assert that the respondent seems to be a habitual infringer and squatter.

7. **Analysis**

7.1 It is pertinent to note that Paragraph 4 of the INDRP Domain Name Dispute Resolution Policy, mentions about class of disputes, which grants any person who considers that a registered domain name conflicts with his/her legitimate rights or interests, the right to file a complaint with the .IN Registry. There are 3 conditions which an aggrieved right holder may file



the complaint under. The complainant has in the present complaint mentioned that its rights under all the three conditions, have been violated:

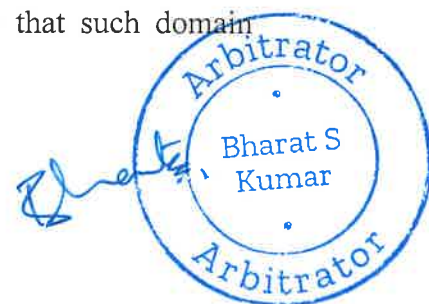
- i. Condition 4(a) - The Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the complainant has rights;

The complainant has stated in the complaint that the disputed domain name is confusingly similar to a trade mark in which the complainant has rights. The complainant avers that the disputed domain name comprises the complainant's **WHATSAPP** trade mark with the addition of the prefix(word) "fm", under the domain extension ".net.in". The complainant submits that the addition of the word "fm" does not prevent a finding of confusing similarity with the complainant's WHATSAPP trade mark, which remains clearly recognizable in the domain name. The complainant relies upon *WhatsApp, Inc. v. Nasser Bahaj, WIPO Case No. D2016-0581*: where it was held that

"The disputed domain name <ogwhatsapp.org> comprises the Complainant's trademark WHATSAPP combined with the letters 'og' which are the initials of the developer Osama Ghoraib as indicated on the website of the Respondent. Adding these two letters does not in any way eliminate the confusing similarity with the Complainant's trademark."

The complainant also draws this tribunal attention to *WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / Muhammad Asif*, WIPO Case No. D2022-3170 (<gbwhatsappdownload.com>) and *WhatsApp LLC v. Pruthvi Raj*, WIPO Case No. D2023-1715 (<gbwhatsappdownloads.com>).

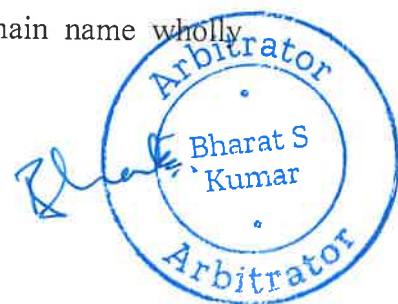
The complainant further states that with regard to the ".net.in" domain extension, it is well established under the .IN Policy that such domain



extension may be disregarded when assessing whether a domain name is identical or confusingly similar to a complainant's trade mark. The complainant further places reliance on *Google LLC v Hom Kit Bk Picture*, INDRP/1814, (<simstim.net.in>). Basis the aforementioned, the complainant asserts that the disputed domain name is confusingly similar to the complainant's trade mark in accordance with paragraph 4(a) of the .IN Policy.

I have gone through the pleadings and documents filed by the complainant. With regard to the fulfilment of paragraph 4(a) of the INDRP policy, it is evident that the complainant has been continuously and extensively using the registered trademark WHATSAPP in the course of trade and commerce since its launch in the year 2009. The complainant has also registered its trademark WHATSAPP across myriad jurisdictions including the home country of the respondent and in India (multiple classes – classes 9 and 38). Its statutory rights thus, in the trademark WHATSAPP is well established. It is pertinent to note that the disputed domain name fmwhatsapp.net.in was registered on September 01, 2023, much later than the adoption and registration of the complainant's registered trademark, WHATSAPP.

It is noteworthy that a perusal of the disputed domain name 'fmwhatsapp.net.in' of the registrant/respondent shows that the respondent has used the complainant's trademark 'WHATSAPP' in its entirety and merely added a word "fm", as a prefix to it. The disputed domain name 'fmwhatsapp.net.in' is confusingly similar and one could say, near identical to the 'WHATSAPP' trademark of the complainant. It is well established that the mere addition of a TLD such as "net.in" and even a prefix, such as 'fm' to a trademark(s), are not significant in distinguishing a domain name. It has been held by prior panels deciding under the INDRP, such as in *Kenneth Cole Productions v. Viswas Infomedia INDRP/093*, that there is confusing/deceptive similarity where the disputed domain name wholly

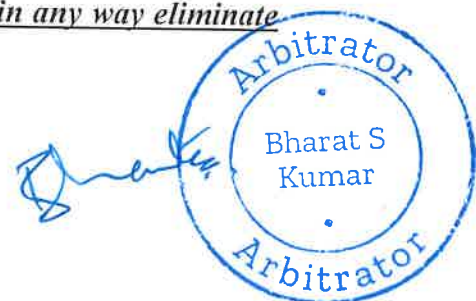


incorporates a complainant's trade mark. It is further noteworthy that, a TLD/ccTLD such as "net.in " is an essential part of domain name. Therefore, it cannot be said to distinguish the respondent's domain name 'fmwhatsapp.net.in' from the complainant's trademark 'WhatsApp'. In **Satyam Infoway Ltd vs Siffynet Solutions Pvt. Ltd AIR 2004 SC 3540**, the Hon'ble Supreme Court of India stated that the law pertaining to the Trademark Act, 1999 shall be applicable to domain names in India. The Hon'ble Supreme Court of India also observed that domain names have the same characteristics of a trademark and thus act as a source and business identifier. In *M/s Retail Royalty Company v. Mr. Folk Brook INDRP/705*, wherein on the basis of the complainant's registered trademark and domain names for "AMERICAN EAGLE", having been created by the complainant much before the date of creation of the disputed domain name <americaneagle.co.in> by the respondent, it was held that:

"The disputed domain name is very much similar to the name - and trademark of the complainant. The Hon'ble Supreme Court of India has recently held that the domain name has become a business identifier. A domain name helps identify the subject of trade or service that an entity seeks to provide to its potential customers. Further that there is a strong likelihood that a web browser looking for AMERICAN EAGLE products in India or elsewhere would mistake the disputed domain name as of the complainant. "

A precedent, pertinent to the present case at hand has been shared by the complainant, it being *WhatsApp, Inc. v. Nasser Bahaj*, WIPO Case No. D2016-058. The relevant excerpts are highlighted as hereinunder:

"The disputed domain name <ogwhatsapp.org> comprises the Complainant's trademark WHATSAPP combined with the letters "og" which are the initials of the developer Osama Ghoraib as indicated on the website of the Respondent. Adding these two letters does not in any way eliminate



the confusing similarity with the Complainant's trademark. As for the gTLD ".org", it is established that a gTLD does not typically eliminate confusion.

The disputed domain name <whatsapp-plus.org> comprises the Complainant's trademark WHATSAPP in its entirety. Adding the term "plus" not only does not eliminate confusion but on the contrary gives the impression that new and enhanced versions of the Complainant's application are available through the website the disputed domain name resolves to."

I reiterate that the complainant has rights in the trademark WHATSAPP by way of trademark registrations across myriad jurisdiction, and by virtue of use in the course of trade, as part of their company. Pertinently, the use is also much prior to the date on which the respondent created the impugned domain <fmwhatsapp.net.in> incorporating the complainant's trademark and trade name WHATSAPP in totality and as a whole. I agree that merely adding "fm" not only creates confusion, but may even make a potential web user believe that this may well be an enhanced version of the complainant's application.

The respondent has not filed any response to the assertions put forth by the complainant. The averments of the complainant thus remain unrebutted.

In view of the above facts and submissions of the complainant, on perusal of the documents filed and annexed with the complaint, I therefore hold that the disputed domain name <fmwhatsapp.net.in> of the registrant (respondent) is confusingly/deceptively similar and infact nearly identical to the trademark WHATSAPP of the complainant.

- ii. Condition no.4 (b) the Respondent (Registrant) has no rights or legitimate interest in respect of the domain name:




The complainant asserts that the respondent is unable to invoke any of the circumstances set out in Paragraph 6 of the .IN Policy to demonstrate rights or legitimate interests in the domain name. To further its claims, the complainant states that the respondent cannot assert that, prior to any notice of this dispute, it was using, or had made demonstrable preparations to use, the domain name in connection, fmwhatsapp.net.in, with a bona fide offering of goods or services in accordance with paragraph 6(a) of the .IN Policy. The complainant further states that it has not authorised, licensed or otherwise allowed the respondent to make any use of its WHATSAPP trade mark, in a domain name or otherwise. It places reliance on the decision of prior panels, averring that the lack of such prior authorisation would be sufficient to establish a prima facie case regarding the respondent's lack of rights or legitimate interests in the disputed domain name. In stating that same, the complainant relies on *Wacom Co. Ltd. v. Liheng*, INDRP/634, wherein it was stated that:

"the Complainant has not licensed or otherwise permitted the Respondent to use its name or trademark or to apply for or use the domain name incorporating said name"

The complainant further avers 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 "extra features [...] not found in the official WhatsApp app", including "customized privacy, [...] bulk image sharing [and] personalized icons".

The complainant also states that prior panels have recognized that service providers using a domain name containing a third-party trade mark may be making a bona fide offering of goods or services and



Arbitrator
Bharat S
Kumar
Arbitrator

thus have a legitimate interest in such domain name, which is not in the present case. The complainant further avers that this case is typically measured against the list of factors set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903 (the Oki Data criteria):

- (a) the respondent must actually be offering the goods or services at issue;
- (b) the respondent must use the site to sell only the trade marked goods or services;
- (c) the site must accurately and prominently disclose the registrant's relationship with the trade mark holder; and
- (d) the respondent must not try to "corner the market" in a domain name that reflects the trade mark.

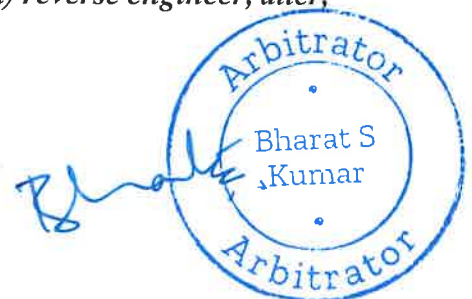
The complainant categorically in paragraph 42 of the complaint responds to every Oki data criteria put forth above by it and argues that the respondent fails to fulfil the first, third and fourth criteria.

The complainant states that the WhatsApp Terms of Service, available at <https://whatsapp.com/legal/terms-of-service>, provide as follows:

"Acceptable Use Of Our Services

[...]

Harm To WhatsApp Or Our Users. You must not (or assist others to) directly, indirectly, through automated or other means, access, use, copy, adapt, modify, prepare derivative works based upon, [...] perform, or otherwise exploit our Services in impermissible or unauthorized manners, or in ways that burden, impair, or harm us, our Services, systems, our users, or others, including that you must not directly or through automated means: (a) reverse engineer, alter,



modify, create derivative works from, decompile, or extract code from our Services[...]."

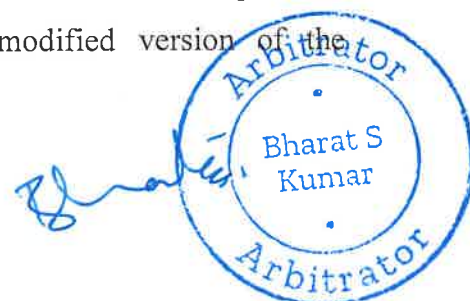
In emphasizing on the same, the complainant has also shared a copy of the WhatsApp Terms of Service as **Annexure 14**.

The complainant, pertinently, states that it is committed to maintaining the integrity of its WhatsApp service and does not support such third-party applications. The use of the domain name to offer for download an unauthorized modified APK version of the WhatsApp application impairs the integrity of the WhatsApp service, breaches the WhatsApp Terms of Service and cannot be considered a bona fide offering of goods or services. The complainant places reliance on *WhatsApp, Inc. v. Nasser Bahaj*, WIPO Case No. D2016-0581 (<ogwhatsapp.org> et al.):

"The Complainant has indicated that it has never authorized the use of its trademark by the Respondent. The Respondent is not making a bona fide offering of goods or services via the disputed domain names but is rather offering unauthorized and unlicensed versions of the Complainant's application."

The complainant also avers that its brand guidelines, available at <https://about.meta.com/brand/resources/whatsapp/whatsapp-brand>, prohibit the registration of domain names that comprise any WhatsApp trade mark and could be confused with WhatsApp. Excerpts mentioned at paragraph 45.

The complainant avers that the domain name, which comprises the complainant's WHATSAPP trade mark, violates the WhatsApp Brand Guidelines. The complainant also states that in light of the nature of the domain name and its use, the respondent's use of a website that features its WHATSAPP trade mark, a modified version of its WhatsApp telephone logo and figurative trade mark to promote the downloading of an unauthorized modified version of the



complainant's WhatsApp application evidences a risk of implied affiliation with the complainant. The complainant states that 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. It places reliance on *WhatsApp Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Mohsen Moussawi*, WIPO Case No. D2021-0032 (<cyberwhatsapp.com>):

"The evidence provided by the Complainant further shows that the disputed domain name was temporally linked to a website, which content included various references to the Complainant's trademark WHATSAPP as well as a modified version of its telephone logo within a green circle. The Panel considers that this use of the disputed domain name contributes to a risk of affiliation and confusion, which is not avoided by the disclaimer, in English language, included at the bottom of this site in small letters."

(emphasis to the highlighted portions)

The complainant further states 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. It avers 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 "fmwhatsapp".

The complainant states that the respondent's use of the domain name to purport to offer for download an unauthorized modified APK version of the complainant's WhatsApp application does not amount to legitimate non-commercial or fair use. It relies on *WhatsApp LLC*





v. *Furqan Taunsvi, Buch Executive Villas*, WIPO Case No. DCC2024-0012 (<gbwhatsapps.cc> et al.):

"The composition of the disputed domain names, the content of the website to which they redirect, displaying the Complainant's trademark, logo, and color scheme, combine to create a risk of implied affiliation with the Complainant and/or endorsement by the trademark owner, which cannot be considered fair use."

I agree with the assertions put forth by the complainant. I believe that the complainant has established its rights in the trade mark WHATSAPP and the respondent has failed to fulfil this tribunal of the prerequisites of paragraph 6 of the IN policy.

It is significant to note that the respondent's website featured an altered and/or diluted version of the complainant's logo the words FM [space] **WHATSAPP** mentioned at multiple places, in addition to the domain name. This is definitely likely to give a false impression to internet users that the disputed website is either owned by the complainant to is affiliated to the complainant in some manner. The respondent cannot conceivably claim that its use of the complainant trademark is *bona fide* as per paragraph 6(a) of the .IN Policy or is commonly known by the domain name in accordance with paragraph 6(b) of the .IN Policy or is a legitimate or non-commercial fair use in sync with paragraph 6(c) of the .IN Policy.

The mere fact that the disputed domain name is registered does not imply that the respondent has any rights or legitimate interests in them. In *Deutsche Telekom AG v. Phonotic Ltd.* (WIPO Case No. D2005-1 000), it has been held that "*Registration of a domain name in itself does not establish rights or legitimate interests for purposes of paragraph 4(a)(ii) of the Policy*". Therefore, any use of the

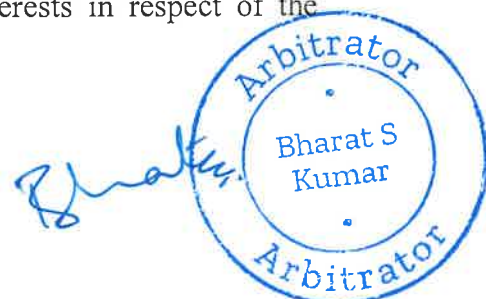



disputed domain name by the respondent is not a legitimate, non-commercial or fair use. The respondent thus has no rights or legitimate interests in, the disputed domain name.

There is no quarrel in mentioning that 'WHATSAPP' is known, across India and the world over. The adoption of word/mark "WHATSAPP", therefore in the disputed domain name affirms the malafide intention of the respondent to make use of and ride on the coat tails of the complainant for earning commercial benefits. Such a conduct demonstrates anything, but a legitimate interest in the domain name. In the *Sports Authority Michigan, Inc. v. Internet Hosting*, NAF Case No. 124516, it was held *'It is neither a bona fide offerings of goods or services, nor an example of a legitimate non-commercial or fair use under Policy 4(c)(i) and (iii), when the holder of a domain name that is confusingly similar to an established mark uses the domain name to earn a profit without approval of the holder of the mark'.*

It is reiterated that the respondent (registrant) has not filed any response to counter the complainant's assertions, despite service. The respondent has thus failed to satisfy the conditions contained in clauses 6(a), (b) and (c) of INDRP Policy. Significantly, the respondent has never been identified with the disputed domain name or any variation thereof. The respondent's (Registrant) use of the disputed domain name will inevitably create a false association and/or affiliation with complainant and its extensively known trademark/label marks, WHATSAPP.

Therefore, in view of the submissions made in the complaint and on perusal of the accompanying documents, I am of the opinion that the respondent has no rights or legitimate interests in respect of the



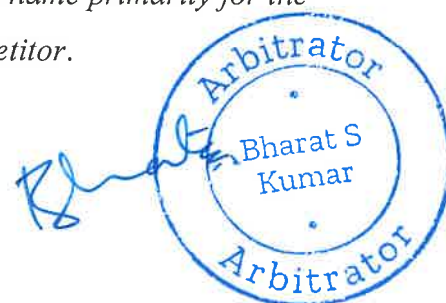
disputed domain name. Accordingly, condition 4(b) of the INDRP policy is decided in the favour of the complainant.

- iii. Condition 4(c): The Registrant's domain name has been registered or is being used in bad faith:

To look into condition 4 (c) of the INDRP policy, clause 7 is to be looked into. Clause 7 of the INDRP policy states as under:

For the purposes of Clause 4(c), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the Registration and use of a domain name in bad faith:

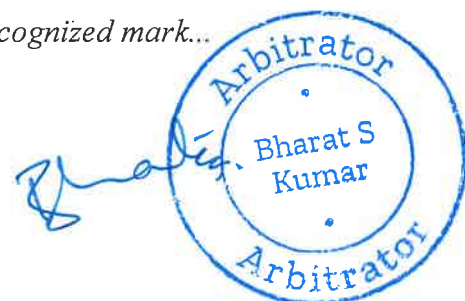
- (a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the Trademark or Service Mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or*
- (b) the Registrant 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 Registrant has engaged in a pattern of such conduct; or*
- (c) by using the domain name, the Registrant has intentionally 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; or*
- (d) The Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor.*



It is pertinent to reiterate that the complainant is vested with statutory rights in its WhatsApp trademark and has been using the same from the year 2009. The respondent's registration of a disputed domain name wholly incorporating the complainant's trademark is most certainly to ride on the coat tails of the complainant's commercial success which its WhatsApp trademark has attained over the past 15 years. It is also noteworthy that the actions of the respondent seem to fall squarely within subclause (c) hereinabove. A testament to the same are the cases mentioned by the complainant in paragraph 24 of its complaint wherein the very same respondent has engaged in surreptitiously registering and using the complainant's celebrated trademark, **WHATSAPP**, or parts of it thereof. A perusal of the decisions, more particularly *Instagram LLC v GB Apps*, INDRP Case No. 1889 (<instapro.ind.in>); *WhatsApp LLC v GB Apps*, .PK Case Number C2024-0004 (<whatsappgb.pk>); *WhatsApp LLC v GB Apps*, *Apps.Pk*, WIPO Case No. DCO2024-0043 (<gbwhatsapp.net.co>) among many others makes it evident that the respondent seems to be acting like a cyber squatter.

Given the enormous success of the complainant's business model, its celebrated trademark **WHATSAPP**, being known all across the world, there seems to be no reason for the respondent to adopt an identical name/ mark with respect to the impugned domain name. This adoption by the respondent, of course seems to create a deliberate and false impression in the minds of users that the respondent is somehow associated with or endorsed by the complainant. A case by a previous panel, *M/s Merck KGaA v Zeng Wei JNDRP/323*, can be referred wherein it was stated that:

"The choice of the domain name does not appear to be a mere coincidence, hut a deliberate use of a well-recognized mark..."



such registration of a domain name, based on awareness of a trademark is indicative of bad faith registration. "

It is noteworthy that Rule 3 of .IN Domain Name Dispute Resolution Policy (INDRP), casts obligations on a registrant, such as the respondent here. The same provides as under:

3. Registrant's Representations:

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant hereby represents and warrants that:

(a) the credentials furnished by the Registrant for registration of domain name are complete and accurate;

(b) to the knowledge of Registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;

(c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and

(d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations. It is the sole responsibility' of the Registrant to determine whether their domain name registration infringes or violates someone else's rights.

It is evident from above rule that rule 3(b) and (d) puts an obligation on the Registrant, the respondent herein, before registering a domain name. The registrant is to verify that the registration of the domain name will not infringe upon or otherwise violate the rights of any third party. Considering the conduct of the respondent in numerous cases above, it is reiterated that the respondent seems to be a cyber squatter, willingly violating the rights of other parties.




From a perusal of the averments and documents filed herewith, there is therefore no doubt that the respondent has got the disputed domain name registered in bad faith and to ride on the complainant's WHATSAPP trademark's goodwill and reputation. The actions of the respondent are thus in contravention with paragraph 4(c) of the INDRP policy. I therefore hold that the respondent's domain name has been registered in bad faith.

Decision

In view of the foregoing, I hold that the disputed domain name, <fmwhatsapp.net.in> is identical and/or confusingly similar to the complainant's 'WHATSAPP' trademark(s). I further hold that the respondent has no rights or legitimate interests in respect of the disputed domain name and that the same was registered in bad faith by the respondent.

In accordance with the INDRP Policy and Rules, I direct that the disputed domain name registration be transferred to the complainant. No order as to costs.

Date: 20.03.2025
Place: New Delhi

