

**BEFORE ALOK KUMAR JAIN, SOLE ARBITRATOR
.IN REGISTRY
NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)
INDRP ARBITRATION
INDRP Case No. 1776**

Disputed Domain Name: <WHATSAPPNOW.IN>

ARBITRATION AWARD

Dated 4.12.2023

IN THE MATTER OF:

WhatsApp LLC
1601 Willow Road

Menlo Park, California 94025

United States of America

Complainant

Versus

Leadiac Marketing
Leadic Marketing Agency
Ernakulam, Kerala
India-682019
Email: lediacmarketing@gmail.com

Respondent

1. **The Parties** The Complainant in this Arbitration proceeding is **WhatsApp LLC¹**, an American corporation with its principal place of business at 1601 Willow Road, Menlo Park, California, 94025, United States of America, Email: domaindisputes@hoganlovells.com (hereinafter referred to as the **Complainant**).

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The Complainant's authorized representative is David Taylor / Jane Seager ,Hogan Lovells (Paris) LLP ,17, avenue Matignon , 75008 Paris ,France , Phone+33 1 53 67 47 4 7 Fax: +33 1 53 67 47 48 Email: domaindisputes@hoganlovells.com

- 1.1 Respondent in these proceedings is Leadiac Marketing Organization: Marketing Agency,Ernaakulam .Kerala, 682019 India .Telephone: (91).7306115457
Email leadiacmarketing@gmail.com

2 **Domain Name and Registrar:-**

The Disputed Domain name is<WWW.WHATSAPPNOW.IN>The Domain Name is registered with GoDaddy.com, LLC (the Registrar).2155 E GoDaddy Way .Tempe ,Arizona 85284
United States Telephone: +1 4805058800

Email: legal@godaddy.com

3 **Procedure 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") which were 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.

As per the information received from NIXI, the history of the proceedings is as follows:

3.2. The Complaint was filed by the Complainant with NIXI against the Respondent .On 6.11.2023 I was appointed as Sole Arbitrator to decide the disputes between the parties. I submitted statement of Acceptance and Declaration of Impartiality and Independence same day as required by rules to ensure compliance with Paragraph 6 of the Rules. NIXI notified the Parties of my appointment as Arbitrator via email dated 6.11.2026 and served by email an electronic Copy of the Complaint with Annexures on the Respondent at the email addresses of the Respondent.

3.3. I issued notice to the parties via email dated 8.11.2026 directing the Complainant to serve complete set of Complaint on the Respondent in soft copies as well as in

physical via courier /Post.The Respondent was directed to file its response with in10 days from the date of notice. A brief response was received from the Respondent vide email dated 14.11.23. No personal hearing was requested by any parties.

3.4 A Complete set of Complaint was served by NIXI in electronic form by email to the Respondent on 6.11.2021 at the email provided by the Respondent with WHOIS ,while informing the parties about my appointment as Arbitrator. All communications were sent to Complainant, Respondent and NIXI by the Tribunal vide e mails. None of the emails so sent have been returned so far. Respondent has also responded vide email dated 14.11.23Therefore I hold that there is sufficient service on the Respondent through email as per INDRP rules. The Respondent has filed a brief response.

3.5. Clause 8(b) of the INDRP Rules requires that the Arbitrator shall at all times treat the Parties with equality and provide

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each one of them with a fair opportunity to present their case.

3.6 As stated above, Initially I gave 10days time to the Respondent to file a Response. The Respondent filed a brief Response vide email dated 14.11.23 and chose not to give detailed answer to the Complainant's assertions or the contentions raised therein. Respondent has been given a fair opportunity to present his case.

3.7 Further Clause 13(a) of the Rules provides 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.

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Accordingly now the Tribunal proceeds to decide the complaint on merit in accordance with said Act, Policy and Rules .

4. Grounds for Arbitration Proceedings.

INDRP Policy para 4.Class of Disputes provides as under:

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 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 in bad faith.

5. The Case of the Complainant :-

- 5.1 The Complainant stated in the complaint that the Complainant, **WhatsApp LLC**, 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. Its main website available at www.whatsapp.com also allows Internet users to access its messaging platform. A screen capture of the Complainant's website homepage at www.whatsapp.com is provided as **Annex 5** with the Complaint.

5.2 it is further stated 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 India where the Respondent is based. 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 and the 1st most downloaded application for iOS in India according to applications information company Data.ai (formerly known as App Annie). 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 (**ccTLDs**).

Copies of the WhoIs records for a selection of domain names comprising the Complainant's WHATSAPP trade mark are provided with the Complaint as **Annex 7**. The Complainant has also made substantial investments to develop a strong presence online by being active on various social-media forums. For instance, WhatsApp's official page on Facebook has over 34 million "likes". In addition, WhatsApp has 5 million followers on Twitter. Screen captures of the Complainant's social-media pages are provided with the complaint as **Annex 8**.

5.3 The Complainant owns numerous trade mark registrations in the term WHATSAPP in many jurisdictions throughout the world, including in India. Such trade mark registrations include but are not limited to the following:

- United States Trademark Registration No. 3939463, WHATSAPP, registered on 5 April 2011;
- European Union Trade Mark No. 009986514, WHATSAPP, registered on 25 October 2011;
- European Union Trade Mark No. 010496602, , registered on 18 May 2012;
- International Trademark No. 1085539, WHATSAPP, registered on 24 May 2011;

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- Indian Trademark Registration No. 2149059, WHATSAPP, registered on 24 May 2011; and
- Indian Trade mark No. 2423, , registered on 7 June 2012.

Copies of these trade mark registrations are provided as **Annex 9**.

5.4 The Respondent Domain Name <whatsappnow.in> incorporates the WHATSAPP trade mark in its entirety, with the addition of the term "now" under the ccTLD ".in".

The Domain Name does not currently resolve to an active website. Evidence that the domain name no longer resolves to an active website is provided as **Annex 10**. The Domain Name used to resolve to a website entitled "#1 Marketing Platform for Social Network" (the **Respondent's website**). The website displayed the following logo which uses the Complainant's distinctive green-and-white colour scheme and reproduces WhatsApp's telephone speech bubble logo:



In addition, the Respondent's website offered a centralised social media hub tool that supposedly allowed users to manage their social media accounts using the Respondent's software, including sending bulk messages using the Complainant's

application. Subscriptions for the Respondent's software started at 200 INR per month.

Historical screen captures of the Respondent's website are provided as **Annex 11**. The Respondent's website did not contain a disclaimer stating that it was not affiliated with WhatsApp.

On 28 June 2023, the Complainant's lawyers, in an attempt to resolve the matter amicably, sent a cease and desist letter to the Respondent using the email address found during the Complainant's search. The Respondent never replied.

A copy of the cease and desist letter sent by the Complainant's lawyers is provided as **Annex 12**.

The Respondent's registration and use of the Domain Name did not conform to the Complainant's Brand Guidelines (nor did it comply with the WhatsApp Business Terms of Service).

Copies of WhatsApp's Brand Guidelines and WhatsApp Business Terms of Service are provided as **Annex 13**.

The Complainant filed the present Complaint in order to request the transfer of the Domain Name under the .IN Policy to protect its legitimate business interests and rights and to protect the general public from confusion.

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6. Class of disputes:

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 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 in bad faith.

Therefore in order to succeed in the Complaint, the Complainant has to satisfy inter alia all the three conditions provided in clauses 4(a),4(b) and 4(c) quoted above.

- 6.1 **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;**

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I have gone through the complaint and perused all the documents annexed with the Complaint. Considering the Complainant's trade mark registrations as detailed in (Annex 9) and seeing other documents, the Complainant has established its trade mark rights in the mark WHATSAPP for the purposes of paragraph 4(a) of the .IN Policy.

The disputed Domain Name incorporates the Complainant's **WHATSAPP** trade mark in its entirety with the addition of the descriptive term "now". Complainant's **WHATSAPP** trade mark is clearly recognizable as the leading element of the Domain Name, the addition of the descriptive term "now" cannot prevent a finding of confusing similarity with the Complainant's trade marks. Complainant rightly relies upon following panel decisions.

- i. *Amazon Technologies Inc. v. Logistics, INDRP/939(<amazoncareer.in>): "It is a settled law enunciated in various decisions under UDRP and INDRP that the addition of a generic term that is descriptive of the goods and services increases the confusing similarity of the domain name."*

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- ii. *Skyscanner Limited v. Mickey heab*,__WIPO CASE
NO>D2022-1462 (<skyscannernow.com>):

"In this case, because the Complainant's SKYSCANNER trademark is recognizable within the Domain Name, the inclusion of the term "now" does not prevent a finding of confusing similarity between the Domain Name and the Complainant's trademark. The gTLD ".com" is disregarded from the assessment of confusing similarity. Therefore, the Domain Name is confusingly similar to the Complainant's SKYSCANNER trademark."

With regard to the .IN ccTLD it is well established under the .IN Policy that such suffix should be disregarded when assessing whether a domain name is identical or confusingly similar to a complainant's trade mark.

Therefore, the domain name <whatsappnow.IN> is visually, phonetically, conceptually, deceptively and confusingly identical/ similar to Complainant's corporate and trade name and the Complainant's domain.

It has been held by prior panels deciding under the INDRP that there is confusing similarity where the disputed domain name wholly incorporates the Complainant's trade mark such as *Kenneth Cole Productions v . Viswas Infomedia*

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INDRP/093. Further, a TLD/ccTLD such as “.in” is an essential part of domain name. Therefore, it cannot be said to distinguish the Respondent’s domain name <whatsappnow.IN> from the Complainant’s trademark **whatsapp**. This has been held by prior panels in numerous cases, for instance in *Dell Inc. v. Mani, Soniya INDRP/753* and *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. ”

That the Complainant has acquired rights in the trade mark **WHATSAPP** by way of trademark registrations, and by virtue of use as part of their company and domain names since 2009 much prior to the date on which the Respondent created the impugned domain <WHATSAPPNOW.IN> incorporating the Complainant's identical company name, trade mark and trade name **WHATSAPP** in toto. This evident identity between the Respondent's domain name and the Complainant's marks, domain names and company name incorporating **WHATSAPP** is likely to mislead, confuse and deceive the Complainant's customers as well as the general public as to the source, sponsorship, affiliation or endorsement of the Respondent's domain name.

The Respondent has not filed any detailed response in writing except a brief response vide email dated 14.11.23 to the complaint as such all the averments of the complainant has remained un rebutted.

In view of the above facts and submissions of the complainant, and on perusal of the documents annexed with

the Complaint, I hold that the Disputed Domain Name <WHATSAPPNOW.IN> of the Registrant is identical and or confusingly similar to the trademark WHATSAPP of the Complainant.

6.2 **Condition no.4 (b) the Registrant has no rights or legitimate interests in respect of the domain name;**

The Complainant stated in the complaint that the Respondent has no legitimate interest in the domain name <WHATSAPPNOW.IN>. It is further stated that the Complainant has not authorized the Respondent at any point of time to register the impugned domain name. Further, the Respondent cannot assert that it is using the domain name in connection with a *bona fide offering of goods and services* in accordance with Paragraph 6(a) of the .IN Policy, as it is not operating any website from the impugned domain .

Respondent's website featured the Complainant's logo and used the same distinctive green-and-white colour scheme was likely to give the false impression to Internet users that

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they had reached a website affiliated with or endorsed by the Complainant.

The Complainant further stated that the Respondent's use of the Domain Name to attract Internet users to its own site, which promoted a purported marketing tool enabling, *inter alia*, bulk messaging via the Complainant's application, cannot be considered as *bona fide* use as per paragraph 6(a) of the .IN Policy as the Respondent was clearly attempting to trade off the reputation and goodwill attached to the Complainant's trade marks and business as held in *WhatsApp Inc., Facebook, Inc. v. Alex Xu, HKITN, WIPO Case No. D2019-1709*(<facebook-marketinghk.com> et al.):

"The Panel considers that the Respondent was trading on the Second Complainant's reputation and goodwill by diverting traffic to a website associated with a domain name that is confusingly similar to the Second Complainant's WHATSAPP trademark and on which the Respondent offered marketing messages via WhatsApp messages. Such use is likely to generate commercial gain through the offering of spam services and cannot be considered a bona fide offering of goods and services for purposes of paragraph 4(c)(i) of the Policy."

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Complainant averred that the Domain Name currently does not resolve to an active website (see **Annex 10**). The non-use of the Domain Name does not qualify as use of the Domain Name in connection with a *bona fide* offering of goods or services. See in this regard *Instagram, LLC v. Registration Private, Domains By Proxy LLC/ sezersuat*, WIPO Case No. D2022-0157

(<Instagramloginverification.com>)

"Non-use of a domain name doesnot amount to a use inconnection with a *bona fide* offering of goods or services or to a legitimate noncommercial or fair use of the domain name,especially when the domain name is confusingly similar to a well-known third party's trademark and has been registered without authorization of the trademark owner."

The Respondent cannot conceivably claim that it is commonly known by the Domain Name in accordance with paragraph 6(b) of the .IN Policy. Neither the Respondent's name "**Leadiac Marketing**" nor the organization name

Marketing Agency" bears any resemblance to the Domain Name. To the best of the Complainant's knowledge, the Respondent has not secured or even sought to secure any trade mark rights in the term WHATSAPP or WHATSAPP NOW.

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Thus the Respondent has failed to satisfy the conditions contained in clause 6(a),(b) and 6(c) of INDRP Policy.

On the contrary the Complainant has established that the Registrant has no rights or legitimate interest in respect of the Disputed Domain Name and has never been identified with the Disputed Domain Name or any variation thereof. The Registrant's use of the Disputed Domain Name will inevitably create a false association and affiliation with Complainant and its well-known trade mark **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 domain name; Accordingly I hold that the Registrant has no rights or legitimate interests in respect of the Disputed Domain Name.

6.3

Condition 4(C):the Registrant's domain name has been registered or is being used in bad faith

Clause 7 of INDRP Policy provides as under:

Clause 7. Evidence of Registration and use of Domain Name in Bad Faith

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.

Complainant states that considering the Complainant's renowned goodwill worldwide (including in India) and its trade mark rights established long before the registration of the Domain Name, it would be inconceivable that the Respondent did not have knowledge of the Complainant's WHATSAPP trade mark when it registered the Domain Name in 2020. Case of *WhatsApp Inc. v. Warrick Mulder*, INDRP/1233(whatsap.in), **registered in 2013**) is referred in the complaint where it was held inter alia that :

"At the time of registration of the Disputed Domain Name, the Complainant was using the registered trademark 'WHATSAPP' and the Respondent knew, or at least should have known, of the existence of the Complainant's trademark 'WHATSAPP'."

This shows that the Respondent registered the Domain Name in 2020 with full knowledge of the Complainant's rights. Prior panels have held that actual knowledge of a wellknown trade mark at the time of registration of a domain name constitutes strong evidence of bad faith. Reference is made to case of *QRG Enterprises Limited & Havells India*

Limited v. Zhang Mi, INDRP/852 (<qrg.co.in>) wherein it was held inter alia :

"Such registration of a domain name based on awareness of a trade mark is indicative of bad faith registration under the Policy."

The Complainant therefore submits that the Respondent registered the Domain Name in bad faith in accordance with paragraph 4(c) of the Policy.

It is evident that the Respondent 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.

Given the confusing similarity between the Domain Name and the Complainant's trade mark, and the use of this Domain Name to point to a website promoting the Respondent's software, in the absence of any disclaimer regarding the relationship with the Complainant, Internet users were likely to be misled into believing that the Respondent's website was somehow affiliated with or otherwise endorsed by the Complainant. Such use of the Domain Name to intentionally attract Internet users to a website supposedly providing paid marketing software via WhatsApp services, obviously for commercial gain, constitutes use in bad faith in accordance with paragraph 7(c)

of the .IN Policy. Complainant relies upon the cases of *Amazon Technologies Inc. v. Mr. Alex Parker*, INDRP/1166(<amazonemi.in>)(where the panel found that the use of the disputed domain name to point to a website selling products related to Amazon constitutes use in bad faith) and *WhatsApp Inc., Facebook, Inc. v. Alex Xu*, *HKITN*, WIPO Case No. D2019-1709, *supra*.

It is further averred that the Domain Name was used to promote software enabling bulk messaging. As noted above, there is an appreciable risk that such software may be used to send unsolicited electronic communications (spam), for phishing, or for other unauthorized activities. Such use places the security of WhatsApp users at risk, and violates the WhatsApp Business Terms of Service. Prior panels have held that such activities amount to use of a domain name in bad faith. See *WhatsApp LLC v. Bulk Whatsapp Software*, WIPO Case No. D2021-0564(<bulkwhatsappsoftwares.com>):

Further the Domain Name was pointing to a website displaying a logo which reproduced WhatsApp's speech bubble logo and used the same distinctive green-and-white colour scheme (see **Annex 11**), thereby creating a misleading impression of association with the Complainant in bad faith. Reference is made to case of *WhatsApp Inc. v. Edwin Lizcano, Inversiones Capira SAS*, WIPO Case No. D2019-1700,<maswhatsapp.com>:

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"Other factors corroborate a finding of bad faith:

a. the use of the Complainant's distinctive green-and-white color scheme, as well as a modified version of the Complainant's logo at the webpage that resolves from the disputed domain name without a single disclaimer or indication that the Respondent's website is not operated by or affiliated with the Complainant, thus creating a misleading impression of association with the Complainant [...]"

In addition, the fact that the Domain Name no longer resolves to an active website cannot cure the Respondent's bad faith. Reference is made to *Facebook Technologies, LLC v. Vickie Tubbs, Chen Jiajin*, WIPO Case No. D2020-1990:

"The Panel notes that the use of the disputed domain names has now changed and they no longer resolve to any active website. This does not alter the Panel's conclusion; on the contrary, it may constitute further evidence of bad faith."

Complainant submits that in light of the high risk of implied affiliation between the Domain Name and the Complainant, the Complainant submits that the presence of the Domain Name in the hands of the Respondent represents an abusive threat hanging over the head of the Complainant (*i.e.*, an abuse capable of being triggered by the Respondent at any time) and therefore a continuing abusive use. Reference is made is made to case of *Conair Corp. v. Pan Pin, Hong*

Kong Shunda International Co. Limited, WIPO Case No. D2014-1564 wherein it was held inter alia that :

"The Panel is in no doubt that Internet users in substantial numbers are likely to be deceived into believing that the Domain Name is a domain name operated and/or authorized by the Complainant.

The Panel finds that the Domain Name was registered and is being used in bad faith. To the extent that the use complained of now appears to have ceased (currently, the Domain Name resolves to an inactive website), the presence of the Domain Name in the hands of the Respondent represents, in the view of the Panel, an abusive threat hanging over the head of the Complainant (i.e., an abuse capable of being triggered by the Respondent at any time) and therefore a continuing abusive use."

The Complainant submits that the Respondent's failure to reply to the Complainant's cease and desist letter (see **Annex 12**) prior to the filing of this Complaint also indicates the Respondent's bad faith. Reference is made to case of *WhatsApp Inc. v. Warrick Mulder*, INDRP/1233(<whatsapp.in>).

Respondent has not filed any detailed reply controverting the averments made in the complaint. The Respondent filed a brief response vide email dated 14.3.2023 as under:

*On Tue, Nov 14, 2023 at 7:59 PM Leadiac Marketing <leadiacmarketing@gmail.com> wrote:
[Regarding INDRP Case No: 1776] ..Hello All,*

We are from Leadiac Marketing Solutions,

after going through all the details in the above mail I understood that the WhatsApp TM issue affected our website, and the logo too.. We discussed this with our company lawyer and took suggestions from the internationaldemarkregist so lawyers, we need to disclose some more details here

1. The website name (whatsappnow.in) we registered from GoDaddy LLC.. if the domain contains a specific spell with some other brand doesn't restrict registering the domain the trademark belongs to WhatsApp, not whatsappnow.. which means the website delivers the word whatsapp-now. and registered with domain .in. if there is any issue with that GoDaddy should restrict this website name doesn't allow registering because it contains a specific trademark keyword. after registering a third party shows it contains key work so it can't be used for our use.

2. The logo contained in Annex 11-15 doesn't match the WhatsApp logo ..the logo implemented on the website is triangle-shaped mark containing a calling symbol different from third party logo.

3. We are ready to do the resolution at any manner. but we did a lot of work to register the website and implement the script. the website uses our clients and it's our reputation and we did marketing for our business. so providing us the invested amount (very genuinely we are a very small firm running the business with this website compared with WhatsApp) will make a way to re-register the domain and surrender the logo.

thanks in advance “

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I have perused all the material on record and various panel decisions relied upon by the complainant as well as the brief reply given by the Respondent.

The contention raised by the Respondent in its reply is devoid of any legal force and untenable.

Rule 3 of .IN Domain Name Dispute Resolution Policy (INDRP) 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 before registering a domain that to verify that the registration of the domain name will not infringe upon or otherwise violate the rights of any third party. Thus evidently the Respondent has violated above rules.

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It is evident from the material on record that the Complainant mark **WHATSAPP** is a unique combination of words and the Respondent is using the identical combination with respect to the impugned domain name **<WHATSAPPNOW.IN>**. There can be no other plausible explanation as to how the Respondent arrived at the impugned domain name **<WHATSAPPNOW.IN>** which incorporates the Complainant's mark **WHATSAPP** in toto. The decision of prior Panel in *M/s Merck KGaA v Zeng Wei INDRP/323* can be referred wherein it was stated that:

"The choice of the domain name does not appear to be a mere coincidence, but 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."

The Respondent had no reason to adopt an identical name/mark with respect to the impugned domain name except to create a deliberate and false impression in the minds of consumers that the Respondent is somehow associated with

or endorsed by the Complainant, with the sole intention to ride on the massive goodwill and reputation associated with the Complainant and to unjustly gain enrichment from the same.

The facts and contentions enumerated in the complaint establish that Respondent's domain name registration for <WHATSAPPNOW.IN> is clearly contrary to the provisions of paragraph 4(c) of the INDRP and is in bad faith.

It is shown by the complainant that the Complainant is a well known reputed and popular global entity with extensive operations around the world since long 2009 having registration of the mark WHATSAPP in all over the world with very high global reputation.. The Registrant was most certainly aware of the repute and goodwill of the Complainant. Therefore adoption of the substantially identical Disputed Domain Name by the Registrant in 2020 is with the sole intention to trade upon and derive unlawful

benefits from the goodwill accruing to the Complainant. And such registration is in bad faith.

The Panel has no doubt that the choice of disputed domain registration by the registrant is not a mere coincidence as the registrant must have known about the complainant mark **WHATSAPP** from the overwhelming and unprecedented popular use of **WHATSAPP** over the globe and it leads to the conclusion that the registrant registered the said domain in bad faith which wholly contains the Complainant's prior globally acknowledged reputed trademark **WHATSAPP** to ride upon the goodwill of the complainant by attracting customers to the Disputed Domain Name by creating confusion with the Complainant's trademark **WHATSAPP** and corresponding domain name. The panel finds such registration is definitely in bad faith.

Registration in bad faith is also evident from the comparison of the logo of the Complainant and the Registrant which comparison clearly shows that the logo of the Registrant is identical and or confusingly similar to

complainants logo incorporating completely the logo of the Complainant.

It is relevant to refer to following cases:

In Samsung Electronics Co. Ltd v. Vishal Didwania (NDRP/141) wherein the rights of the complainant Samsung Electronics Co. Ltd. in the trading name and trademark SAMSUNG were protected from the unlawful adoption of the domain name www.samsung.in and the disputed domain name was ordered to be transferred to the complainant.

Similarly in the case of PepsiCo .. Inc. v Mr. Wang Shwng (NDRP/400) wherein the rights of PepsiCo .. Inc. in the reputed PEPSI marks were protected from the unlawful adoption of the domain name www.pepsi.in and the disputed domain name was ordered to be transferred to the Complainant.'

In view of above facts, submissions of the Complainant and on perusal of the documents annexed with the Complaint ,I

find that the Complaint has proved the circumstances referred in Clause 7(a)(b) and (c) of INDRP policy and has established that the registration and use of disputed domain name is in bad faith. Accordingly I hold that the Registrant's Domain Name has been registered in bad faith.

Decision

7. In view of the foregoing, I hold that the Disputed Domain Name is identical and or confusingly similar to the Complainant's well-known 'WHATSAPP' Trademarks and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered in bad faith.

In accordance with the INDRP Policy and Rules, I direct that the Disputed Domain Name registration be transferred to the Complainant.

Delhi
Dated 4.12.2023

Alok Kumar Jain
Alok Kumar Jain
Sole Arbitrator