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BEFORE THE ARBITRAL TRIBUNAL

V.P.PATHAK

SOLE ARBITRATOR

ARBITRAL AWARD

V.P. Pathak
V.P. PATHAK
H.J.S.
Former Judge
Sole Arbitrator

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**BEFORE THE .IN REGISTRY OF INDIA
INDRP CASE NO. 1906
IN THE MATTER OF AN ARBITRATION UNDER THE .IN DOMAIN NAME
DISPUTE RESOLUTION POLICY; THE INDRP RULES OF PROCEDURE
AND THE ARBITRATION CONCILIATION ACT, 1996**

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**BEFORE THE .IN REGISTRY OF INDIA
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DISPUTE RESOLUTION POLICY; THE INDRP RULES OF PROCEDURE
AND THE ARBITRATION CONCILIATION ACT, 1996**

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
Pakistan

....Respondent

**DISPUTE RELATING IN THE DOMAIN DISPUTE NAME
www.downloadgbwhatsapp.com.in**

Award Dated- 27.02.2025

**BEFORE V.P.PATHAK
SOLE ARBITRATOR
AT NEW DELHI**

⇒ **DISPUTED DOMAIN NAME & REGISTRAR-**

The disputed domain name is registered through the Registrar of the disputed domain name www.dynadot.com LLC, which is accredited with the .IN registry and is listed on the of the .IN registry.

⇒ **ARBITRATION TRIBUNAL-**

1. The Complainant has filed this Complaint for the disputed domain name, to be transferred to it. To decide this Complaint, NIXI has appointed the undersigned as Arbitrator. A consent letter with a declaration of impartiality by the undersigned to decide this case was sent to NIXI on 11.01.2025.

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2. This Tribunal resumed this matter on 21.01.2025, by sending notice to the Respondent for reply. Further, in the interest of justice, the Tribunal gave an extension to the Respondent of 5 days till 11.02.2025, but there was no response even though the Complainant has sent a hard copy of the Complaint to the Respondent.
3. As per **Rule 5 of the INDRP Rules** the Tribunal issued a notice dated 21.01.2025 calling upon the Respondent to file its reply on the Complaint within fifteen days from the date of receipt of the notice and rejoinder within fifteen days thereafter.
4. The Tribunal is constituted under the INDRP Policy and Rules. Under rule 13, the arbitration proceedings must be conducted according to the Arbitration and Conciliation Act, 2019 (as amended up to date) read with the Arbitration & Conciliation Act, Rules, Dispute Resolution Policy and its by-laws, and guidelines, as amended from time to time.
5. As mentioned above, the Respondent has not replied to any of the notices hence, this Tribunal is bound to proceed Ex Parte against the Respondent.

⇒ **PARTIES TO THE ARBITRATION-**

6. The Complainant is India's largest private general insurance company duly registered with IRDA (Insurance Regulatory Development Authority of India). The Complainant has filed the instant Complaint challenging the registration of the domain name www.downloadgbwhatsapp.com.in under the ".in" Domain Name Dispute Resolution Policy (INDRP) and the rules framed there under. The Complainant has preferred this arbitration by raising this dispute for the reprisal of its grievances.
7. **Rule 2 of INDRP Rules of Procedure** provides for communication/services of Complaint. Per this rule, the Respondent was sent a copy of the Complaint on the email shown in the domain name registration data in the .IN Registry's WHOIS database.
8. There is no reply to the Complaint so, we are unaware of the Respondent's version.

⇒ **FACTS OF THE CASE -**

• **Complainant-**

9. The Complainant, WhatsApp LLC, is an American company and is a provider of one of the world's most popular mobile messaging applications (or apps). It was founded in 2009 and acquired by Meta Platforms, Inc. (formerly known as Facebook, Inc.) in 2014. WhatsApp allows user 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 the Internet user to access its messaging platform. Website homepage is annexed as **ANNEXURE 5**.
10. 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 Pakistan where the Respondent appears to be based. Consistently

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being ranked amongst Google Play and Apple iTunes 25 most popular free mobile applications and Tech Radars Best Android Apps, WhatsApp is the 4th most downloaded application for iOS phones worldwide. **ANNEXURE 6.**

11. Reflecting its global reach, the Complainant is the owner of numerous domain names, comprising its WHATSAPP trademark, under various generic Top-Level Domains (gTLD) as well as many "country code Top Level Domains" (ccTLDs) (A ccTLD is a top-level domain (TLD) indicates a country or geographic location of the website. These "country code" TLDs help internet users understand where the entity behind a website is located. As TLDs are a key component of a business's URL, they are part of a business's identity).
12. The Complainant's selection of domain names comprising its WHATSAPP trademark is attached herewith. **ANNEXURE 7.**
13. 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 35 million "likes." In addition, WhatsApp has 5.5 million followers on X (formerly known as Twitter). **ANNEXURE 8.**
14. The Complainant owns numerous Trademark registrations in the term WHATSAPP in many jurisdictions throughout the world. Such Trademark registrations have been registered all over the world including Pakistan on May 27, 2011. Other trademark registrations are annexed as **ANNEXURE 9.**
15. The Complainant submits that the addition of the term "download" and the letters "gb" does not prevent a finding of confusing similarity with the Complainant's WHATSAPP Trademark, which remains clearly recognizable in the Domain Name.

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.

WhatsApp LLC v. Registration Private, Domains By Proxy, LLC / Muhammad Asif, WIPO Case No. D2022-3170 (<gbwhatsappdownload.com>):

"The mere addition of the letters 'gb' and the generic term 'download', does not, in view of the Panel, serve to avoid a finding of confusing similarity between the disputed domain name and the Complainant's WHATSAPP trademark."

16. In the light of the Complainant's prior adoption of the mark and the reputation and goodwill created by the Complainant, it is recognized as the proprietor of the said mark, which is perceived and identified by consumers and members of the trade, as the Complainant's mark alone. Thus, the adoption and use of a mark by a third party, that is similar and/or identical to the Complainant's Trademark and trading style "WHATSAPP" with respect to any of the diversified fields of activities, will lead to confusion and deception amongst the relevant class of consumers and the members of the trade.

- **Respondent-**

17. The Respondent has not replied to the Complaint.

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⇒ **CONTENTIONS OF THE PARTIES-**

• **By the Complainant-**

18. The Complainant was recently made aware of the Domain name, comprising its WHATSAPP trademark preceded by the term “download” and the letters “gb” under the domain extension “.com.in”, registered on December 7, 2023.
19. Until on or around 19.07.2024, the Domain name redirected to <https://gbapps.in> and a website titled “GBAPPS.IN GBWhatsApp APK Download (Updated) OFFICIAL 2024 Anti-Ban” that purported to offer for download an unauthorized modified APK version of the Complainant’s WhatsApp app (the Respondent’s website). The Respondent’s website also features commercial advertising banners. **ANNEXURE 10.**
20. The Respondents website featured green and white colour scheme that was similar to the green and white colour scheme of the Complainant’s WhatsApp platform. **Annexure 5 & 10.**
21. The Respondents website also featured modified versions of the Complainant’s Whatsapp figurative telephone trademark and logos and a favicon that were very similar to the Complainant’s WhatsApp figurative telephone trademark. (as attached in the Complaint).
22. The Respondent’s website also shows a step-by-step guide on how to install GB WhatsApp on a mobile phone and featured the wording in small font in the footer.
23. The Respondent’s website featured the following general disclaimer-like wording:
 “GBAPPS.IN is not affiliated with any official app developers or companies. The modified application s discussed on this website are provided by the third-party developers.”
24. At the time of filing of the Complaint, the Respondent’s website resolves to an inactive webpage. A screen capture of the inactive webpage to which the domain name currently resolves is provided. **ANNEXURE 11.**
25. On 26.06.2024, to resolve the matter amicably, the Complaint’s lawyers submitted a Registrar registrant contact form notice. No response was received. Registrar registrant contact form notice are provided. **ANNEXURE 12.**
26. The Respondent was named as the Respondent in the following cases, in each of which the relevant Panel ordered the transfer of the disputed domain name to the Complainant, being either the Complainant or the Complainant’s related company-
 - a) *Whatsapp LLC vs. GB Apps* – PK Case Number C2024-0004 (<*whatsappgb.pk*>);
 - b) *Whatsapp LLC vs. Apps.PK*- WIPO Case No- D2024-2487 (<*gbwhatsapppro.app*>)
 - c) *Whatsapp LLC vs. GB Apps, Apps.Pk*- WIPO Case No- DCO2024-0043 (<*gbwhatsapp.net.co*>)
 - d) *Instagram LLC vs. GB Apps*- INDRP Case No.- 1889 (<*instapro.ind.in*>)
 - e) *Instagram LLC v GB APPS*- INDRP Case No.- 1890 (<*instapro.com.in*>)
 - f) *Whatsapp LLC vs. GB Apps* – PK Case Number C2024-0008 (<*gbwhatsappdownloads.pk*>)

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27. The Complainant has received information in these prior cases, disclosed by the registrar concerned, that demonstrates that GB Apps and Apps.PK are in fact the same registrant. A copy of the full registrant information for GB Apps/Apps.Pk received by the Complainant in the prior case *Instagram LLC vs. GB Apps, supra*, is provided. **ANNEXURE 13.**
28. The disputed domain name completely incorporates the trademark/service mark of the Complainant and the gTLD **.com.in** (According to Google, gTLD means- a generic Top-Level Domain – the last part of a domain name after the final dot (that makes up the URL of a web address aka the site's domain name) will not distinguish the disputed domain name from the Complainant's Trademark.
29. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use their registered and famous trademark "WHATSAPP". The Respondent's domain name is identical to the trading style and trademark in which the Complainant has prior rights.
30. It is again submitted that the Complainant already owns and operates the domain name *whatsapp.com* worldwide with the same domain name and website. Therefore, the disputed domain name *whatsapp.com.in* would inevitably confuse and deceive the consumers, the members of the trade and the public.
31. Prior panels have found under the .IN Policy that "where a Complainant makes out a *prima facie* case that a 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." See *Instagram LLC v. Ding RiGuo.*, INDRP/1183 (<instagram.in>). **ANNEXURE 14.**
32. In *Wacom Co. Ltd. v. Liheng*, INDRP/634 (<wacom.in>) "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.
33. As detailed above, the Respondent's website purported to offer for download an unauthorized modified APK version of the WhatsApp application, which purported to provide WhatsApp "users with a wide range of enhanced features, privacy options and customization possibilities", including the ability to "hide last seen status, blue ticks, and typing indicators".
34. Prior panels have recognized that service providers using a domain name containing a third-party Trademark may be making a *bona fide* offering of goods or services and thus have a legitimate interest in such domain name. Whether or not, this is the case that is typically measured against the list of factors set out in the famous case of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903 (also known as 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 Trademarked goods or services.

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- c. the site must accurately and prominently disclose the registrant's relationship with the Trademark holder; and
 - d. the Respondent must not try to "corner the market" in a domain name that reflects the trademark.
35. The Complainant submits that the Respondent cannot be viewed as a *bona fide* service provider as it does not provide sales or repairs in relation to a product provided by the Complainant, rather, the Respondent is making unauthorized use of the Complainant's Trademark to market its own ancillary services as detailed above.
36. Nevertheless, even if one is to apply the *Oki Data* criteria, the Respondent fails to fulfil the first, third and fourth criteria, namely that:
- a) Offering the services- The Respondent's website purported to offer for download a third-party unauthorized APK version of the WhatsApp application. As such, the Respondent cannot be said to be using the Respondent's website to offer the goods or services at issue, namely the Complainant's WhatsApp application.
 - b) Registrant relationship with the trademark holder- The Respondent's website failed to accurately and prominently disclose its lack of relationship with the Complainant. The wording "GBAPPSS.IN is not affiliated with any official app developers or companies" on the "Disclaimer" page of the Respondent's website constitutes neither an accurate nor a prominent disclaimer as to the lack of relationship with the Complainant. Rather, the Respondent's website displayed repeated references to the Complainant's WHATSAPP Trademark, together with modified versions of the Complainant's figurative WhatsApp telephone Trademark and logo, and made use of a white and green colour scheme that is very similar to that used by the Complainant (see **Annex 5** and **Annex 10**). The Respondent's website was therefore likely to mislead Internet users into believing that it was operated or authorized by the Complainant, which was not the case.
 - c) Respondent has tried to corner the market- The Complainant submits that the Respondent's registration of several domain names comprising the Complainant's WHATSAPP Trademark, as well as several domain names comprising the INSTAGRAM and INSTA Trademarks of the Complainant's related company, Instagram LLC, alongside various descriptive terms as detailed above establishes a pattern of registration of domain names comprising these Trademarks and even constitutes an attempt to "corner the market" in such domain names.
37. The Complainant alluded that WhatsApp Terms of Service, which is available at <https://whatsapp.com/legal/terms-of-service>, states that no one should harm WhatsApp or the users, or adapt, copy, modify, exploit the services in impermissible or unauthorized

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manners or in ways that would harm the services, system of the users of WhatsApp.

ANNEXURE 15.

38. Thus, the Complainant submits that the Respondent's use of the Domain Name does not amount to a *bona fide* offering of goods or services. 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 Trademark rights in the term "whatsapp" or "downloadgbwhatsapp".
39. Given the Complainant's renown and goodwill worldwide and its Trademark rights established long before the registration of the Domain Name, it would be inconceivable for the Respondent to argue that it did not have knowledge of the Complainant's WHATSAPP Trademark when it registered the Domain Name in December 2023. See *WhatsApp Inc. v. Warrick Mulder*, INDRP/1233 (<whatsapp.in>, registered in 2013):
- "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'."
40. The Respondent registered the disputed domain name after the Complainant acquired common law trademark rights in its mark "WHATSAPP". The disputed domain name appears to be registered by the Respondent with the sole purpose of selling it to the Complainant's competitors. This shifts the burden of proof on the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name.
41. Clause 3(d) of the INDRP requires a Respondent to not knowingly use the domain name in violation or abuse of any applicable laws or regulations. The obligations imposed by clause 3(d) are an integral part of the INDRP applicable to all the Respondents, and cannot be ignored, as was observed by the Ld. Arbitrator in the case- *Momondo A/S vs. Ijorghe Ghenrimopuzulu*, INDRP Case No 882.
42. Thus, the Complainant prays for IN Registry of NIXI to transfer the disputed domain name "downloadgbwhatsapp.com.in" to the Complainant along with the costs of the proceedings of the Complainant.

• **By the Respondent-**

43. The Respondent has not replied to the Complaint.

⇒ **ANALYSIS-**

44. According to the above-mentioned facts of the case, the Tribunal has to decide the following points-

A. Whether the Respondent's domain downloadgbwhatsapp.com.in is identical and confusingly similar to the trademark or service mark in which the Complainant has rights.?

As per the Complainant, the website www.whatsapp.com & the application was registered in 2009. WhatsApp LLC is an American company and is a provider of one of the world's most popular mobile messaging applications (or apps). It was acquired by Meta Platforms, Inc. (formerly known

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as Facebook, Inc.) in 2014. WhatsApp allows user across the globe to exchange messages for free via smartphones, including iPhone and Android. The Complainant owns numerous Trademark registrations in the term WHATSAPP in many jurisdictions throughout the world including- Indian Trademark Registration No. 2149059, WHATSAPP, registered on 24 May 2011 and in Pakistan on May 27, 2011. Thereafter, the Trademark WHATSAPP was assigned to the Complainant, and the necessary requests were made to bring the Complainant on record as the Trademark was also registered at the Trademarks Registry in India. Here, it is important to understand that a domain name is registered so that there is an internet address. A trademark is registered to identify a product or service. The meaning of the word "domain name" is "a unique name that identifies a website on the internet" which in this case is "WHATSAPP" which came into use when the Complainant came into business in 2009. The domain name then further ends with an extension, without which the website is incomplete and cannot be opened such as - .in, .com, .org and so on. This extension is called gTLD (generic Top-Level Domain)- the last part of a domain name after the final dot (that makes up the URL of a web address aka the site's domain name). Thus, the Respondent's domain name is identical and similar to the trademark or service mark to that of the Complainant. In *ITC Limited vs. Travel India (INDRP Case No. 065)* it was opined that- the fact that a disputed domain name wholly incorporates a Complainant's Trademark is sufficient to establish the identity or confusing similarity for the purpose of INDRP.

This proves that the Respondent is running its business under the Complainant's domain name making the Respondent's domain name unauthentic. Thus, the Respondent's domain name is identical and confusingly similar to the trademark or service mark in which the Complainant has rights, and the Respondent should not think of it as its own and run its business using this name.

B. Whether the Respondent has any rights or legitimate interests in respect of the domain name?

The Respondent has not replied to the Complaint. This point was to be proved by the Respondent. The Complainant's domain name and the Respondent's domain name are similar since it has used the gTLD ".com.in" and the Complainant has used ".com" which are identical and confusing. It is clear from record that the Complainant started its business with the domain name whatsapp.com in 2009, which establishes that the Complainant is the first and only user of the domain name "WHATSAPP" and not the Respondent. It is also pertinent to mention that the word "WHATSAPP" is the disputed domain name and any the gTLD after this name does not matter as the Complainant is the sole holder of this disputed domain name. In the decision of INDRP in the case-

Nike Inc. v. Nike Innovative CZ Zhaxia (Case No- INDRP/804) which said that- the disputed domain name completely incorporates the trademark/service mark of the Complainant and the gTLD ".com.in" will not distinguish the disputed domain name from the Complainant's Trademark. It is a settled principle that gTLD is not to be considered when determining the similarity of the domain name with a mark under the first element. So, to answer the above

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mentioned question, the Respondent has no rights or legitimate interests concerning the domain name "icicilombard.in".

C. Whether the Respondent's domain name is registered or is being used in absolute bad faith?

The Complainant in its statement supported with evidence has contended that the Respondent is using the disputed domain name since 2023 and is providing similar services to its consumers as is the Complainant. The Complainant is a world known application and website, it is hard to never come across such a prominent phone application, which in today's day and age is used by almost everyone, all over the world. So, the doubt that the Respondent could have missed such an important fact about the Complainant is not believable. The Respondent has registered this website only to mislead and divert customers and to tarnish the trademark or service mark "WHATSAPP". It is to be noted that, the practice of selling domain names is a common practice but the practice is valid only when the domain name is of the rightful and legitimate owner.

The applicant registered the domain name "whatsapp.com" earlier in time (2009) in comparison to the Respondent which was registered on December 7, 2023.

Again, the registration by the Respondent was for reasons un-known since it has not bothered to comply with the orders of this Tribunal but one can only presume that it was done for malicious reasons and to probably get monetarily benefits.

The above-mentioned facts themselves disclose the malice of the Respondent. To answer the question above - the Respondent's domain name registered is being used in absolute bad faith and such use demonstrates that the Respondent has used the disputed domain name to derive a commercial benefit and to tarnish the Complainant's website and domain name image.

⇒ **CONCLUSION-**

34. Considering the above facts, this Tribunal believes that the Complaint has merit. The Respondent did not have the Complainant's permission to use its domain name and hence it had no right to treat the domain name as its own. It is being mentioned again, that without the domain name, there is no gTLD. So, even though the Respondent's domain name is "downloadgbwhatsapp.com.in", the name "WHATSAPP" belongs to the Complainant. The whole dispute in this Complaint is for the domain name and the mere alteration of a domain name or its extension does not affect or alter the ownership thereof.
35. The Complainant brought the name "WHATSAPP" to life, so the Respondent does not have any standing in this domain name anymore.
36. In addition to everything mentioned above, it is pertinent to mention that the Respondent is using the Complainant's domain name but it has not once responded to the Complaint made against it. The Respondent was given notice by the Complainant and by the tribunal. The hard copy of the Complaint was also sent to it through courier (receipt enclosed). This

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clearly shows that the Respondent has nothing to say and is not interested in its domain name and it's all just fable.

37. The Complainant has the full right and ownership of the domain name "WHATSAPP" & "downloadgbwhatsapp.com.in." So, the Complaint is allowed.
38. This Award is being passed as per Clause 5 (e) of the INDRP Rules, and Arbitration Act, 1996.

⇒ **ORDER-**

39. The.IN Registry of NIXI is directed to transfer the disputed domain name "downloadgbwhatsapp.com.in." to the Complainant forthwith. Registry to do the needful.
40. Parties to bear their own costs.
41. This Award is passed today at New Delhi on 27.02.2025.

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Sole Arbitrator
Date- 27.02.2025