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INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

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Certificate Issued Date	: 10-Sep-2021 07:26 PM
Account Reference	: SELFPRINT (PU)/ dl-self/ NEHRU/ DL-DLH
Unique Doc. Reference	: SUBIN-DL DL-SELF40563098554639T
Purchased by	: SARANSH SAINI
Description of Document	: Article 12 Award
Property Description	: ARBITRATION AWARD FOR NIXI COMPLAINT
Consideration Price (Rs.)	: 101 (One Hundred And One only)
First Party	: SRIDHARAN RAJAN RAMKUMAR
Second Party	: SRIDHARAN RAJAN RAMKUMAR
Stamp Duty Paid By	: SRIDHARAN RAJAN RAMKUMAR
Stamp Duty Amount(Rs.)	: 101 (One Hundred And One only)

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P. Anurag

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**BEFORE THE SOLE ARBITRATOR UNDER THE .IN DOMAIN NAME DISPUTE
RESOLUTION POLICY**

INDRP Case No: 1408

IN THE MATTER OF:

WhatsApp LLC
1601 Willow Road
Menlo Park
California 94025
United States of America
Telephone – +33 1 53 67 47 47
Fax – +33 1 53 67 47 48
E-Mail - domaindisputes@hoganlovells.com

...Complainant

VERSUS

Zhao Ke
Weihai Rd. 2001
Shanghai 200050
China
Telephone: +862156331560
E-mail: darkbluebruce@gmail.com
domainstore@163.com

...Respondent

AWARD

I. THE PARTIES:

1. COMPLAINANT

The WhatsApp LLC is a company registered under the Companies Act, 1956, with its registered office at 1601 Willow Road, Menlo Park, California, 94025, United States of America(hereinafter the Complainant or WhatsApp).

2. RESPONDENT

The Respondent is Zhao Ke, having his address as, Weihai Rd. 2001, Shanghai 200050, China.

II. THE DOMAIN NAME AND REGISTRAR:



The disputed domain name: <whatsapp.in>

III. PROCEDURAL HISTORY:

- June 18, 2020: Date of Complaint
- July 12, 2020: The .IN REGISTRY appointed Sridharan Rajan Ramkumar as Sole Arbitrator from its panel as per paragraph 5 (b) of INDRP Rules of Procedure after taking a signed statement of acceptance and declaration of impartiality and independence.
- July 12,2021: Arbitral proceedings were commenced by sending notice to Respondent through e-mail as per Paragraph 4 (c) of INDRP Rules of Procedure, marking copy of the same to Complainant's authorized representative and to the .IN REGISTRY to file response within 15 days of receipt of same. As the Respondent failed to file his response within the stipulated 15 days' time period intimated to all parties, the instant award is being passed.

IV. FACTUAL AND LEGAL BACKGROUND:

1. It was submitted that the Complainant, WhatsApp LLC, is a provider of one of the world's most popular mobile messaging applications (or "app"). Until recently, the Complainant operated under the corporate name WhatsApp Inc. Founded in 2009 and acquired by Facebook, Inc. in 2014, WhatsApp allows users across the globe to exchange messages via smartphones, including iPhone, BlackBerry and Android without having to pay for SMS.
2. It was submitted that its main website available at www.whatsapp.com also allows Internet users to access its messaging platform (see Annex 5 for a screen capture of this website). Since its launch in 2009, WhatsApp has become one of the fastest growing and most popular mobile applications in the world, with 2 billion active users worldwide (as of February 2020).
3. It was submitted that currently inaccessible in mainland China where the Respondent is based, the Complainant is however far from an unknown name to the



Chinese public, particularly taking into account numerous Chinese press articles (notably including China's state media People's Daily) on its popularity worldwide. Needless to say, WhatsApp has acquired considerable reputation and goodwill worldwide, including in India and China. It was submitted that Annex 6 contains information on the Complainant, including company information, WhatsApp's Wikipedia entry, press articles on Facebook's acquisition of WhatsApp in 2014 as well as WhatsApp's rankings and its explosive growth and popularity worldwide, including in India and in China.

4. It was submitted that reflecting its global reach, the Complainant is the owner of a large number of domain names consisting of the WHATSAPP trade mark, for instance, <whatsapp.com>, <whatsapp.net>, <whatsapp.org>, <whatsapp.biz>, <whatsapp.info> as well as under numerous country code extensions, such as <whatsapp.in>, <whatsapp.co.in> (India), <whatsapp.co.za> (South Africa), <whatsapp.us> (United States), <whatsapp.de>(Germany), <whatsapp.do> and <whatsapp.com.do> (Dominican Republic), <whatsapp.eu> (European Union), <whatsapp.be> (Belgium), <whatsapp.cl> (Chile), <whatsapp.hk> (Hong Kong), <whatsapp.ly> and <whatsapp.com.ly> (Libya), <whatsapp.mx> (Mexico), <whatsapp.ru> (Russia), <whatsapp.rs> (Serbia), <whatsapp.me> (Montenegro), <whatsapp.es> (Spain), <whatsapp.tw> (Taiwan), <whatsapp.uk> and <whatsapp.co.uk> (United Kingdom). Copies of sample WHOIS records were attached as Annexure 7.

5. It was submitted that the fame of the Complainant's trademarks is also evidenced by the number of cybercasters, who have sought to unfairly and illegally exploit the very significant consumer recognition and goodwill attached to its trade marks. Prior domain name dispute panels have recognized the strength and renown of the Complainant's WHATSAPP trade mark, and have ordered infringing respondents to transfer or revoke the disputed domain names to the Complainant. See, for example, *WhatsApp Inc. v. Francisco Costa*, [WIPO Case No. D2015-0909](#) (<webwhatsapp.com> registered in 2012):

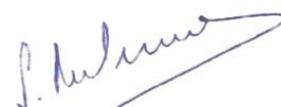
"The Panel agrees with Complainant that it is likely improbable that Respondent did not know about Complainant's WHATSAPP trademark

at the time it registered the Disputed Domain Name considering the worldwide renown it has acquired amongst mobile applications, and the impressive number of users it has gathered since the launch of the WhatsApp services in 2009."

6. It was submitted that in addition to its strong online presence, the Complainant has secured ownership of numerous trade mark registrations in the term WHATSAPP in many jurisdictions around the world, including in India and in China (where the Respondent is based), as detailed below.
7. It was submitted that the term WHATSAPP is highly distinctive and exclusively associated with the Complainant. All search results obtained by typing the term WHATSAPP into Google search engine available at www.google.com, www.google.co.in and www.google.ee refer to the Complainant (Annex 8).
8. It was submitted that the Complainant's valuable reputation offline and online is not only crucial to maintain the value and distinctiveness of its trade marks, but also vital to the success, integrity and protection of its business and consumers. It was submitted that accordingly, the Complainant devotes significant resources to protect its trademark rights and its goodwill in forums such as this administrative proceeding.

The Respondent, the Domain Name and the associated website

9. It was submitted that the Complainant was recently alerted to the fact that a typo squatted version of its WHATSAPP trade mark (i.e., "WhatsApp") had been registered under the .IN country code Top Level Domain (ccTLD) by the Respondent.
10. It was submitted that at the time of filing, the Domain Name points to a page stating "The content of the page cannot be displayed". Screen capture of the website associated with the Domain Name were attached as Annexure 9.
11. It was submitted that on 13 December 2020 and 13 February 2021, the



Complainant's lawyers received messages from the email address darkbluebruce@gmail.com proposing to sell the Domain Name. On 15 February 2021, the Complainant's lawyers replied with a cease-and-desist letter by email asserting the Complainant's trade mark rights and asking the sender of the email to transfer the Domain Name to the Complainant. On 17 February 2021, the user of the address darkbluebruce@gmail.com replied, offering to sell the Domain Name for USD 6,500 (Annex 10).

12. A search carried out by the Complainant has revealed the Respondent used to be associated with hundreds of trade mark abusive domain names including <facebhok.com>, <workplacebyfacebook.co.uk>, <mozilla.co.za>, <armanibeauty.hk>, <britishairways.jp>, <macbookair.in>, <acne.asia>, <adecco-usa.com>, <amazonbook.in>, <yvessaintlaurent.co.za>, <windows8.in>, <amazonabebooks.in>, <bnpparibas-am.asia>, <bosch.in> and <dailymotion.co.in> (Annexure 4).

13. It was submitted that moreover, the Respondent was involved in at least 29 previous domain name proceedings where the panellists ordered the transfer of the disputed domain names to the complainants, including:

- (i) *Mozilla Foundation, Mozilla Corporation v. Zhao Ke*, [ZA2017-0262](#), <mozilla.co.za>;
- (ii) *GA Modefine S.A. v. Zhao Ke*, [WIPO Case No. D2012-0595](#), <armanibeautyusa.com>;
- (iii) *L'Oréal, YSL Beauté, The Body Shop International PLC v. Zhao Ke, Yeli*, [WIPO Case No. D2013-1264](#), <inoa-usa.com> et al;
- (iv) *DD IP Holder LLC v. Zhao Ke*, [WIPO Case No. DES2018-0006](#), <dunkindonuts.es>;
- (v) *Stuart Weitzman IP, LLC v. Zhao Ke*, [WIPO Case No. DTV2014-0004](#), <stuartweitzman.tv>;
- (vi) *Alibaba Group Holding Limited v. Zhao Ke*, [WIPO Case No. DES2019-0027](#), <taobao.es>;
- (vii) *Robert Bosch GmbH v. Zhao Ke*, [INDRP / 894](#), <bosch.in>; *ASOS plc v. Zhao Ke*, [WIPO Case No. D2017-2458](#), <asos.asia>;



- (viii) *Sopra Steria Group v. Zhao Ke*, [WIPO Case No. D2016-0151](#), <soprasteriahr.com>;
- (ix) *Capital IQ, Inc. v. Zhao Ke*, [WIPO Case No. D2013-1543](#), <capitaliq.org>;
- (x) *Lagardere S.C.A. v. Zhao Ke*, [WIPO Case No. D2012-0473](#), <lagarderepublicite.com>;
- (xi) *Guccio Gucci S.p.A. v. Zhao Ke / Yeli / Corporate Domains, Inc / Li Ye*, [WIPO Case No. D2012-0357](#), <groupgucci.com> et al.;
- (xii) *L'Oréal v. Zhao Ke*, [WIPO Case No. D2012-0179](#), <shuueamuraus.com>;
- (xiii) *Dr. Martens International Trading GmbH, Dr. Maertens Marketing GmbH v. Zhao Ke / Hao Domains Services* [WIPO Case No. D2011-1943](#), <drmartensstore.com>;
- (xiv) *Dr. Ing. h.c. F. Porsche AG v. Zhao Ke*, [WIPO Case No. D2011-1913](#), <porschese.com>;
- (xv) *Basf SE v. Zhao Ke*, [WIPO Case No. D2011-1910](#), <basf-usa.com>;
- (xvi) *Missoni S.p.A. v. Zhao Ke*, [WIPO Case No. D2011-1768](#), <hotelmissoni.net>;
- (xvii) *L'Oréal, Laboratoire Garnier et Compagnie, Lancôme Parfums et Beauté et Compagnie v. Zhao Ke, Zeng Wei, Zhu Tao, Yang Yong, Ma Yun, Ye Genrong, Ye Li, ChinaDNS Inc., DomainJet, Inc., Hao Domains Services*, [WIPO Case No. D2011-1608](#), <lancomeparfums.com> et al.;
- (xviii) *Société Nationale des Chemins de Fer Français SNCF, SNCF International v. Zhao Ke*, [WIPO Case No. D2011-1503](#), <sncfinternational.com> et al.;
- (xix) *Automobile Club di Brescia v. Zhao Ke*, [WIPO Case No. DRO2018-0012](#), <1000miglia.ro>;
- (xx) *Jemella Group Limited v. Zhao Ke*, [WIPO Case No. DNL2017-0065](#), <ghdhair.nl>;
- (xxi) *Rolls Royce Motor Cars Limited v. Zhao Ke*, [WIPO Case No. DNL2015-0062](#), <rolls-roycemotorcars.nl>;
- (xxii) *Arla Foods Amba v. Zhao Ke*, [WIPO Case No. DMX2016-0012](#), <arlafoods.mx>;
- (xxiii) *Rolls-Royce Motor Cars Limited v. Zhao Ke*, [WIPO Case No. DMX2016-0006](#), <rolls-roycemotorcars.mx>;
- (xxiv) *Hugo Boss Trade Mark Management GmbH & Co KG and Hugo Boss AG*



- v. *Zhao Ke*, WIPO Case No. DME2020-0007, <hugoboss.me>;
- (xxv) *Stuart Weitzman IP, LLC v. Zhao Ke*, [WIPO Case No. DME2015-0003](#), <stuartweitzman.me>;
- (xxvi) *FXCM Global Services, LLC c. Zhao Ke*, [WIPO Case No. DES2020-0048](#), <fxcm.es>;
- (xxvii) *Boehringer Ingelheim Pharma GmbH & Co. KG v. Zhao Ke*, [WIPO Case No. DES2016-0035](#), <dulcolax.es>; and
- (xxviii) *Automobile Club di Brescia v. Zhao Ke, Domain Smart*, [WIPO Case No. DAE2016-0001](#), <millemiglia.ae>.

It was submitted that given the blatantly abusive registration of the Domain Name and the Respondent's pattern of conduct in registering trademark-abusive domain names, the Complainant had no choice but to file 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.

V. **PARTIES CONTENTIONS:**

1. Complainant
 - (a) The Domain Name is identical or confusingly similar to a Trademark of the Complainant
 - (b) Respondent has no legitimate interest in the domain name
 - (c) Respondent has registered the domain name in bad faith
2. The Complainant asserts that each of the aforementioned factors are established, as substantiated as substantiated below:
3. The Domain Name is identical or confusingly similar to the Complainant's trademarks.
4. It was submitted that WhatsApp owns numerous trade mark registrations in the term WHATSAPP in many jurisdictions throughout the world, notably in India and in China (where the Respondent is based). Such trade mark registrations include



but are not limited to the following:

Indian Trade mark No. 2149059, WHATSAPP, registered on 24 May 2011;

Chinese Trade mark No. 21470703A, WHATSAPP, registered on 21 December 2017;

United States Trade mark No. 3939463, WHATSAPP, registered on 5 April 2011;

International Trade mark No. 1085539, WHATSAPP, registered on 24 May 2011.

Copies of these trade mark registrations are attached at Annex 11. The Complainant has therefore established rights in the term WHATSAPP.

5. It was submitted by the Complainant that the Domain Name is confusingly similar to a trade mark in which the Complainant has rights.
6. It was submitted that the Domain Name consists of a typosquatted version of the Complainant's WHATSAPP trade mark (the letter "s" is added). Prior panels deciding under the UDRP have held that such an addition is insufficient to distinguish a domain name from a complainant's trade mark. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"):

"A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element."

See also *WhatsApp, Inc. v. Abdallah Almqbali*, [WIPO Case No. D2016-1287](#), <watsabsplus.com> et al.:

"The Panel also notes that in the disputed domain names <whatsapp-plus.ws>, <whatsappplus.com>, <whatsappplus.info>, <whatsappplus.net> and <whatsappplus.org> the WHATSAPP mark is incorporated in its entirety, with the addition of the generic term "plus". It is well

established that such kind of additions generally is inapt to distinguish the domain name from the mark. Also, the addition of an "s" to the mark to make the plural form in some of these domain names does not avoid the impression of confusing similarity."

Also in *WhatsApp Inc. v. Jay Neeme*, INDRP / 1279, <whatspps.in> and *WhatsAppInc. v. Warrick Mulder*, [INDRP / 1233](#), <whatsap.in>:

"The Disputed Domain Name consists of a typo squatted version of the Complainant's WHATSAPP trade mark (the last letter "p" is missing) and merely adds the generic top-level domain, ".in". Prior panels deciding under the Uniform Domain Name Dispute Resolution Policy (UDRP) have held that such visually minimal and aurally irrelevant omission is insufficient to distinguish a domain name from a complainant's trade mark".

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. See *AB Electrolux v. GaoGou of YERECT*, [INDRP / 630](#), <zanussi.in>:

"The expressions .in and .com need to be discarded while comparing the marks with the domain names".

Therefore, the Domain Name is confusingly similar to the Complainant's trade mark in accordance with paragraph 4 (i) of the .IN Policy.

The Respondent has no rights or legitimate interests in respect of the Domain Name

7. It was submitted by the Complainant that the Respondent has no rights or legitimate interests in the Domain Name.
8. Numerous previous panels have found that "once the Complainant makes a *prima facie* showing that the registrant does not have rights or legitimate interests in the



domain name, the evidentiary burden shifts to the registrant to rebut the showing by providing evidence of its rights or interests in the domain name". See WIPO Overview 3.0, section and *HSBC Holdings plc v. Hooman Esmail Zadeh*, [INDRP / 032](#), <hsbc.in>.

9. It was submitted by the Complainant that the Respondent is unable to invoke any of the circumstances set out in Paragraph 6 of the .IN Policy in order to demonstrate rights or legitimate interests in the Domain Name.
10. It was submitted that the Complainant has not authorised, licensed or otherwise allowed the Respondent to make any use of its WHATSAPP trade mark, in a domain name or otherwise. Previous panels deciding under the .IN Policy have already held 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. See *Wacom Co. Ltd. v. Liheng*, [INDRP / 634](#), <wacom.in> (finding no legitimate interest where "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").
11. It was submitted that the Respondent cannot assert that, prior to any notice of this dispute, he was using, or had made demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services in accordance with paragraph 6(a) of the .IN Policy. As described above, the Domain Name has never resolved to an active website. It was submitted that such passive holding of the Domain Name cannot constitute a *bona fide* offering of goods and services under the .IN Policy. See, for example, *Avast Software s.r.o. v. Shashi Kant*, [INDRP / 1196](#), <avast.net.in>.
12. The Respondent, Zhao Ke, cannot conceivably assert that he is commonly known by the terms WHATSAPPS or WHATSAPP, in accordance with Paragraph 6(b) of the .IN Policy, given the notoriety surrounding the Complainant's trade marks and the fact that this term is exclusively associated with the Complainant (Annex 8). Furthermore, to the best of the Complainant's knowledge, the Respondent has not secured or even sought to secure any trade mark rights in the terms



WHATSAPPS or WHATSAPP. See *Shulton Inc. v Mr. Bhaskar*, [INDRP / 483](#), <oldspice.in> (finding no rights or legitimate interests in the disputed domain name as the respondent did not have trade mark rights in a word corresponding to the disputed domain name and there was no evidence that the respondent was commonly known by the disputed domain name).

13. Neither can the Respondent assert that he has made or is currently making a legitimate non-commercial or fair use of the Domain Name as per Paragraph 6(c) of the .IN Policy given the above-described pointing of the Domain Name. As previously mentioned, the Complainant's lawyers received a message offering the Domain Name for sale. Such use of the Domain Name, which is confusingly similar to the Complainant's distinctive and well-known trade mark, cannot be considered as *bona fide* use, nor can it be deemed as non-commercial or fair use of the Domain Name within the meaning of 6(c) of the .IN Policy. See *Turner Network Television, Inc. v. Expired Domain Resource****Maybe For Sale on Dynadot Marketplace c/o Dynadot*, [WIPO Case No. D2018-1036](#), <tntsuspensecollection.com>.
14. Finally, given the Complainant's renown worldwide, including in India as well as in China where the Respondent is based, it is simply not possible to conceive of any plausible actual or contemplated active use of the Domain Name by the Respondent (or a third party) that would not be illegitimate, as it would inevitably result in misleading diversion and taking unfair advantage of the Complainant's rights. See *Telstra Corporation Limited v. Nuclear Marshmallows*, [WIPO Case No. D2000-0003](#).
15. The Complainant therefore asserts that the Respondent has no rights or legitimate interests in the Domain Name, in accordance with paragraph 4(ii) of the .IN Policy.

The Domain Name was registered or is being used in bad faith

16. The Complainant asserts that the Domain Name was registered *and* is being used in bad faith although the .IN Policy only requires that a complainant demonstrate that the disputed domain name was either registered *or* being used in bad faith. It was



submitted that Paragraph 7 of the .IN Policy lists three circumstances which, in particular but without limitation, may be evidence of registration and use of a domain name in bad faith for the purposes of Paragraph 4(iii) of the .IN Policy.

17. It is submitted that Paragraphs 7(a) and 7(b) are of particular relevance in the present case, although there are other factors not listed in Paragraph 7 of the .IN Policy that strongly indicate the Respondent's bad faith.

Registration in bad faith

18. It was submitted by the Complainant's WHATSAPP trademark is highly distinctive and well-known throughout the world. It has been continuously and extensively used since 2009 in connection with an instant messaging "app" for mobile devices and has rapidly acquired considerable goodwill and renown worldwide. See *WhatsApp Inc. v. Francisco Costa*, [WIPO Case No. D2015-0909](#), <webwhatsapp.com> registered in 2012 (where the panel found that the WHATSAPP trade mark had acquired "worldwide renown... amongst mobile applications" and an "impressive number of users... since the launch of the WhatsApp services in 2009").

19. It was submitted that given the Complainant's renown and goodwill worldwide and particularly its popularity and trade mark rights well established throughout the world, including in China where the Respondent is based (see Annex 6 for the press articles on the Complainant's popularity worldwide and Annex 11 for copies of the Complainant's trade mark registrations established both in India and in China prior to the registration of the Domain Name), it would be inconceivable for the Respondent to argue that he did not have knowledge of the Complainant's WHATSAPP trade mark when he registered the Domain Name in 2020. See *WhatsApp Inc. v. Francisco Costa*, [WIPO Case No. D2015-0909](#), <webwhatsapp.com> registered in 2012.

20. It was submitted that furthermore, pursuant to Paragraph 3 of the .IN Policy, "it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand



owner". See *PJS International S.A. v. Xiangwang*, [INDRP / 616](#), <parajumpers.in>. In this sense, the Respondent's failure to take efforts to screen its registration against readily-available online databases so as to avoid registering trademark-abusive domain names constitutes bad faith under the IN. Policy.

21. It was submitted that the fact that the Complainant's lawyers received an unsolicited offer to sell the Domain Name for USD 6,500 clearly demonstrates that the Respondent registered the Domain Name primarily for the purpose of selling it to the Complainant for valuable consideration in excess of his documented out-of-pocket costs directly related to the Domain Name, in accordance with Paragraph 7(a) of the .IN Policy. See *Educational Testing Service v. TOEFL*, [WIPO Case No. D2000-0044](#), <toefl.com>. See also *Facebook Inc. v. Alice Collier*, INDRP / 1284, <facebookhome.in>.
22. The Complainant further submitted that the Respondent has engaged in a pattern of conduct within the meaning of Paragraph 7(b) of the .IN Policy by registering a large number of trade mark abusive domain names. As stated above, the Respondent was involved in at least 29 domain name proceedings where the panellists ordered the transfer of the disputed domain names to the complainants (paragraph 24, supra). This pattern of abusive domain name registrations can only be interpreted as a strong indication of his bad faith in the present case. See Annex 4 and *Microsoft Corporation v. Gioacchino Zerbo*, [WIPO Case No. D2005-0644](#), <internetexplorer.com>.

Use in bad faith

23. It was submitted that as described in the foregoing paragraphs, the Domain Name is not resolving to an active website. However, it is a well-established principle that it is not necessary for a disputed domain name to be associated with an active website for a finding of bad faith to be made under the Policy. See *Aditya Birla Management Corporation v. Chinmay*, [INDRP / 1197](#), <adityabirla.in>. It was submitted that to the best of the Complainant's knowledge, the Respondent has never actively used the Domain Name. It is submitted that such passive holding of the Domain Name would not preclude a finding of bad faith given the overall



circumstances of the case. See WIPO Overview 3.0, [section 3.3](#):

"From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding.

While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domainname may be put."

24. The Complainant submitted that three of the abovementioned factors apply in the present case.

- (i) The Complainant's WHATSAPP trade mark is distinctive, is well known throughout the world, and is exclusively associated with the Complainant. See Annex 6, see also *WhatsApp Inc. v. Francisco Costa*, supra.
- (ii) That there is no evidence of the Respondent's actual or contemplated *bona fide* use of the Domain Name.
- (iii) The Complainant submits that the Domain Name carries a high risk of implied affiliation with the Complainant's WHATSAPP trade mark. As stated above, in light of the nature of the Domain Name itself, *i.e.*, an obvious misspelling of the Complainant's trade mark, the Complainant submits that there is no plausible good-faith use to which the Domain Name could be put that would not have the effect of misleading consumers as to the source or



affiliation of the Domain Name. See *Telstra Corporation Limited v. Nuclear Marshmallows*, [WIPO Case No. D2000-0003](#).

25. In view of the above, the Complainant asserts that the Domain Name was registered and is being used in bad faith in accordance with Paragraph 4(iii) of the .IN Policy.

VI. DISCUSSION AND FINDINGS:

In view of all the above facts and well-known legal propositions and legal precedents I find and hold as under:

- i) that that the Respondent's domain name is deceptively similar/identical to the trademark/ trade name in which the Complainant has rights.
- ii) that the disputed domain name WHATSAPPS.IN registered by the Respondent incorporates the Complainant's well-known WHATSAPPS trademarks in their entirety.
- iii) that due to the fame of the distinctive and reputation of the trade mark WHATSAPPS, the first impression in the minds of the users shall be that the Respondent's website originates from, is associated with, or is sponsored by the Complainant.
- iv) that the Respondent has no rights or legitimate interests in respect of the domain name.
- v) that none of the exemptions provided under paragraph 7 of the .IN Domain Dispute Resolution Policy (INDRP) apply in the present circumstances.
- vi) that Complainant has not authorized, licensed, or permitted the Respondent to register or use the Domain Name or to use the WHATSAPPS trademark.
- vii) that the Complainant has prior rights in the trademark WHATSAPPS which precedes the registration of the disputed domain name by the Respondent.
- viii) that the Complainant has therefore established a *prima facie* case that the Respondent have no rights and legitimate interests in the disputed domain name and thereby the burden of proof shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Domain Name.
- ix) that the disputed domain name has been registered in bad faith



- x) that the disputed domain name is deceptively similar to the Complainant's registered trademark WHATSAPPS, in which the Respondent cannot have any rights or legitimate interest.

That I received no Response / Reply to the Complaint on behalf of the Respondent though proper service was effected to her email addresses provided and I am satisfied that the Respondent has received the copy of the Complaint as well as the Order and direction of this Tribunal to submit its reply within 15 days of receipt of the Complaint and the email of the Tribunal. I have therefore proceeded only on the basis of available documents and assertions on the law and facts made before me.

DECISION

- a) In view of the above facts and circumstances, it is clear that the Complainant has succeeded in its complaint.
- b) That the .IN Registry of NIXI is hereby directed to transfer the domain name/URL of the Respondent "WHATSAPPS.IN" to the Complainant;
- c) In the facts and circumstances of the case no cost or penalty is imposed upon the Respondent. The Award is accordingly passed on this 6th Day of September, 2021.



Sridharan Rajan Ramkumar
Sole Arbitrator

Date: 06/09/2021

Place: New Delhi