Panel Decision for dispute CAC-ADREU-007387

Case number	CAC-ADREU-007387
Time of filing	2017-03-24 10:11:25
Domain names	whatsapps.eu

Case administrator

Aneta Jelenová (Case admin)

Complainant

Organization	WhatsApp Inc.

Respondent

Name	Picasa Picasa

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of other pending or decided proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is WhatsApp Inc, a company incorporated under US law providing mobile messaging applications that allow users to exchange messages via smartphones without having to pay for SMS. It has over 1 billion monthly active users worldwide.

The Complainant has registered the WHATSAPP word trademark in numerous states throughout the world, including a community trademark in several classes listed in the annexes to the Complaint. Inter alia the word trademark registered in European Union, reg. No. 009986514 for the term of 10 years, filed on 23 May 2011, registered on 25 October 2011 in respect of goods and services in classes 9, 38 and 42.

The disputed domain name WHATSAPPS was registered on 4 March 2016 by the Respondent. The Complainant's lawyers did send a cease and desist letter to the Respondent by email on 13 May 2016 requesting him to transfer the disputed domain name to the Complainant and to refrain from using his trademark in a domain name or otherwise. The Respondent did not respond.

The Complainant filed the Complaint on 16 December 2016 and requested that the Panel appointed in this proceeding cancels the disputed domain name in accordance with Paragraph B1(b)(11) of the ADR Rules,

The Respondent has not confirmed receiving the notice of the ADR Proceeding by accessing the online platform and was notified of his failure to comply with the deadline indicated in the notification of deficiencies in response on 12 February 2017.

A. COMPLAINANT

1) The Complainant claims that the disputed domain name is confusingly similar to his trademarks in accordance with paragraph B11(d)(1)(i) of the ADR Rules.

2) It further claims that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph B11(d)(1)(ii) of the ADR Rules.

3) It submits finally that the disputed domain name was registered and used in bad faith in accordance with paragraph B11(d)(1)(iii) of the ADR Rules.

B. RESPONDENT

The Respondent did not submit a response within 30 working days from the delivery of a notification according to the requirement of the ADR rules and supplemental rules nor did it later and is considered being in default.

DISCUSSION AND FINDINGS

Article 22(10) of the Regulation No 874/2004 and Paragraph B10(a) of the ADR rules provide that in the event that a party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other party.

The Complainant has provided sufficient evidence that it is the proprietor of many trade mark registrations for the word WHATSAPP, which were all registered before the disputed domain name.

1) The disputed domain name <WHATSAPPS.eu> incorporates the word WHATSAPP in its entirety and only differs from the Complainant's trademark by the addition of the one letter "s" and the suffix .eu.

It is the consensus view among the panelists that for assessing identity or confusing similarity the .eu suffix has to be disregarded, while adding the letter "s" is largely insufficient to distinguish the disputed domain name from the trademark.

See CAC Case No 06585,: "It is either the possessive “s” in Jack Wolfskin’s or the plural “s” in Jack Wolfskins. Neither of these is sufficient to make the marks dissimilar."

Therefore the Panel finds that the disputed domain name is highly similar to the trademarks registered on behalf of the Complainant well before its registration.

2) The Complainant states that the Respondent is not his licensee and that he has not otherwise authorised or allowed him to make any use of its trademark WHATSAPP, be it in a domain name or otherwise.

For the purposes of paragraph B11(d)(1)(ii) of the ADR rules the Respondent could demonstrate its rights or legitimate interests to the disputed domain name by his use of the disputed domain name in connection with the offering of goods or services or the preparation to do so prior to any notice of this dispute.

However, the disputed domain name previously resolved to a website that supposedly allowed users to hack and spy on Whatsapp's users accounts and gain access to their data. Such services do not demonstrate a legitimate interest and certainly not a right to the disputed domain name.

There is no indication that the Respondent is known by the name WHATSAPPS by anyone else than itself and its intention to mislead consumers or harm the reputation of the Complainant is obvious.

Therefore the panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name.

3) For the purposes of paragraph B11(d)(1)(iii) of the ADR rules, the particular circumstance, if found by the Panel to be present, that the domain name was intentionally used to attract Internet users for commercial gain to the Respondent’s website by creating a likelihood of confusion with a name on which a right is recognized or established, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website may be evidence of the registration or use of a domain name in bad faith.

The Panel agrees with the Complainant that the Respondent simply could not have chosen the disputed domain name for any reason other than to create a false association with the Complainant in order to take advantage of the Complainant's goodwill and reputation, considering his billion users worldwide.

The Respondent could not argue that he had no knowledge of the rights of the Complainant, while his subsequent use of the disputed domain name to resolve to a website that purportedly allowed to users to spy on Whatsapp users' accounts leaves no doubt as to his awareness.

Nor does the provision of false contact information in the WHOIS of the disputed domain name, including his name and physical address, see CAC Case New York University No 04925: "Respondent's failure to provide correct contact information also is evidence of

bad faith." .

Therefore the Respondent both registered and used the disputed domain name in bad faith.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name <WHATSAPPS.EU> be revoked.

PANELISTS

Name	**Herman Sobrie**

DATE OF PANEL DECISION 2017-03-21

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: whatsapps.eu

II. Country of the Complainant: USA, country of the Respondent: France.

III. Date of registration of the domain name: 4 March 2016.

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision: word trademark registered in European Union, reg. No. 009986514 for the term of 10 years, filed on 23 May 2011, registered on 25 October 2011 in respect of goods and services in classes 9, 38 and 42.

V. Response submitted: No

VI. Domain name/s is confusingly similar to the protected right of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: a domain name resolving to a website that supposedly allows users to hack and spy on the Complainant's user accounts and gain acces to their data does not demonstrate a legitimate intrest and certainly not a right to the domain name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: the Respondent's use of the domain name to resolve to a website that purportedly allows users to spy on the Complainant's user accounts leaves no doubt as to his bad faith both in registration and use of the domain name.

IX. Other substantial facts the Panel considers relevant: Respondent's failure to provide correct contact information also is evidence of bad faith.

X. Dispute Result: Revocation of the disputed domain name.

XI. Procedural factors the Panel considers relevant: No

XII. [If transfer to Complainant] Is Complainant eligible? Not applicable