



.hk Domain Name Dispute Resolution
ARBITRATION PANEL DECISION

Complainant: WhatsApp Inc.

Respondent: T LAM

Case Number: DHK-1300100

Contested Domain Name: <whatsapp.hk>

Panel Member: Adam Samuel

1. Parties and Contested Domain Name

The Complainant is WhatsApp Inc. of 3561 Homestead Road, #416, Santa Clara, CA 95051, USA

The Respondent is the T LAM of an unknown address in Hong Kong.

The contested domain name is <whatsapp.hk>, registered by Respondent with the Hong Kong Domain Name Registration Company.

2. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Center (the "Center") on 26 August 2013. On that day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On 27 August 2013, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the HKDNR Domain Name Dispute Resolution Policy (the "Policy") and the HKDNR Domain Name Dispute Resolution Rules (the "Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on 28 August 2013. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on 19 September 2013.

The Center appointed Adam Samuel as the sole panelist in this matter on 23 September 2013. The Panel finds that it was properly constituted. The Panel has submitted the

Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

3. Factual Background

The Complainant is a US corporation which provides mobile applications involving cross-platform mobile messaging. The Complainant is the legal owner of a Hong Kong trademark registration 301926874 for WHATSAPP, dated 25 May 2011. The disputed domain name was registered on 9 September 2012.

4. Parties' Contentions

The Complainant

The Complainant is the registered owner of the WHATSAPP trade mark in Hong Kong and elsewhere, notably the USA and China. It provides its mobile applications using the trademark WHATSAPP. It has previously won a number of cases involving the registration of domain names incorporating its WHATSAPP trademark.

The disputed domain name is identical to the Complainant's WHATSAPP trademark registration in Hong Kong. The Respondent has never been authorized to register the disputed domain name. The Respondent has neither acquired trade or service mark rights in the disputed domain name. Nor is he making a legitimate non-commercial or fair use of the disputed domain name. The Respondent has no connection with the Complainants and has not received any license or consent from the Complainant to use its mark in any manner.

The Respondent must have known or ought to have known of the Complainant's exclusive rights in the WHATSAPP trademark in numerous countries and, in particular, Hong Kong where the Respondent is located. The Respondent elected to register the disputed domain after the Complainant had obtained registration of its WHATSAPP trademark in Hong Kong with the bad faith intention of exploiting the Complainant's goodwill in the trademark concerned. The Respondent has not provided an address when registering the disputed domain name and has used the e-mail address, "addresswhatsapp.hk@hotmail.com" which incorporates entirely the Complainant's WHATSAPP trademark as the Respondent's contact information for the disputed domain name. The Respondent has made use of the disputed domain name to mislead the public into believing that the website to which it resolves is an official website of the Complainant by using the Complainant's trademarks, using the e-mail address, "sales@whatsapp.hk" which incorporates entirely the Complainant's trademark on the "contact us" page of the Respondent's website. The Respondent has attempted to use the disputed domain name to attract, for commercial gain internet users to the website to which the disputed domain name resolves by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of the website and the services offered through it. The Respondent failed to respond to the Complainant's letter of 23 July 2013 requesting the transfer of the disputed domain name. The Respondent has engaged in similar patterns of behaviour with regard to other

companies' trademarks in order to prevent the owner of the trade or service mark from reflecting the mark in a corresponding domain name.

The Respondent

The Respondent has not replied to the Complaint.

5. Findings

According to Paragraph 4a of the HKDNR Domain Name Dispute Resolution Policy (the "Policy") which is applicable hereto, the Complainant has the burden of proving that:

- (i) the Disputed Domain is identical or confusingly similar to a trade mark or service mark in Hong Kong in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain; and
- (iii) the Disputed Domain has been registered and is being used in bad faith; and
- (iv) if the Disputed Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of Domain Name.

(1). Identical/confusing similarity

The disputed domain name consists of the Complainant's trademark and the necessary addition of ".hk". It is at the very least confusingly similar to the Complainant's trademark.

(2). Rights or Legitimate Interests of Respondent

The Respondent is not called "Whatsapp" or anything similar to these words and does not appear to trade under that or any related name. There is no evidence that the Complainant has ever authorized the Respondent to use its trademarks. For these reasons, and in the absence of any response on this point, notably one contradicting the Complainant's claim that the Respondent has never been connected to it in any way, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

(3). Bad faith

The domain name replicates the Complainant's trademark and was registered after the Hong Kong registration of that trademark. The website to which the domain name originally resolved is no longer available on the internet. However, the screenshots provided with the Complaint contain references to "sms" and "wechat" alongside the disputed domain name. Other references on the website make it reasonably clear that whoever designed the site was well aware of the world of text messaging and website applications. The clear

impression that one gains is that the Respondent registered this domain name while well aware of the Complainant's trademark.

In this Panel's view, it is impossible, at least without a full Response to the Complaint, to identify any other reason why the Respondent registered the disputed domain name except to benefit in some way from the Complainant's trademark. The only explanation of what has happened seems to be that the Respondent's motive in registering the disputed domain name was either to disrupt the Complainant's relationship with its customers or potential customers, attempt to attract Internet users for potential gain or persuade the Complainant to buy the disputed domain name for an amount in excess of the Respondent's out-of-pocket expenses. These all constitute evidence of registration and use in bad faith.

In the circumstances, it is unnecessary to deal with the other submissions made by the Complainant.

The Panel concludes that the Respondent registered and is using the disputed domain name in bad faith.

(4). If the Disputed Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of domain name

Paragraph 4(c) of the Policy states: "For the purposes of Paragraph 4(a)(iv), the Registrant shall have violated the eligibility requirements for any Domain Name registered in the Individual Domain Name categories. These include the name incorporated in the Domain Name is not the Registrant's legal name for .hk domain names as set out in the Registration Agreement and the Registration Policies, Procedures and Guidelines and the Published Policies." Here, it is reasonably apparent that the name incorporated in the Domain Name is not the Registrant's legal name. So, the Complainant has proved this element as well.

6. Conclusions

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <whatsapp.hk> be transferred to the Complainants.

Dated 7 October 2013



<Name of the Panelist>