

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Privacy services provided by Withheld for Privacy ehf / DIEGO DIAZ
Case No. D2022-2354

1. The Parties

The Complainant is Fenix International Limited, c/o Walters Law Group, United States.

The Respondent is Privacy services provided by Withheld for Privacy ehf, Iceland / DIEGO DIAZ, Venezuela (Bolivarian Republic of).

2. The Domain Name and Registrar

The disputed domain name <onlypacks.club> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 29, 2022. On June 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 29, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 30, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on July 1, 2022.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 26, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on August 11, 2022. 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.

4. Factual Background

The Complainant has been operating since January 2013, a website located at “www.onlyfans.com” which provides a social media platform enabling users to post and subscribe to audio-visual content on the Internet.

By 2022, the Complainant’s website has more than 180 million registered users. According to Alexa Internet, the Complainant’s website is the 177th most popular website on the World Wide Web and the 75th most popular website in the United States.

The Complainant holds a number of registered trademarks around the world for ONLYFANS including:

- United Kingdom Registered Trademark No. UK00917912377, which has been registered with effect from June 5, 2018, in respect of a range of goods and services in International Classes 9, 35, 38, 41, and 42;
- European Union Registered Trademark No. 017912377, registered on January 9, 2019, with effect from June 5, 2018, in respect of a range of goods and services in International Classes 9, 35, 38, 41, and 42; and,
- United States Registered Trademark No. 5,769,267, which was registered in the Principal Register on June 4, 2019, in respect of “arranging subscriptions of the online publication of others” in International Class 35, and claiming to have been first used in commerce in the United States in July 2016.

Registrations of this trademark have also been pursued in numerous other countries around the world.

The disputed domain name was registered on November 12, 2020.

The disputed domain name is currently inactive. However, at the time of filing the Complaint the disputed domain name contained, according to the Complaint, content pirated from the Complainant’s users displaying the message in Spanish “PACKS ONLYFANS EXCLUSIVOS”, and a logo that includes “ONLYFANS”.

5. Parties’ Contentions

A. Complainant

The disputed domain name incorporates part of the ONLYFANS trademark namely the word “only” and then adds the term “packs”. The disputed domain name recognizably refers to the Complainant’s ONLYFANS trademark is confusingly similar to that trademark.

The Respondent has no rights or legitimate interests in the disputed domain name. No evidence indicates that the Respondent is known by the terms included in the disputed domain name, and the Respondent has no authorization to use the ONLYFANS mark. In addition, the Respondent is pirating material from the Complainant’s website, which is clearly not legitimate.

The disputed domain name was registered and is being used in bad faith. The Respondent was undoubtedly aware of the ONLYFANS trademark when it registered the disputed domain name. The content of the Respondent’s website corroborates the bad faith registration and use of the disputed domain name.

The terms “packs” which creates a risk of implied affiliation since it refers to the collection of photographs stolen from the Complainant’s services and offered on the disputed domain name free of charge.

The Complaint request the cancellation of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of such domain name; and

(iii) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the ONLYFANS trademark.

The Panel finds the disputed domain name is confusingly similar to the ONLYFANS trademark. It seems to the Panel that this trademark conflates two ordinary English words – “only” and “fans” which each are of approximately equal weight in the resulting singular trademark. The disputed domain name removes one of those words and adds the term “packs”.

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). It is established that, where a mark is recognizable in a disputed domain name, the disputed domain name is considered to be confusingly similar to the registered mark. The question therefore is whether “only” is a sufficient approximation to “onlyfans” in the context of the case analysis at hand. The Panel accepts this may be a case-specific issue but has formed the view that this is the type of case referred to at WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) section 1.7: “In specific limited instances, while not a replacement as such for the typical side-by-side comparison, where a panel would benefit from affirmation as to confusing similarity with the complainant’s mark, the broader case context such as website content trading off the complainant’s reputation, or a pattern of multiple respondent domain names targeting the complainant’s mark within the same proceeding, may support a finding of confusing similarity.”

The content of the Respondent’s website is undoubtedly directed at trading off the Complainant’s reputation and this supports the conclusion that the disputed domain name is confusingly similar to the Complainant’s trademark. The Panel moreover notes that the term “packs” appearing after the invoked portion of the mark clearly signals an intent to conjure up (in a clearly infringing manner) the Complainant’s trademark.

The Panel also notes that several past WIPO decisions found confusing similarity where the disputed domain name consisted of only a portion of the Complainant’s ONLYFANS trademark See *Fenix International Limited v. Host Master, 1337 Services LLC*, WIPO Case No. [D2021-0582](#) (<ofans.party>); *Fenix International Limited v. Privacy service provided by Withheld for Privacy ehf / Nemanja Krecelj*, WIPO Case No. [D2022-0216](#) (<leakedonly.com>); *Fenix International v. Privacy Service Provided by Withheld for Privacy ehf / Eduardo Guerrero Romero*, WIPO Case No. [D2021-3180](#) (<onlypacks.net>); *Fenix*

International Limited v. Privacy Service Provided by Withheld for Privacy ehf / Pablo Espinoza, WIPO Case No. [D2021-3200](#) (<only-megapacks.com>) and *Fenix International Limited v. Nemanja Krecelj, Rocket Science Group*, WIPO Case No. [D2021-2667](#) (<leakedfanscontent.com>); *Fenix International Limited v. Privacy Services Provided by Withheld for Privacy ehf / Rob Visser*, WIPO Case No. [D2022-1897](#) (<onlycams.vip>) and *Fenix International Limited c/o Walters Law Group v. Jiri Veselovsky*, WIPO Case No. [D2022-2352](#) (<onlythots.org>).

It is also well established that the generic Top-Level Domain (“gTLD”) (in this case “.club”) does not generally affect the comparison between the disputed domain name and the Complainant’s trademark for the purpose of determining whether it is identical or confusingly similar.

Accordingly, the Panel finds that the disputed domain name is confusingly to the Complainant’s ONLYFANS trademark, and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

There is no evidence of the existence of any of those rights or legitimate interests. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or its trademarks. The Complainant has prior rights in the trademarks which precede the Respondent’s registration of the disputed domain name. The Respondent is not using the disputed domain name which cannot constitute a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. The Complainant has therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to rebut the Complainant’s *prima facie* case.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant must prove both that the disputed domain name was registered and used in bad faith.

The Complainant’s allegations with regard to the Respondent’s registration and use of the disputed domain name in bad faith have been considered by the Panel. The Respondent has not contested these allegations.

As explained the term “only fans” does not have any additional meaning, except to identify the Complainant. The addition of a generic term to the disputed domain name and the content of the website at the disputed domain name is related to the Complainant activities. In addition, the content of the website at the disputed domain name clearly refers to the Complainant’s ONLYFANS trademark. Thus, it is the view of the Panel that the Respondent was aware of the Complainant and its trademark when it registered the disputed

domain name.

Therefore, in light of the evidence available, the Panel is of the view that by using the disputed domain name as described above the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of that website. In accordance with paragraph 4(b)(iv) of the Policy, this shall be evidence of both the registration and use in bad faith of the disputed domain name for the purposes as set out in paragraph 4(a)(iii) of the Policy.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

7. Decision

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 <onlypacks.club> be cancelled.

/Pablo A. Palazzi/

Pablo A. Palazzi

Sole Panelist

Date: September 1, 2022