

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Aniket salunkhe, Anny
Case No. D2023-3614

1. The Parties

The Complainant is Fenix International Limited, United States of America (“United States”), represented by Walters Law Group, United States.

The Respondent is Aniket salunkhe, Anny, India.

2. The Domain Name and Registrar

The disputed domain name <onlyfansapk.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 28, 2023. On August 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 31, 2023, 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 (Registration Private, Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 5, 2023 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/amended Complaint on September 5, 2023.

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 September 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2023. The Respondent did not submit a formal response. Accordingly, the Center notified the Respondent with Commencement of Panel Appointment Process.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on October 19, 2023. 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 created in 2016 and is operating a social media platform which allows users to post and subscribe to audiovisual content on the Internet. In 2023, the Complainant's platform has more than 180 million registered users, and is the 94th most popular website on the World Wide Web (and the 53rd most popular in the United States).

The Complainant owns several registered trademarks containing the term "onlyfans" or the OF logo, including the:

- European Union Trade mark No. EU017912377, registered on January 9, 2019;
- United Kingdom Trade mark No. UK00917912377, registered on January 9, 2019; and
- United States Trademark No. 5,769,267, registered on June 4, 2019 (together hereinafter referred to as "the Mark").

The Complainant also owns *inter alia* the <onlyfans.com> domain name, registered on January 29, 2013.

The disputed domain name was registered on March 31, 2023, and resolved to a commercial website displaying the Mark and offering the Complainant's services.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name reproduces the Mark, in which it has rights, and is confusingly similar to the Mark insofar as the disputed domain name contains the element "onlyfans" and that the addition of the letters "apk" after "onlyfans" is not capable of dispelling the confusing similarity, as the Mark remains recognizable in the disputed domain name.

The Complainant also contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, is not commonly known as "onlyfansapk" and never had any affiliation with the Complainant (which never authorized the Respondent to use the Mark in any manner).

Furthermore, the Complainant contends that the Respondent had knowledge of the Mark and registered the disputed domain name in bad faith, and is also using it in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Aspects - Failure to respond

As aforementioned, no formal Response was received from the Respondent.

Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

The Panel does not find any exceptional circumstance in this case which would cause the Panel to proceed differently.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the event of a default.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's default as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the default, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by defaulting and failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Requirements of paragraph 4(a) of the Policy

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the dominant feature of the Mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of another term here, such as "apk" (allegedly an acronym for "Android Package Kit"), may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Regarding the generic Top-Level Domain ("gTLD") ".com" in the disputed domain name, it is well established that a gTLD does not generally affect the assessment of a domain name for the purpose of determining identity or confusingly similarity. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant’s arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Mark.

First, the registration of a domain name that is confusingly similar to a famous or widely-known trademark by an entity that has no relationship to that mark may be, depending on the circumstances, evidence of opportunistic bad faith. See section 3.1.4, [WIPO Overview 3.0](#).

Second, it is well-established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may be, in certain circumstances, evidence of bad faith registration. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

In this case, the Complainant provided evidence that numerous UDRP panels have found that the Mark is well known. See for instance *Fenix International Limited v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Leon Key*, WIPO Case No. [D2021-3132](#); *Fenix International Limited v. Privacy Service Provided by Withheld for Privacy ehf / Andrei Ivanov*, WIPO Case No. [D2021-3384](#); *Fenix International Limited v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Rajav Raj*, WIPO Case No. [D2021-3181](#); *Fenix International Limited v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Eduardo Guerrero Romero*, WIPO Case No. [D2021-3180](#); *Fenix International Limited v. Host Master, 1337 Services LLC*, WIPO Case No. [D2021-2652](#); *Fenix International Limited v. Ladislav Hricko / 1a world Ltd, admin Me / Whois Privacy Corp.*, WIPO Case No. [D2021-2522](#); *Fenix International Limited c/o Walters Law Group v. Scripcariu Bogdan*, WIPO Case No. [D2021-2068](#); *Fenix International Limited v. Dontrell Mcfarland*, WIPO Case No. [D2021-2232](#);

Fenix International Limited c/o Walters Law Group v. Marouan Elmarchoum, Marouan, WIPO Case No. [D2021-1583](#); *Fenix International Limited c/o Walters Law Group v. Reshad Bashir, AXC BV*, WIPO Case No. [D2021-1603](#); *Fenix International Limited c/o Walters Law Group v. Andrei Ivanov*, WIPO Case No. [D2021-1284](#); *Fenix International Limited v. Datos privados*, WIPO Case No. [D2021-1306](#); *Fenix International Limited v. Nicolas Landry*, WIPO Case No. [D2021-0881](#); *Fenix International Limited v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Andrei Ivanov*, WIPO Case No. [D2021-1339](#); *Fenix International Limited v. Private Whois, Knock Knock WHOIS Not There, LLC / Alberto Sainz*, WIPO Case No. [D2021-0864](#); *Fenix International Limited v. Leon Key, Key International enterprises LLC*, WIPO Case No. [D2021-0836](#); *Fenix International Limited v. Kiril Kirilov*, WIPO Case No. [D2021-0853](#); *Fenix International Limited v. Jayson Many, media friend / WhoisGuard, Inc.*, WIPO Case No. [D2021-0880](#); *Fenix International Limited c/o Walters Law Group v. Juan Anton, Onlyfanx*, WIPO Case No. [D2021-0837](#); *Fenix International Limited v. WhoisGuard Protected, WhoisGuard Inc. / Genadiy Ivanov*, WIPO Case No. [D2021-0828](#); *Fenix International Limited v. WhoisGuard Protected, WhoisGuard Inc. / kadene wignall*, WIPO Case No. [D2021-0825](#); *Fenix International Limited v. Danesco Trading Ltd. / Mikasantik Dikalov*, WIPO Case No. [D2021-0593](#); *Fenix International Limited v. Andre Fabrici*, WIPO Case No. [D2021-0377](#); *Fenix International Limited v. Leandro Vinicius Bau*, WIPO Case No. [D2021-0584](#); *Fenix International Limited v. Host Master, 1337 Services LLC*, WIPO Case No. [D2021-0582](#); *Fenix International Limited c/o Walters Law Group v. WhoisGuard, Inc., WhoisGuard Protected / Wrenn Taylor*, WIPO Case No. [D2021-0350](#); *Fenix International Limited v. WhoisGuard Protected, WhoisGuard, Inc. / henry chandler*, WIPO Case No. [D2021-0340](#); *Fenix International Limited v. WhoisGuard Protected, WhoisGuard, Inc. / Yazid Laiss / Stive Belb / Ahmed Bel Bouahli*, WIPO Case No. [D2021-0152](#); *Fenix International Limited c/o Walters Law Group v. WhoisGuard, Inc., WhoisGuard Protected / Marry Mae Cerna*, WIPO Case No. [D2021-0327](#); *Fenix International Limited v. Domains By Proxy, LLC. / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-3447](#); *Fenix International Limited v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Juan Paolo Dino*, WIPO Case No. [D2020-3460](#); *Fenix International Limited v. WhoisGuard Protected, WhoisGuard, Inc. / Howard Jones*, WIPO Case No. [D2020-3444](#); *Fenix International Limited v. Domains By Proxy, LLC, Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-3048](#); *Fenix International Limited v. Perfect Privacy, LLC/ Chad Moston, Speedplexer*, WIPO Case No. [D2020-1162](#).

Considering this evidence, the Panel finds that it is impossible to believe that the Respondent chose to register the disputed domain name randomly with no knowledge of the Mark. See *Barney's Inc. v. BNY Bulletin Board*, WIPO Case No. [D2000-0059](#); *Kate Spade, LLC v. Darmstadter Designs*, WIPO Case No. [D2001-1384](#); citing *Cellular One Group v. Paul Brien*, WIPO Case No. [D2000-0028](#); and *Sembcorp Industries Limited v. Hu Huan Xin*, WIPO Case No. [D2001-1092](#).

In addition, the Respondent used a privacy service to hide her identity and contact details to register the disputed domain name, which prevented a cease-and-desist demand sent by the Complainant on June 1, 2023 from effectively reaching her. This reinforces the Panel's finding of bad faith.

Finally, some UDRP panels have held that in certain circumstances, registrants of domain names have a duty to abstain from registering and using a domain name, which is either identical or confusingly similar to a prior trademark held by others and which would infringe upon or otherwise violate the rights of a third party.

See Policy, paragraph 2(b); *Nike, Inc. v. B. B. de Boer*, WIPO Case No. [D2000-1397](#); *Nuplex Industries Limited v. Nuplex*, WIPO Case No. [D2007-0078](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *BOUYGUES v. Chengzhang, Lu Ciagao*, WIPO Case No. [D2007-1325](#); *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#); and *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#).

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <onlyfansapk.com>, be transferred to the Complainant.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: November 2, 2023