

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Stuart Biggs, Little Nippers
Case No. D2023-3886

1. The Parties

The Complainant is Fenix International Limited c/o Walters Law Group, United States of America (“USA”).

The Respondent is Stuart Biggs, Little Nippers, United Kingdom.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 17, 2023. On September 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 18, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 20, 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 on September 20, 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 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 18, 2023.

The Center appointed Cherise Valles as the sole panelist in this matter on October 27, 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 owns and operates the website located at the domain name <onlyfans.com>. It has used its domain for several years “in connection with the provision of a social media platform that allows users to post and subscribe to audiovisual content on the World Wide Web” (Annex B of the Complaint). It has registrations in multiple classes for the “ONLYFANS” word (and variations thereof) in the European Union, the United Kingdom, and the United States. The Complainant has had registered trademark rights as early as June 5, 2018, and it has used the Marks since at least June 4, 2016.

Jurisdiction	Registration Number	Trademark	Registration Date
European Union	EUIPO Trade Mark No. EU017912377	ONLYFANS	January 9, 2019
European Union	EUIPO Trade Mark No. EU017946559	ONLYFANS	January 9, 2019
United Kingdom	UKIPO Trade Mark No. UK00917912377	ONLYFANS	January 9, 2019
United Kingdom	UKIPO Trade Mark No. UK00917946559	ONLYFANS	January 9, 2019
United States	USPTO Registration No. 5769267	ONLYFANS	June 4, 2019
United States	USPTO Registration No. 5769268	ONLYFANS.COM	June 4, 2019
United States	USPTO Registration No. 6918292	OFTV	December 6, 2022

The Complainant also asserts that it has developed extensive common law rights throughout the world.

The disputed domain name <onlyfansleakedppv.com> was registered on March 10, 2023.

At the time of the decision, the disputed domain name resolves to a website that “offers and advertises adult entertainment services (including content pirated from Complainant’s users) in direct competition with Complainant’s services... in the field of adult entertainment” (Annex E of the Complaint).

5. Parties’ Contentions

A. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

- The disputed domain name is confusingly similar to the Complainant’s registered ONLYFANS Marks, in light of the fact that it wholly incorporates the Complainant’s mark.

The Respondent lacks rights or legitimate interests in the disputed domain name.

- The Complainant states that the Respondent should be considered as having no rights or legitimate interests in the disputed domain name. The Complainant has never licensed or otherwise permitted the Respondent to use its trademarks or to register any domain name that included its trademarks.

The disputed domain name has been registered and is being used in bad faith.

- The Complainant asserts that the disputed domain name was registered and is being used in bad faith. The mere fact of registration of a domain name that is confusingly similar or identical to a famous trademark by an entity that has no relationship to that mark is itself evidence of bad faith registration and use.

The Complainant requests the Panel to issue a decision finding that the disputed domain name be transferred to the Complainant, in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

In terms of paragraph 4(a) of the Policy, for a Complainant to succeed, the Complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and,
- (iii) the disputed domain name has been registered or is being used in bad faith.

The Respondent has failed to file a Response in this proceeding. The Panel may draw appropriate inferences from the available evidence submitted by the Complainant.

A. Identical or Confusingly Similar

To prove this element, the Complainant must have relevant UDRP rights in a trademark and the disputed domain name must be identical or confusingly similar to such trademark.

The Complainant submits that the disputed domain name is confusingly similar to the trademark in which it has rights. The disputed domain name incorporates the ONLYFANS mark in its entirety with the addition of the term "leakedppv" (the Complainant argues that 'ppv' likely stands for 'pay per view'). Given the Complainant's trademark registration as detailed above, the Panel finds that the Complainant has established its trademark rights in "ONLYFANS" for the purposes of paragraph 4(a)(i) of the Policy.

As stated in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element".

The Complainant asserts that the disputed domain name is confusing similar to its trademarks. The disputed domain name incorporates said trademark in its entirety with the addition of the term "leakedppv". As stated in section 1.9 of the [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". Thus, the addition of the term "leakedppv" in the disputed domain name does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's ONLYFANS trademark.

It is standard practice when comparing a disputed domain name to a complainant's trademark not to take the Top-Level Domain ("TLD",) into account. See section 1.11.1 of the [WIPO Overview 3.0](#), which states that the "applicable TLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and, as such, is disregarded under the first element of the confusing similarity test". See *WhoisGuard Protected / Wrenn Taylor*, WIPO Case No. [D2021-0350](#). In the present case, the TLD ".com" is disregarded under the first element of the confusing similarity test.

In the light of the foregoing, the Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark and that the Complainant has met its burden with respect to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out a non-exhaustive set of circumstances, any of which, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate a respondent's rights or legitimate interests to a domain name for the purposes of paragraph 4(a)(ii) of the Policy, namely:

"[a]ny of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (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."

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, whether on the basis of the non-exhaustive examples set out in paragraph 4(c) of the Policy or on any other basis, and the Panel draws inferences from this failure, where appropriate, in accordance with paragraph 14(b) of the Rules.

It is recognised in cases under the Policy that it is sufficient for a complainant to make a *prima facie* case under the second element of the Policy, not rebutted by the respondent, that the respondent has no rights or legitimate interests in the domain name concerned (See, for example, *Paris Saint-Germain Football v. Daniel Macias Barajas, International Camps Network*, WIPO Case No. [D2021-0019](#); *Spinrite Inc. v. WhoisGuard, Inc. / Gabriella Garlo*, WIPO Case No. [D2021-0012](#) and the discussion in section 2.1 of the [WIPO Overview 3.0](#)). If a respondent fails to rebut such a *prima facie* case by demonstrating rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy, or on any other basis, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

On the evidence before the Panel, it appears that the Respondent is not affiliated or related to the Complainant in any way. The Respondent does not seem to be licensed, or otherwise authorized, be it directly or indirectly, to register or use the Complainant's ONLYFANS trademark in any manner, including in, or as part of, the disputed domain name.

The Complainant asserts that the Respondent is unable to invoke any of the circumstances set out in paragraph 4(c) of the Policy in order to demonstrate rights or legitimate interests in the disputed domain name. In particular, the Respondent cannot assert that, prior to any notice of this dispute, he was using, or had made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services in accordance with paragraph 4(c)(i) of the Policy.

The Complainant submits that the Respondent is not a licensee, authorized agent of the Complainant, or in any other way authorized to use the Complainant's trademark. Specifically, the Respondent is not an authorized reseller of the Complainant and has not been authorized to register and use the disputed domain name.

According to [WIPO Overview 3.0](#), section 2.5.1, a disputed domain name comprising the complainant's trademark and certain additional terms cannot constitute fair use, when doing so effectively impersonates or suggests sponsorship or endorsement by the complainant. See *WhoisGuard, Inc. / henry chandler*, WIPO Case No. [D2021-0340](#).

In light of the foregoing, the Panel finds that the Complainant has established an un rebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and concludes that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

For this element, the Complainant is required to prove that the disputed domain name was registered or that it was used in bad faith. The term "bad faith" is "broadly understood to occur where a respondent takes unfair advantage of, or otherwise abuses, a complainant's mark". See section 3.1 of the WIPO Overview. Paragraph 4(b) of the Policy sets out four non-exhaustive examples of circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, namely:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

In the present case, the Complainant's submissions relate to paragraph 4(b)(iv) of the Policy.

Previous UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typographical errors or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#). In the present case, the disputed domain name was registered on March 10, 2023, long after the Complainant attained registered rights in its trademarks for ONLYFANS. Bad faith registration can be found where "the widespread use and numerous registrations of the Marks ... long predate Respondent's registration." See *Fenix International Limited v. c/o who is privacy.com / Tulip Trading Company, Tulip Trading Company Limited*, WIPO Case No. [DIO2020-0038](#).

Furthermore, the nature of the disputed domain name, consisting of the Complainant's trademark with the addition of the term "leakedppv", carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#). In the present case, the Respondent seeks to attract Internet users interested in the service to its website by creating a likelihood of confusion with the Complainant's trademark.

The disputed domain name currently resolves to a website that “offers and advertises adult entertainment services (including content pirated from Complainant’s users) in direct competition with Complainant’s services... in the field of adult entertainment’.” (Annex C and E to the Complaint).

As a final element showing a lack of *bona fides*, the Respondent did not reply to the Cease-and-Desist letter sent by the Complainant. As the panel found in *The Great Eastern Life Assurance Company Limited v. Unasi Inc.*, WIPO Case No. [D2005-1218](#), “[b]y operation of a common sense evidentiary principle, the Respondent’s failure to counter the allegations of the cease-and-desist letter amounts to adoptive admission of the allegations”.

Bad faith use may be found where users are directed to a commercial site that offers goods and services in direct competition with the trademark owner’s business. See *Fenix International Limited v. Registration Private, Domains By Proxy, LLC. / Jason Douglas*, WIPO Case No. [D2021-0829](#).

The Respondent has not participated in the administrative proceeding and has not answered the Complainant’s contentions. The fact that the Respondent has decided not to provide any legitimate explanation or to assert any alleged good faith motivation in respect of the registration or use of the disputed domain name in the face of the Complainant’s contentions can be regarded as an indicator of registration or use in bad faith. See *Novartis AG. v. Mathew French*, WIPO Case No. [DIO2020-0011](#).

Accordingly, the Panel concludes that the Complainant has satisfied its burden of showing bad faith registration and use of the disputed domain name under paragraph 4(a)(iv) 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 <onlyfansleakedppv.com> be transferred to the Complainant.

/Cherise Valles/

Cherise Valles

Sole Panelist

Date: November 10, 2023