

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Aroshi Islam
Case No. D2023-4436

1. The Parties

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

The Respondent is Aroshi Islam, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <celebrityonlyfansleaked.site> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 26, 2023. On October 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 26, 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 October 27, 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 October 27, 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 October 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 19, 2023. The Respondent sent email communications to the Center on November 4, 5, and 7, 2023. The Center informed the Parties that it will proceed to panel appointment on November 23, 2023.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on November 29, 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 is a company active in the online media sector. The Complainant operates a social media platform allowing users to post and subscribe to audiovisual content on the Internet. The Complainant states that in the year 2023, the website hosted at its official domain name <onlyfans.com> is one of the most popular websites in the world, with more than 180 million registered users. According to the third party service Similarweb, it is the 94th most popular website on the Internet, and it is the 53rd most popular website in the USA.

The Complainant provides evidence that it owns an international trademark portfolio for ONLYFANS, including but not limited to the United Kingdom trademark registration Nos. UK00917912377 and UK00917946559 registered on January 9, 2019; the European Union trademark registration Nos. 017912377 and 017946559 registered on January 9, 2019; and, United States Trademark Nos. 5769267 and 5769268 registered on June 4, 2019. The Complainant also has a strong online presence and also owns a portfolio of official domain names incorporating its ONLYFANS mark.

The disputed domain name was registered on April 27, 2023, and is therefore of a later date than the abovementioned trademarks of the Complainant. The Complainant submits evidence that the disputed domain name directs to an active website which offers adult content. However, on the date of this Decision, the Panel notes that the disputed domain name directs to an inactive website.

The Complainant also provides evidence that it attempted to settle this matter amicably by sending a cease-and-desist letter to the Respondent on July 9, 2023, requesting, *inter alia*, for the disputed domain name to be cancelled. However, the Complainant did not receive any response to the demand letter from the Respondent.

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 the disputed domain name is confusingly similar to its trademark for ONLYFANS, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith to divert Internet users to the Respondent's website which competes with its website.

The Complainant argues that its trademark ONLYFANS is internationally famous, and refers to a large number of prior UDRP panel decisions which have recognized its rights in the ONLYFANS trademarks and their strong reputation and fame, such as *Fenix International Limited v. Danesco Trading Ltd.* / *Mikasantik Dikalov*, WIPO Case No. [D2021-0593](#), and *Fenix International Limited c/o Walters Law Group v. WhoisGuard, Inc., WhoisGuard Protected / Marry Mae Cerna*, WIPO Case No. [D2021-0327](#). The Complainant essentially contends that the disputed domain name is confusingly similar to the Complainant's intensively used trademarks, as it incorporates the Complainant's ONLYFANS trademark, with the addition of the merely descriptive words "celebrity" and "leaked" to the disputed domain name. The Complainant also provides evidence that the disputed domain name is linked to an active webpage which makes available adult content and which directly competes with the Complainant's website, which, the Complainant argues,

confers no rights or legitimate interests in the disputed domain name on the Respondent. The Complainant also argues that the Respondent had or can be expected to have had prior notice of the Complainant's trademarks at the time the disputed domain name was registered, and that the selection of the disputed domain name was therefore intentional and designed to divert Internet traffic from the Complainant's site to the Respondent's website. The Complainant essentially contends that the registration and use of the disputed domain name in such circumstances constitutes registration and use in bad faith.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions. In its informal communications to the Center, the Respondent asked for assistance in resolving the matter, expressing confusion as to the nature of the Respondent's "mistake", and later stated that it had contacted the Registrar regarding the cancellation of the disputed domain name.

6. Discussion and Findings

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 entirety of the mark is reproduced 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.

Although the addition of other terms, here "celebrity" and "leaked", may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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. Rather, the Respondent has seemingly consented to the remedy, which reinforces the notion that the Respondent has no rights or legitimate interests in the disputed domain name.

Moreover, upon review of the facts and evidence submitted, the Panel notes that the disputed domain name resolved to an active website which offered adult content to Internet users. In the Panel's view, no rights or legitimate interests can derive from using a disputed domain name which is confusingly similar to a third party trademark to host websites for commercial gain that advertise goods and services in direct competition with those of the trademark owner (see in this regard also earlier UDRP decisions such as *Fenix International Limited v. Danesco Trading Ltd. / Mikasantik Dikalov*, WIPO Case No. [D2021-0593](#) and *Fenix International Limited v. IVAN KOBETS, MINERAL*, WIPO Case No. [D2023-0690](#)). Additionally, the Panel agrees with the Complainant that the nature of the disputed domain name, incorporating the Complainant's ONLYFANS trademarks, combined with the terms "celebrity" and "leaked", carries a risk of implied affiliation and cannot constitute fair use as the terms "celebrity" and "leaked" appear to refer to the disputed domain name providing leaked content of celebrities taken from the Complainant's official website (see [WIPO Overview 3.0](#), section 2.5.1).

However, the Panel notes that on the date of this Decision, the disputed domain name directs to an inactive website. In this regard, the Panel finds that holding a domain name passively, without making any use of it, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent (see in this regard earlier UDRP decisions such as *Bollore SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#), and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

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

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent has registered a domain name which is confusingly similar to the Complainant's internationally well-known, intensely used, and distinctive trademarks. The Panel deducts from this fact that by registering the disputed domain name, the Respondent deliberately and consciously targeted the Complainant's prior trademarks for ONLYFANS. The Panel finds that this creates a presumption of bad faith. In this regard, the Panel refers to the [WIPO Overview 3.0](#), section 3.1.4, which states "[p]anel[s] have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos 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." The Panel also notes that the Complainant's trademarks in this case predate the registration date of the disputed domain name by several years, and that the Respondent could not have been reasonably unaware of them. The Panel considers that the Respondent has intentionally and opportunistically targeted the Complainant's trademark for ONLYFANS. The Panel deducts from these efforts to consciously target the Complainant's prior registered trademarks that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain name. The Panel also notes that even a cursory Internet search at the time of registration of the disputed domain name would have made it clear to the Respondent that the Complainant owned prior rights in its trademarks for ONLYFANS. In the Panel's view, these elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name 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.

Particularly, the Complainant provides evidence that the website linked to the disputed domain name made available pornographic content to Internet users. The Panel finds that this means that the Respondent attempts to direct unsuspecting Internet users to its commercial website which offers services in direct competition with the trademark owner, which clearly constitutes use in bad faith of the disputed domain name (see in this regard also prior UDRP decisions such as *Guardant, Inc. v. Jeff Park*, WIPO Case No. [D2009-0631](#), and *Fenix International Limited v. IVAN KOBETS, MINERAL*, WIPO Case No. [D2023-0690](#)). The Panel concludes that such use constitutes an intentional attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's marks as to the source, affiliation, or endorsement of the disputed domain name. This constitutes direct evidence of the Respondent's bad faith under paragraph 4(b)(iv) of the Policy. The Panel therefore finds that it has been demonstrated that the Respondent has used, and is using the disputed domain name in bad faith.

However, on the date of this Decision, the disputed domain name links to an inactive website. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds that the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put, [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the internationally well-known nature of the Complainant's marks, their distinctiveness and intensive use, the competing use made of the disputed domain name by the Respondent before it was deactivated, the composition of the disputed domain name (clearly containing the Complainant's marks in their entirety), and the implausibility of any good faith use to which the domain name may be put. The Panel finds that in the circumstances of this case the current passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <celebrityonlyfansleaked.site> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: December 11, 2023