

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Ivan Bondarev

Case No. D2023-4544

1. The Parties

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

The Respondent is Ivan Bondarev, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <onlyfan.cyou> is registered with Spaceship, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 1, 2023. On November 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 3, 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 Purposes) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 7, 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 November 8, 2023.

The Center verified that the Complaint [together with the amendment to the Complaint/amended 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 November 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 7, 2023.

The Center appointed Beatrice Onica Jarka as the sole panelist in this matter on December 22, 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> and has used its domain name 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.

In providing its services, the Complainant has made extensive use of the ONLYFANS trademark.

The Complainant has registered rights in the trademark ONLYFANS in multiple classes with the European Union Intellectual Property Office (“EUIPO”), namely, European Union Trade Mark No. 017912377 (registered on January 9, 2019) and 017946559 (registered on January 9, 2019). The Complainant also has a registration for ONLYFANS in Class 35 in the United States of America with the United States Patent and Trademark Office (“USPTO”) (United States Registration No. 5769267 (registered on June 4, 2019)) and a registration for ONLYFANS.COM in Class 35 (United States Registration No. 5769268 (registered on June 4, 2019)).

Following BREXIT, the Complainant also holds automatic registrations with the United Kingdom Intellectual Property Office (“UKIPO”) (United Kingdom Trade Mark No. UK00917912377 (registered on January 9, 2019) and UK00917946559 (registered on January 9, 2019)), and other registrations under the Madrid Protocol.

In addition, the Complainant appears to hold extensive common law rights in the trademark ONLYFANS, as the website at <onlyfans.com> registered on January 29, 2013 is one of the most popular websites in the world, with more than 180 million registered users.

Respondent who appears to be a citizen of Ukraine registered the disputed domain name on June 29, 2023.

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 is identical or confusingly similar to Complainant’s marks, because, absent the “s” in “fan”, it fully and solely incorporates the marks with the addition of the Top Level Domain (“TLD”). Neither dropping a single letter from the mark the use of the top level domain does nothing to avoid confusing similarity.
- the Respondent has no connection or affiliation with Complainant and has not received any authorization, license, or consent, whether express or implied, to use the marks in the disputed domain name or in any other manner.
- the Respondent is not commonly known by the marks and does not hold any trademarks for the disputed domain name.
- the website at the disputed domain name purports to offer the chance to “meet local girls in your area” while providing nude images in direct competition with Complainant’s services, including “providing entertainment services ... in the nature of a website featuring non-downloadable video, photographs, images, audio, and ... in the field of adult entertainment.”
- using a disputed domain name to host commercial websites that advertise goods and services in direct competition with the trademark owner does not give rise to legitimate rights or interests.
- the disputed domain name currently resolves to a website that collects personal information from users including their age, password, email, gender, and a series of survey questions about their romantic and sexual interests and use of third-party social media websites.

- the Respondent's use of the disputed domain name to offer illegal services is not in connection with a bona fide offering of goods or services.
- the Respondent registered and used the disputed domain name not because it refers to or is associated with Respondent, but because the disputed domain name is identical or confusingly similar to the domain name and marks used by Complainant in association with Complainant's services.
- the Respondent's conduct amounts to clear bad faith.
- the disputed domain name was registered on June 29, 2023, long after the Complainant attained registered rights in the marks and long after the Complainant had common law rights in the marks which had acquired distinctiveness. This acquired distinctiveness was so strong that the Complainant's website is among the top 100 most popular websites in the world.
- the Complainant's marks have been recognised in numerous previous UDRP proceedings as "internationally well-known amongst the relevant public" such that the respondent either knew or ought to have known of Complainant's marks and likely registered the domain to target the marks.
- the Respondent registered the disputed domain name to target the marks.
- the Respondent registered the confusingly similar disputed domain name to offer services in direct competition with the Complainant, including "providing entertainment services ... in the nature of a website featuring non-downloadable video, photographs, images, audio, and ... in the field of adult entertainment."
- Complainant attempted to send a full cease-and-desist letter to Respondent on September 12, 2023, demanding the Respondent stop using and cancel the disputed domain name.
- given the lack of an email address for Respondent, the full demand letter was sent to the registrar's abuse address, and a shorter demand was sent through the registrar's registrant contact form.
- Respondent did not respond, thus necessitating the filing the Complaint, which is further evidence of bad faith.

B. Respondent

Although summoned at all the available addresses, the Respondent did not reply to the Complainant's contentions.

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.

The Complainant has shown rights in respect of a ONLYFANS trademark for the purposes of the Policy as per [WIPO Overview 3.0](#), section 1.2.1., and has also established unregistered trademark or service mark rights for the purposes of the Policy, as per [WIPO Overview 3.0](#), section 1.3.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark ONLYFANS of the Complainant for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. because, absent the "s" in "fan", it fully and solely incorporates the marks with the addition of the TLD.

The Panel finds the mark is completely recognisable within the disputed domain name. Neither dropping a single letter from the mark or the use of the top level domain does nothing to avoid confusing similarity.

Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy, as per [WIPO Overview 3.0](#), section 1.7.

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 recognised 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.

According to the Complainant, the website at the disputed domain name purports to offer the chance to “meet local girls in your area” while providing nude images in direct competition with Complainant’s services, including “providing entertainment services ... in the nature of a website featuring non-downloadable video, photographs, images, audio, and ... in the field of adult entertainment.” Moreover, the disputed domain name currently resolves to a website that collects personal information from users including their age, password, email, gender, and a series of survey questions about their romantic and sexual interests and use of third-party social media websites. It is the opinion of the Complainant that such use of the disputed domain name is not in connection with a bona fide offering of goods or services.

As mentioned, the Respondent has not rebutted any of the assertions of the Complainant; it is obvious that using the mark of the Complainant in the competing manner in which the Respondent has, cannot amount to bona fide offering of goods and services given the well known character of the Complainant.

Consequently, 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 appears to have:

- registered the disputed domain name to target the marks.
- registered the confusingly similar disputed domain name to offer services in direct competition with the Complainant, including “providing entertainment services ... in the nature of a website featuring non-downloadable video, photographs, images, audio, and ... in the field of adult entertainment.”
- never answered to the cease-and-desist letter to Respondent on September 12, 2023, demanding the Respondent stop using and cancel the disputed domain name, sent through the registrar’s registrant contact form.

The evidence in the case file as presented does indicate that the Respondent’s aim in registering the disputed domain name was to unfairly profit from or exploit the Complainant’s trademark.

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 <onlyfan.cyou> be transferred to the Complainant.

/Dr. Beatrice Onica Jarka/

Dr. Beatrice Onica Jarka

Sole Panelist

Date: January 5, 2024