

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Eng Evano

Case No. D2024-0445

1. The Parties

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

The Respondent is Eng Evano, Egypt.

2. The Domain Names and Registrar

The disputed domain names <onlyfansmx.com> and <onlyfansmz.com> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2024. On January 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 31, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names 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 February 1, 2024, 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 February 1, 2024.

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 February 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 27, 2024.

The Center appointed Andrea Jaeger-Lenz as the sole panelist in this matter on March 12, 2024. 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's business is to operate and to provide a social media platform that allows Internet users to post and subscribe to audiovisual content on the Internet, including content for adult entertainment. The Complainant's social media platform is located at the domain name <onlyfans.com>, which was registered on January 29, 2013, and use of which has commenced by July 4, 2016. As of 2024, the Complainant's website under the domain name <onlyfans.com> counts more than 180 million registered users. Apart from the use as domain name, the Complainant uses the trademark ONLYFANS within its website at the domain name <onlyfans.com>.

The Complainant owns, according to Annex C of the Complaint, several trademarks for ONLYFANS, including but not limited to the following:

- US trademark no. 5,769,267 ONLYFANS (word), registered on June 4, 2019, for services in Class 35;
- US trademark no. 6,253,455 ONLYFANS (fat lettering), registered on January 26, 2021, for goods and services in Classes 9, 35, 38, 41 and 42; and
- European Union ("EU") trademark no. 17946559 ONLYFANS (black and blue device with blue keyhole), registered on January 9, 2019, for goods and services in Classes 9, 35, 38, 41 and 42.

The disputed domain names were both registered on October 14, 2023. The websites to which they respectively resolve are, according to Annex E to the Complaint, constructed using the ONLYFANS mark and laid out using an identical template. The website to which the disputed domain name <onlyfansmz.com> resolves displays the designation "Onlyfansmz" and the headers "Onlyfansmz- Onlyfans mz Videos" and "OnlyFans – Erika Gomez Fuck – Onlyfansmz" and offers adult entertainment services including watermarked content pirated from users of the Complainant. The website to which the disputed domain name <onlyfansmx.com> resolves does not offer any content apart from the designation "Onlyfansmx" and the header "Onlyfansmx – Onlyfans mx vidoes [note: typo intentional, as in screen shot]".

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 names.

Notably, the Complainant contends that it owns rights in the trademark ONLYFANS. The disputed domain names consist of the Complainant's exact mark, the only difference being the insertion of the either nonsensical or geographically descriptive terms "mx" and "mz" after the Complainant's mark. Thus, according to the Complainant, the relevant trademark is recognizable within both disputed domain names and the addition of other terms would not prevent a finding of confusing similarity. The ".com" generic top level domain ("gTLD") does not change this result, as it is a standard registration requirement and as such has to be disregarded. Consequently, the disputed domain names are confusingly similar to a trademark, in which the Complainant owns rights.

On the second element, the absence of rights or legitimate interests on the side of the Respondent, the Complainant argues as follows: The Respondent has no connection or affiliation with the Complainant and has not received any authorization, license or consent to use the Complainant's mark. The Respondent is

not commonly known by the disputed domain names either and does not hold any trademark rights in ONLYFANS. The Complainant claims that its website is – according to a similarweb ranking in Annex D to the Complaint – the 97th most popular website on the Internet and the 55th most popular website in the US. The Complainant states that it has achieved global fame and success in a short time, so the Respondent knew of the Complainant's marks, with no evidence indicating that the Respondent had known by the text of the disputed domain names. With a view to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the Complainant argues that the Respondent cannot claim any right to use the disputed domain names under fair use, since it includes the mark and the geographic descriptive terms "mx" for Mexico and "mz" for Mozambique, which falsely suggests sponsorship by the Complainant. The content offered by the Respondent on the disputed domain name <onlyfansmz.com> is in direct competition with the 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 goods or services in direct competition with the trademark owner does not give rise to legitimate rights or interests. This, according to the Complainant, is all the more true here where content previously published at the Complainant's website is offered free of charge by the Respondent, without any remuneration to the Complainant of the respective creators. In summary, the Respondent registered and used the disputed domain names not because they refer to or are associated with the Respondent, but because they are confusingly similar to the Complainant's <onlyfans.com> domain name and its trademark.

On the third element, the Complainant claims that the Respondent has registered and used the disputed domain names in bad faith.

The Respondent registered both disputed domain names long after registration, first use made and acquired distinctiveness achieved by the Complainant of its ONLYFANS mark. The latter is so strong that, according to the Complainant, its website under the domain name <onlyfans.com> ranks among the Top 100 most popular websites worldwide. Accordingly, the registration of a domain name that is confusingly similar to a widely-known trademark creates a presumption of bad faith. Previous UDRP Panels have found the Complainant's trademark to be internationally known among the relevant public. Thus, it is evident that the Respondent either knew or must have had knowledge of the ONLYFANS trademark before registering the disputed domain names. Given the altogether adoption of the mark within the disputed domain names, there is no other conceivable reason for the particular choice of the disputed domain names by the Respondent. Even more so, he must have been fully aware of it.

As to use of the disputed domain names in bad faith, the Complainant outlines that this is found where a domain name directs users to a website that offers goods and services in direct competition with the trademark owner for commercial gain by creating a likelihood of confusion. Pointing to the screen shot of the website of the Respondent under the disputed domain name <onlyfansmz.com> as per Annex E of the Complaint, the Complainant argues that the disputed domain name offers adult content in direct competition to the content offered by the Complainant under the ONLYFANS mark. To the extent that the website at the disputed domain name <onlyfansmx.com> is currently not populated with content, the Complainant claims that this could be revived any time and in the hands of the Respondent remains an unjustified threat hanging over the head of the Complainant. In addition, the Complainant put the Respondent on notice of its rights by a warning letter of November 9, 2023 provided in Annex F to the Complaint which remained unanswered. Finally, the Complainant states that the fact of the Respondent hiding behind a privacy service is additional evidence of his bad faith.

B. Respondent

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 3.0](#), section 1.7.

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 entirety of the mark is reproduced within the disputed domain names, and the trademark is clearly recognizable within the disputed domain names. Accordingly, the disputed domain names are 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 "mx" and "mz", respectively, 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 names and the mark for the purposes of the Policy, [WIPO Overview 3.0](#), section 1.8.

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 names. 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 names such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity, here, claimed impersonation/passing off, can never confer rights or legitimate interests on a respondent, [WIPO Overview 3.0](#), section 2.13.1.

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 both disputed domain names considerable time after the first use of the domain name <onlyfans.com> by the Complainant and the

registration of its ONLYFANS trademarks. As demonstrated by the Complainant's Annex E, the Respondent uses the disputed domain name <onlyfansmz.com> for offering adult entertainment to Internet users, and by using the same lay out and template, is making demonstrable preparations to use the disputed domain name <onlyfansmx.com> in the same way. These services are identical to services which the Complainant offers on its website. The Panel holds it to be inconceivable that all of this is merely accidental.

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.

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 available record, the Panel finds the non-use of the disputed domain name <onlyfansmx.com> in the form of a blank page with header "Onlyfansmx – Onlyfans mx vidoes" does not prevent a finding of bad faith in the circumstances of this proceeding. Although 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name <onlyfansmx.com> does not prevent a finding of bad faith under the Policy.

As for the disputed domain name <onlyfansmz.com>, Panels have held that the use of a domain name for illegal activity, here, claimed impersonation/passing off, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

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 names <onlyfansmx.com> and <onlyfansmz.com> be transferred to the Complainant.

/Andrea Jaeger-Lenz/

Andrea Jaeger-Lenz

Sole Panelist

Date: March 19, 2024