

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Pham Tuan, Nguyen Trong Bay, and Joergen Bogetveit, AdsbyPixel, Inc.

Case No. D2024-0446

1. The Parties

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

The First Respondent is Pham Tuan, Viet Nam.

The Second Respondent is Nguyen Trong Bay, Viet Nam.

The Third Respondent is Joergen Bogetveit, AdsbyPixel, Inc., Panama.

Together, the “Respondents”.

2. The Domain Names and Registrars

The First disputed domain name <onlyfan.biz> is registered with NameCheap, Inc. (the “First Registrar”).

The Second disputed domain name <sexyonlyfans.com> is registered with Cosmotown, Inc. (the “Second Registrar”).

The Third disputed domain name <onlyfan.space> is registered with Sav.com, LLC (the “Third Registrar”).

Together, the “disputed domain names” and the “Registrars”.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2024 and was initially related to the First and Second disputed domain names. On January 31, 2024, the Center transmitted by email to the First and Second Registrars a request for registrar verification in connection with the First and Second disputed domain names. On January 31, 2024 and February 2, 2024, the First and Second Registrar respectively transmitted by email to the Center their ~~its~~ verification response disclosing registrant and contact information for the First and Second disputed domain names which differed from the named First and Second Respondents (respectively, Redacted for Privacy, Privacy service provided by

Withheld and no data provided) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 2, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the First and Second Registrars, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint including the additional Third disputed domain name on February 6, 2024. On February 15, 2024, the Center sent the Third Registrar a request for registrar verification in connection with the Third disputed domain name. On February 16, 2024, the Third Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Third disputed domain name which differed from the named Third Respondent (Redacted for Privacy) and contact information in the amended Complaint. On February 16, 2024, the Center sent an email communication to the Complainant with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, again requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amendment to the Complaint on February 16, 2024.

The Center verified that the Complaint together with the amended Complaint and 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 Respondents of the Complaint, and the proceedings commenced on February 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 12, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on March 13, 2024.

The Center appointed Fabrice Bircker as the sole panelist in this matter on March 20, 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 owns and operates the website which is notably available through the domain name <onlyfans.com>. This website provides since 2016 the services of a social media platform that allows users to post and subscribe to audiovisual content, including in the field of adult entertainment. The Complainant's website counts among the most popular worldwide, with over 180 million registered users. Besides, on January 9, 2024, it was the 97th most visited website worldwide, and the 55th most visited website in the United States.

The Complainant's activities are notably protected through the following trademarks:

-  , European Union Trade Mark No. 017946559, filed on August 22, 2018, registered on January 9, 2019, and designating goods and services of classes 9, 35, 38, 41, and 42.
- ONLYFANS, United States Registration No. 5769267, with first use on July 4, 2016, filed on October 29, 2018, registered on June 4, 2019, and designating services of class 35.

The disputed domain names were registered on the following dates:

- <onlyfan.biz>, on September 3, 2023;
- <sexonlyfans.com>, on September 12, 2023;
- <onlyfan.space>, on November 15, 2023.

They all resolve to websites with adult content, that:

- show identical advertisements;
- share some content (such as pictures, privacy policies or Digital Millennium Copyright Act (“DMCA”) takedown procedures);
- have logos with common points, and a similar overall layout;
- share the same contact and DMCA email address.

Very little is known about the Respondents, except that based on the information disclosed by the Registrar, the First and the Second Respondents are apparently located in Viet Nam, and the Third Respondent in Panama.

On October 18, 2023 and on February 2, 2024, the Complainant sent cease and desist letters to the Respondents, notably requesting the cancellation of the disputed domain names.

No reply was given to these cease and desist letters.

Then, the Complainant brought this Complaint.

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.

First, the Complainant requests the consolidation of the procedure against the Respondents because it considers that the Respondents, if not the same person or entity, are somehow connected to each other so that the disputed domain names are under common control.

In this respect, the Complainant notably contends that:

- all disputed domain names were registered in a close period of time; and
- the websites to which the disputed domain names resolve i) display identical advertisements, ii) have a similar overall layout, and iii) share the same DMCA language and email address.

Then, the Complainant argues that the disputed domain names are confusingly similar to its ONLYFANS trademark, because it is recognizable within them.

Besides, the Complainant claims that the Respondents have no rights or legitimate interests in respect with the disputed domain names, in particular because:

- the Respondents have no connection or affiliation with the Complainant and have not received any authorization, license, or consent, whether express or implied, to use its marks in the disputed domain names or in any other manner;
- the Respondents are not commonly known by the ONLYFANS mark and do not hold any trademarks for the disputed domain names;
- the Second disputed domain name carries a risk of implied affiliation with the Complainant;
- the websites at the disputed domain names offer adult entertainment services in direct competition with the Complainant’s services and such use cannot give rise to legitimate rights or interests; and

- the website at the Second disputed domain name contains a logo that is identical to one of the Complainant's stylized ONLYFANS registered trademarks and therefore tries to pass itself off as a website of the Complainant, what prevents any finding of rights or of legitimate interests.

Then, the Complainant contends that the disputed domain names have been registered in bad faith, notably because:

- they were registered long after the Complainant's well-known trademark;
- the Second disputed domain name redirects toward a website reproducing one of the Complainant's stylized registered trademarks;
- the term "sexy" within the Second disputed domain name enhances the likelihood of confusion as it refers to the Complainant's industry;
- the disputed domain names are used in relation with services in direct competition with the Complainant; and
- the Complainant sent cease-and-desist letters to the Respondents who did not respond, what has necessitated the filing of this procedure.

At last, the Complainant submits that the disputed domain names have being used in bad faith, in particular because they direct the Internet users to commercial websites in direct competition with the Complainant, what is an intentional attempt to attract, for commercial gain, Internet users to the Respondents' websites by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the disputed domain names.

B. Respondents

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

6. Discussion and Findings

6.1. Preliminary Issue – Consolidation of Multiple Domain Names and Respondents

The Complaint relates to three disputed domain names that the Complainant wishes to have dealt with in a single administrative procedure, and the Third disputed domain name has been added to the procedure prior to the notification of the Complaint to the Respondents.

First, the Panel accepts without any difficulty the principle that the Third disputed domain name is added to the procedure. Indeed, it is well established that "domain names held by the same registrant(s) may be added to a complaint before notification to the respondent(s) / formal commencement of the relevant proceeding" (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), at section 4.12.1).

Then, according to the information provided by the Registrars, the disputed domain names are held by different Respondents. Paragraph 10(e) of the Rules states that "[a] Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules". The main criteria used to determine whether a request of consolidation can be granted or not are "whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties." ([WIPO Overview 3.0](#), section 4.11.2).

In the present case, the Complainant notably requests the consolidation of the Respondents on the basis of the following arguments:

- all disputed domain names aim at intentionally infringing the Complainant's trademarks and harming consumers;
- all disputed domain names were registered between September and November 2023; and

- the websites at the disputed domain names appear related based on identical advertisements and logos and similar overall website layout. In addition, all three websites share the same DMCA language and email address.

In view of all the above, the Panel finds that the request of consolidation of the disputed domain names in the present procedure is well grounded. Indeed, even if the name and contact details of the Respondents are different for each disputed domain name, the Panel notably finds that:

- all of them redirect toward very close websites (see their description in the “Factual background” section);
- the websites to which the disputed domain names resolve have the same DMCA email address; and
- the Respondents, who have been given the opportunity to contest the consolidation of the disputed domain names in the same procedure, did not object this.

In such circumstances, it is more likely than not that the disputed domain names are under common control.

As a consequence, the Panel considers that consolidation is fair and equitable to all Parties, and also procedurally efficient.

The registrants of the disputed domain names will therefore be collectively referred to as the “Respondent”.

6.2 Substantive Issues

Pursuant to paragraph 4(a) of the Policy, for obtaining the transfer of the disputed domain names, the Complainant must establish each of the following three elements:

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

Paragraph 15(a) of the Rules provides that “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraphs 10(b) and 10(d) of the Rules also provide that “[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case” and that “[t]he Panel shall determine the admissibility, relevance, materiality and weight of the evidence”.

Besides, the Respondent’s failure to reply to the Complainant’s contentions does not automatically result in a decision in favor of the Complainant, although the Panel is entitled to draw appropriate inferences therefrom in accordance with paragraph 14(b) of the Rules (see [WIPO Overview 3.0](#), section 4.3).

Taking the foregoing provisions into consideration the Panel finds as follows.

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.

Based on the available record, the Panel finds that 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 ONLYFANS mark is 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.

Indeed, even if the First and Third disputed domain names <onlyfan.biz> and <onlyfan.space> omit the letter “s” of the ONLYFANS trademark, which constitutes an obvious misspelling of the Complainant’s trademark, the Complainant’s trademark remains recognizable in these disputed domain names. Therefore, such omission does not prevent a finding of confusingly similarity for purposes of the first element ([WIPO Overview 3.0](#), section 1.9).

As far as the Second disputed domain name <sexyonlyfans.com> is concerned, although the addition of other term [here, “sexy”] 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 this disputed domain name 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 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.

Indeed, the Complainant contends that it has not given its consent for the Respondent to use its ONLYFANS trademark in domain name registrations or in any other manner. Besides, there is nothing in the record of the case likely to indicate that the Respondent may be commonly known by the disputed domain names.

Furthermore, the Complainant’s trademark is well known (see for example *Fenix International Limited v. creator creator*, WIPO Case No. [D2022-4230](#); *Fenix International Limited v. Huy Nguyen, Viet Nam*, WIPO Case No. [D2022-3469](#); *Fenix International Limited v. Whois Privacy, Private by Design, LLC / KHALID ZAROUAL, SMART TECH ELEC*, WIPO Case No. [D2022-2931](#)) and the Respondent is using the disputed domain names, which are confusingly similar with the Complainant’s prior registered trademarks, in relation with websites directly competing with the latter. It necessarily results from this situation that the Respondent is making a commercial use of the disputed domain names for commercial gain in misleadingly diverting Internet users. Such use is not a bona fide offering of goods or services, or a legitimate noncommercial or fair use of the disputed domain names.

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 finds that:

- the Complainant's trademark is reproduced almost identically in the First and Third disputed domain names <onlyfan.biz> and <onlyfan.space>;
- the Second disputed domain name <sexyonlyfans.com> identically reproduces the Complainant's trademark with the addition of a term (namely "sexy") directly referring to the industry in which the Complainant has been operating for years;
- the Complainant's well-known trademark predates the registration of the disputed domain names by years;
- the websites to which the disputed domain names resolve directly compete with the Complainant;
- the website available through the Second disputed domain name <sexyonlyfans.com> reproduces a logo that is identical to one of the Complainant's prior trademarks; and
- the website under the Third disputed domain name <onlyfan.space> also directly refers to the Complainant as it mentions such as "OnlyFanLeak" or "FREE ONLYFANS FREE ACCOUNTS LEAK" suggesting that its content emanates from the Complainant's website.

It necessarily results from these circumstances that the Respondent registered the disputed domain names being fully aware of the Complainant's rights, and that it is intentionally using the disputed domain names for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its websites and of the services offered therein. In sum, this case clearly falls within the scope of paragraph 4(b)(iv) of the Policy.

Therefore, the Respondent registered and is using the disputed domain names in bad faith.

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.biz>, <onlyfan.space> and <sexyonlyfans.com> be transferred to the Complainant.

/Fabrice Bircker/

Fabrice Bircker

Sole Panelist

Date: April 3, 2024