

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Md. Mizanur Rahman
Case No. D2024-0467

1. The Parties

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

Respondent is Md. Mizanur Rahman, Bangladesh.

2. The Domain Name and Registrar

The disputed domain name <onlyfansapp.download> is 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 February 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 1, 2024, 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 Complainant on February 2, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on February 2, 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 Respondent of the Complaint, and the proceedings commenced on February 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 28, 2024.

The Center appointed Stephanie G. Hartung 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

Complainant is a company organized under the laws of the United States which provides a social media platform under the brand "OnlyFans", allowing users to post and subscribe to audiovisual content on the Internet, mostly of erotic or pornographic character.

Complainant has provided evidence that it is the registered owner of numerous trademarks worldwide relating to its brand "OnlyFans", including, but not limited to, the following:

- word mark ONLYFANS, European Union Intellectual Property Office (EUIPO), registration number: EU 017946559, registration date: January 9, 2019, status: active;
- word/device mark ONLYFANS, EUIPO, registration number: EU 017946559, registration date: January 9, 2019, status: active;
- word mark ONLYFANS.COM, United States Patent and Trademark Office (USPTO), registration number: 5,769,268, registration date: June 4, 2019, status: active.

Moreover, Complainant has demonstrated to own since January 29, 2013 the domain name <onlyfans.com> which Complainant has used already since June 2016 to run its social media platform "OnlyFans" at "www.onlyfans.com".

Respondent, according to the disclosed Whois information for the disputed domain name, is located in Bangladesh. The disputed domain name was registered on September 5, 2023. It resolves to a website at "www.ofapp.download" offering to download an "Only Fans App" with no authorization to do so, thereby prominently displaying Complainant's ONLYFANS trademark and official logo.

On October 19, 2023, Complainant sent a cease-and-desist letter to Respondent, demanding to stop using and to cancel the disputed domain name, to which Respondent did not respond.

Complainant requests that the disputed domain name be transferred to Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, Complainant contends that its social media platform at "www.onlyfans.com" is one of the most popular websites in the world, with more than 180 million registered users as of now.

Complainant submits that the disputed domain name is at least confusingly similar to Complainant's ONLYFANS trademark, as it consists of the latter in its entirety with the only difference being the insertion of the descriptive term "app". Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent has no connection or affiliation with Complainant and has not received any authorization, license, or consent, whether express or implied, to use Complainant's ONLYFANS trademark in the disputed domain name or in any other manner, (2) Respondent is not commonly known by the ONLYFANS trademark and does not hold any such trademark rights for the disputed domain name, (3) Complainant's ONLYFANS trademark has achieved global fame and success in

a short time which makes it clear that Respondent knew of such trademark when registering the disputed domain name, (4) the website at the disputed domain name contains a logo that is identical to Complainant's official ONLYFANS logo, and (5) Respondent is using an identical or confusingly similar domain name to direct Internet users to a website offering illegal services. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Respondent registered the disputed domain name long after Complainant has obtained registered rights in the ONLYFANS trademark, (2) Complainant's website under the ONLYFANS trademark is among the top 100 most popular websites in the world, (3) the disputed domain name is confusingly similar to Complainant's widely known ONLYFANS trademark and it is more probable than not that Respondent was fully aware of Complainant and its trademark when registering the disputed domain name, and (4) the website under the disputed domain name was clearly set up to divert Internet traffic from Complainant's website to a website offering a mobile app to steal adult entertainment content from Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

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.

Complainant has shown rights in respect of the ONLYFANS trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Also, the entirety of Complainant's ONLYFANS trademark is reproduced within the disputed domain name, simply added by the descriptive term "app". Accordingly, the disputed domain name is confusingly similar to such trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Although the addition of other terms (here, the term "app") 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 the disputed domain name and Complainant's ONLYFANS trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel, therefore, holds 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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

In particular, Respondent has neither been granted a license nor has it been otherwise authorized by Complainant to use its ONLYFANS trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent’s name somehow corresponds with the disputed domain name, and Respondent does not appear to have any trademark rights associated with the term “OnlyFans” on its own. Finally, the disputed domain name resolves to a commercially active website at “www.ofapp.download”, offering to download an “Only Fans App” with no authorization to do so, thereby prominently displaying Complainant’s ONLYFANS trademark and official logo. Such use of the disputed domain name obviously neither qualifies as bona fide nor as legitimate noncommercial or fair within the meaning of paragraph 4(c) of the Policy.

The Panel, therefore, holds 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.

The circumstances to this case leave no doubt that Respondent was fully aware of Complainant’s business in the adult entertainment industry and its rights in the ONLYFANS trademark (notwithstanding the claimed reputation of such trademark) when registering the disputed domain name and that the latter clearly is directed thereto. Moreover, using the disputed domain name to run a website at “www.ofapp.download” offering to download an “Only Fans App”, thereby prominently displaying Complainant’s ONLYFANS trademark and official logo without any authorization to do so, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusing with Complainant’s ONLYFANS trademark as to the source, sponsorship, affiliation or endorsement of Respondent’s website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

In this context, it also carries weight in the eyes of the Panel that Respondent obviously provided false or incomplete contact information in the Whois register for the disputed domain name since, according to the email correspondence between the Center and the postal courier DHL, the Written Notice on the Notification of Complaint dated February 7, 2024 could not be delivered. This fact at least throws a light on Respondent’s behavior which supports the Panel’s bad faith finding.

The Panel, therefore, holds that Complainant has established the third element of the Policy, too.

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, <onlyfansapp.download>, be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: March 25, 2024