

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Privacy service provided by Withheld for Privacy ehf / Nemanja Krecelj
Case No. D2022-0216

1. The Parties

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

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Nemanja Krecelj, Bosnia and Herzegovina.

2. The Domain Name and Registrar

The disputed domain name <leakedonly.com> (the “Domain Name”) 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 21, 2022. On January 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 24, 2022, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on February 1, 2022 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 amended Complaint on February 2, 2022.

The Center verified that the Complaint, together with the 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 February 8, 2022. In accordance with the Rules, paragraph

5, the due date for Response was February 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 3, 2022.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on March 8, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant owns and operates the website located at "www.onlyfans.com". The Complainant has used it for several years as a social media platform that allows users to post and subscribe to audiovisual content. In 2022 "www.onlyfans.com" is one of the most popular websites in the world, with more than 180 million registered users. According to Alexa Internet, it is the world's 428th most popular website.

The Complainant owns trademark registrations in multiple jurisdictions for the ONLYFANS word and design mark, such as European Union Trade Mark No. EU017912377, registered on January 9, 2019; and European Union Trade Mark No. EU017946559, registered on January 9, 2019; and United Kingdom Trade Mark No. UK00917912377, registered on January 9, 2019; and United Kingdom Trade Mark No. UK00917946559, registered on January 9, 2019. The Complainant's domain name <onlyfans.com> was registered on January 29, 2013. All trademarks and the domain name are registered before the Domain Name.

The Domain Name was registered on April 27, 2021. The Complainant has documented that the Domain Name resolves to a website that offers adult entertainment services (including content pirated from the Complainant's users including several references to "Onlyfans").

5. Parties' Contentions

A. Complainant

The Complainant provides evidence of trademark registrations, and argues that it has unregistered common law rights as it has been recognized in previous UDRP decisions. The Complainant submits that the Domain Name is confusingly similar to the Complainant's trademark, as the mere abbreviation of a trademark, or of a portion of a trademark, is insufficient to prevent confusion. As to the additional element "leaked", the Complainant's trademark is recognizable within the Domain Name, and the addition does not prevent a finding of confusing similarity.

The Complainant asserts that it has no association with the Respondent and has never authorized or licensed the Respondent to use its trademark. There is no evidence indicating that the Respondent has been commonly known by the Domain Name. Moreover, the Respondent's use is and cannot be a *bona fide* offering of goods or services, as the Respondent offers adult entertainment services, including content pirated from the Complainant's users.

The Complainant submits that the Respondent was or should have been aware of the Complainant prior to registering the Domain Name. The fact that the Complainant's trademark rights pre-date the Respondent's registration of the Domain Name, and the Respondent's unauthorized use of the Domain Name, prove that the Respondent knew of the Complainant and its business. The Complainant argues that the Respondent's use of the Domain Name gives the false impression that the Domain Name is associated with and/or endorsed by the Complainant. The Respondent misleadingly diverts Internet traffic from the Complainant's website. The Respondent operates a website that provides products and services in direct competition with the Complainant, included material pirated from the Complainant's users. Moreover, the Respondent has not responded to the Complainant's cease-and-desist letter.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established that it has rights in the trademark ONLYFANS. The test for confusing similarity involves a comparison between the trademark and the Domain Name. The Domain Name incorporates a part of the Complainant's trademark with the additional element "leaked". The addition does not prevent a finding of confusing similarity between the Domain Name and the trademark. While the content of the website associated with the domain name is usually disregarded by panels when assessing confusing similarity under the first element, in the circumstances of this proceeding the Panel takes note of the Respondent's use of the Domain Name to confirm confusing similarity. The Respondent appears to target the Complainant's trademark through the Domain Name, see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.15.

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel ignores the generic Top-Level Domain ("gTLD"), see WIPO Overview of [WIPO Overview 3.0](#), section 1.11.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has made unrebutted assertions that it has not granted any authorization to the Respondent to register a domain name containing the Complainant's trademark or otherwise make use of the Complainant's mark. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired unregistered rights. The Respondent has not offered any explanation as to the registration of the Domain Name, and therefore not provided any evidence of good-faith use. The Panel agrees with the Complainant that the Respondent's use of the Domain Name is not *bona fide* offering of goods or services, but rather evidence of bad faith, see below. The Respondent's intention to take unfair advantage of the Complainant's trademark is exacerbated by the alleged pirated content found at the Domain Name, which directly competes with that provided by the Complainant.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds it probable that the Respondent was aware of the Complainant when the Respondent registered the Domain Name. The Complainant's trademarks predate the registration of the Domain Name, and the Respondent's use of the Domain Name indicates that the Respondent knew of the Complainant when the Respondent registered the Domain Name.

The Respondent's use of the Domain Name gives the misleading impression that the Domain Name is associated with the Complainant. The Respondent operates a website at the Domain Name in competition with the Complainant, and the website includes material pirated from the Complainant's users. The Respondent has tried to attract Internet users to its website for commercial gain by targeting the Complainant's trademark, see [WIPO Overview 3.0](#) section 3.1.

The Respondent has not provided any evidence of actual or contemplated good-faith use, and has not responded to the Complaint. The fact that the Respondent has used a privacy protection to conceal its

identity may under the circumstances of this case further point to bad faith.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) 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 Domain Name <leakedonly.com> be cancelled.

Mathias Lilleengen

Sole Panelist

Date: March 18, 2022