

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Aleksandr Dolgikh
Case No. D2022-0276

1. The Parties

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

The Respondent is Aleksandr Dolgikh, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <onlyfans4u.com> is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 27, 2022. On January 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 28, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. On February 4, 2022, the Center sent to the Parties a document in English and Russian in relation to the language of the proceeding and invited the Parties to respond to it. On the same date, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the Complainant’s request.

The Center verified that 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 in both English and Russian, and the proceedings commenced on February 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 21, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on April 6, 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 by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant operates a social media platform where users post and subscribe to audiovisual content online. The platform runs on the Complainant's website at the domain name <onlyfans.com> registered on January 29, 2013, and this website has more than 180 million registered users. According to Alexa Internet, it is the 428th most popular website globally and is the 264th most popular website in the United States.

The Complainant is the owner of the following trademark registrations for the sign ONLYFANS (the "ONLYFANS trademark"):

- the European Union Trade mark ONLYFANS with registration No. 017912377, registered on January 9, 2019, for goods and services in International Classes 9, 35, 38, 41, and 42;
- the United States Trademark ONLYFANS with registration No. 5769267, registered on June 4, 2019, for services in International Class 35; and
- the United States Trademark ONLYFANS.COM with registration No. 5769268, registered on June 4, 2019, for services in International Class 35.

The disputed domain name was registered on August 16, 2021. It is currently inactive. Prior to the filing of the Complaint, the disputed domain name resolved to a dating website.

5. Parties' Contentions

A. Complainant

The Complainant submits that its domain name <onlyfans.com> resolves to one of the most visited websites in the world, it has become a prime target for cybersquatters wishing to profit from the goodwill that the Complainant has garnered in the ONLYFANS trademark, which the Complainant started using well before the Respondent registered the disputed domain name on August 16, 2021.

The Complainant states that the disputed domain name is confusingly similar to the ONLYFANS trademark, because it consists of this exact trademark with the only difference being the insertion of the numeral "4" and the letter "u" (this combination meaning "for you") after the trademark, which does not avoid the confusing similarity.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it has no affiliation with the Complainant and has not been authorized to use the ONLYFANS trademark in the disputed domain name. The Complainant notes that the Respondent is not commonly known by the disputed domain name and does not hold any trademark for it.

The Complainant maintains that the Respondent cannot claim a right to use the disputed domain name under fair use, since it includes the Complainant's ONLYFANS trademark and the additional numeral "4" and letter "u" (meaning "for you") which creates a risk of implied affiliation that the Respondent's website is associated with the Complainant. The Complainant adds that the Respondent's website purports to offer "photos of girls in your area" as part of an adult hookup site, in direct competition with the Complainant's services in the field of adult entertainment. The Complainant notes that the Respondent's website 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 Complainant contends that the disputed domain name was registered and is being used in bad faith.

According to it, the Respondent knew or ought to have known of the Complainant's ONLYFANS trademark and likely registered the disputed domain name to target this trademark. The Complainant notes that the disputed domain name was registered after the Complainant attained registered rights in the ONLYFANS trademark, which has acquired distinctiveness so strong that the Complainant's website is among the top 500 most popular websites in the world. The Complainant maintains that the Respondent registered the disputed domain name to divert Internet traffic from the Complainant's website and to offer services in direct competition with the Complainant's services in the field of adult entertainment, by offering "photos of girls in your area." The Complainant adds that the Respondent's website phishes for user's personal information.

The Complainant adds that it sent a cease-and-desist letter to the Respondent on November 18, 2021, to which the Respondent did not respond.

The Complainant requests that the disputed domain name be cancelled, and notes that given the vast number of domain names infringing on the Complainant's ONLYFANS trademark, it does not want to take possession of all of them and is aware that the disputed domain name can potentially be re-registered after cancellation.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural issue - Language of Proceedings

According to the information provided by the Registrar, the language of the Registration Agreement for the disputed domain name is Russian. Under paragraph 11 of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complaint has been submitted in English, and the Complainant requests that the proceedings be conducted in English, because substantial additional expense and delay would likely be incurred if the Complaint has to be submitted in Russian. The Complainant maintains that there is evidence that the Respondent is capable of reading and writing in English, as the Respondent conducts business on the website located at the disputed domain name in English, and the disputed domain name includes the English words "only" and "fans" as well as the numeral "4" and the letter "u" which is Internet shorthand for the English words "for you."

The Center has sent all its communications to the Respondent in both English and Russian, and has invited the Respondent to express its views on the language of the proceeding. The Respondent has not submitted a Response or any objections to the Complainants' request that the proceedings be held in English. The disputed domain name is indeed composed of English words and an abbreviation of English words, and the associated website was entirely in English.

The above satisfies the Panel that the Respondent would not be disadvantaged if the language of the proceeding is English, and that using the English language in this proceeding would be fair and efficient.

Therefore, in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding will be English.

6.2. Substantive issues

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

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

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]”

The Respondent has however not submitted a Response and has not disputed the Complainant’s contentions and evidence in this proceeding.

A. Identical or Confusingly Similar

The Complainant has provided evidence for the registration of the ONLYFANS trademark, which satisfies the Panel that the Complainant has established its trademark rights for the purposes of the present proceeding.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the generic Top-Level domain (“gTLD”) and country code Top-Level domain (“ccTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” gTLD of the disputed domain name.

The disputed domain name incorporates the easily recognizable ONLYFANS trademark together with the numeral “4” and the letter “u”. As noted by the Complainant, this combination is commonly understood as a shorthand of “for you”. As discussed in section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the ONLYFANS trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it is not commonly known by the disputed domain name, has no affiliation with the Complainant, and has not been authorized to use the ONLYFANS trademark. The Complainant adds that the disputed domain name creates a risk of implied affiliation with the Complainant, and the associated website has offered services in direct competition with the Complainant’s services in the field of adult

entertainment, and has collected personal information from users. Thus, the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent had a fair opportunity to present its case and to address the arguments and evidence of the Complainant and explain why it has chosen and registered the disputed domain name, but refrained from doing so. The Respondent has not denied that it has not responded to the Complainant's cease-and-desist letter.

The disputed domain name is confusingly similar to the ONLYFANS trademark and to the Complainant's domain name <onlyfans.com>, and the evidence shows that it has resolved to a website offering competing services to those of the Complainant.

In view of the above, it appears to the Panel that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant and of its ONLYFANS trademark, has registered and used the disputed domain name in an attempt to confuse and attract Internet users to the website at the disputed domain name and to offer them competing services for financial gain. To the Panel, such conduct does not appear to be fair or giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The disputed domain name is confusingly similar to the Complainant's ONLYFANS trademark and the associated website has offered services in competition with the Complainant. Internet users may well be confused that these services originate from the Complainant. This is sufficient to satisfy the Panel that the Respondent must have been well aware of the Complainant and of the ONLYFANS trademark when it registered the disputed domain name and that it has targeted this trademark with the registration and use of the disputed domain name, likely in an attempt to confuse and attract Internet users for financial gain as to the source of the services offered on the Respondent's website.

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 <onlyfans4u.com> be cancelled.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: April 20, 2022