

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Patrick Flensby
Case No. D2022-0310

1. The Parties

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

The Respondent is Patrick Flensby, Sweden.

2. The Domain Name and Registrar

The disputed domain name <onlyasiafans.com> is registered with Ascio Technologies Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 29, 2022. It stated that the name of the Respondent was not disclosed. On January 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 31, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name. The Center sent an email communication to the Complainant on February 3, 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 amendment to the Complaint on February 4, 2022.

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 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2022. An informal communication from the Respondent was received by the Center on February 9, 2022. A further communication from the Respondent in Swedish language was received by the Center on March 2, 2022. The Respondent on March 3, 2022 was granted the automatic four calendar day extension for filing a response under paragraph 5(b) of the Rules. The due date for Response was extended to March 7, 2022. The Center notified the Parties of the Commencement

of Panel Appointment Process on March 9, 2022. A further communication from the Respondent in Swedish language was received by the Center on March 9, 2022.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on March 17, 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 is Fenix International Limited, a company providing a social media platform that allows users to post and subscribe to audiovisual content on the Internet and owning trademark registrations ONLYFANS, including the following:

- European Union Trade Mark Registration No. 017912377, registered on January 9, 2019;
- United States Trademark Registration No. 5769267, registered on June 4, 2019.

The Complainant operates its website “www.onlyfans.com” and registered the domain name <onlyfans.com> on January 29, 2013. In 2022, “www.onlyfans.com” is one of the most popular websites in the world.

The disputed domain name was registered on June 27, 2021. The disputed domain name has been used to provide products and services in direct competition with the Complainant and resolves to an inactive website at the moment of the Decision.

5. Parties' Contentions

A. Complainant

The arguments put forward by the Complainant can be summarized as follows:

On the first element of the Policy, the Complainant claims that the disputed domain name incorporates the Complainant's ONLYFANS mark in its entirety with the addition of the term “asia” and the generic Top-Level Domain (“gTLD”) “.com”.

On the second element, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Respondent uses the disputed domain name to suggest sponsorship or endorsement by the Complainant. The Respondent has not been authorized, licensed, or permitted by the Complainant to do so.

On the third element of the Policy, the Complainant claims that the Respondent had prior knowledge of the Complainant and its ONLYFANS trademark, therefore the Respondent registered the disputed domain name in bad faith. The Respondent used the disputed domain name on its website that featured a logo that is similar to the Complainant's ONLYFANS logo and the Respondent's website provided products and services in competition with the Complainant. The Respondent used the disputed domain name in bad faith.

The Complainant also sent to the Respondent a cease-and-desist letter on November 18, 2021, demanding to stop the use of the disputed domain name and to cancel the disputed domain name, but the Respondent did not reply.

B. Respondent

The Respondent did not reply to the Complainant's contentions but sent only informal responses. The Respondent's informal communication sent on February 9, 2022 indicated "Hello. Dont exist anymore".

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "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".

UDRP panels have typically treated a respondent's submission of a so-called "informal response" (merely making unsupported conclusory statements and/or failing to specifically address the case merits as they relate to the three UDRP elements, e.g., simply asserting that the case "has no merit" and demanding that it be dismissed) similar to a Respondent's default. It has been a consensus view in previous UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")). The same is valid in case of "informal responses".

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

- (i) the disputed domain name is 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 name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a)(i) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trademark or a service mark in which it has rights.

The Complainant has shown that it holds rights over the trademark ONLYFANS.

The disputed domain name incorporates the ONLYFANS mark with addition of the infix "asia" and followed by the gTLD ".com".

[WIPO Overview 3.0](#), section 1.11.1 reads: "The applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test."

In many UDRP decisions, panels have found that the addition of terms does not prevent a finding of confusing similarity where the relevant trademark is recognizable within the disputed domain name. The disputed domain name is a combination of the Complainant's mark ONLYFANS and the word "asia". The Panel finds that the inclusion of the word "asia" does not prevent the Complainant's mark from being recognizable in the disputed domain name, (see section 1.8 of [WIPO Overview 3.0](#)) which states that "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. The nature of such additional term(s) may however bear on assessment of the second and third elements."

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second element the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Regarding the second element of the Policy, section 2.1 of the [WIPO Overview 3.0](#), states, “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.”

The disputed domain name contains the Complainant’s trademark and the geographical term “asia”. This suggests a sponsorship or endorsement by the Complainant. (See [WIPO Overview 3.0](#), section 2.5.1).

In this case, the Panel finds that the Complainant has made out a *prima facie* case. The Respondent has not submitted any arguments or evidence to rebut the Complainant’s *prima facie* case. Further, the Complainant has not authorized, licensed, or otherwise permitted the Respondent to use its ONLYFANS trademark. Also, the Respondent did not use the disputed domain name in connection with a *bona fide* offering of goods or services.

The Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the policy.

C. Registered and Used in Bad Faith

The Complainant has used the ONLYFANS mark for many years and has held trademark rights since 2019. The trademark ONLYFANS is a well known trademark at least in key markets all over the world. The Complainant has provided evidence to support its claims mentioned above.

The disputed domain name does not currently resolve to an active website at the moment of the decision; however, the Respondent has used the disputed domain name in bad faith to attract Internet users as can be seen from the evidence submitted by the Complainant. The current non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. (See section 3.3 of the [WIPO Overview 3.0](#)).

The Panel believes that the Respondent was or ought to have been aware of the fame of the Complainant’s ONLYFANS trademark at the time of the registration of the disputed domain name, since the Respondent incorporated the entirety of the Complainant’s trademark in the construction of the disputed domain name itself, used a logo that is confusingly similar to the Complainant’s ONLYFANS logo on the website at the disputed domain name, and directed Internet users to a commercial website that offers goods and services in competition with the Complainant. The Respondent has tried to attract Internet users, for commercial gain, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation of the Respondent’s website. (See [WIPO Overview 3.0](#) section 3.1.4).

In addition, the Panel notes the Respondent’s business interests in the same sector as the Complainant and finds that the addition of the word “asia” to ONLYFANS suggests, wrongly, that there is a connection between the Respondent and the Complainant. Further, in light of the lack of any rights to or legitimate interests in the disputed domain name by the Respondent and in the absence of any conceivable good faith use, the Panel finds from the present circumstances that the Respondent has intentionally attempted to attract the Internet users, for commercial gain, by creating a likelihood of confusion with the Complainant’s trademark. Under these circumstances, the Panel therefore finds that the Respondent registered and used the disputed domain name in bad faith.

Thus, the Panel finds that the Complainant has satisfied the requirements 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 disputed domain name, <onlyasiafans.com> be cancelled.

/Christian Gassauer-Fleissner/
Christian Gassauer-Fleissner
Sole Panelist
Date: March 31, 2022