

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Theerapat Pasongpan
Case No. D2022-0341

1. The Parties

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

The Respondent is Theerapat Pasongpan, Thailand.

2. The Domain Name and Registrar

The disputed domain name <line-onlyfan.com> (the “Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2022. On February 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 2, 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. The Center sent a communication to the Parties with the additional registrant information on February 2, 2022.

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, and the proceedings commenced on February 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 24, 2022.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on March 2, 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 owns and operates the website located at the domain name <onlyfans.com> which provides a social media platform that allows users to post and subscribe to audiovisual content on the World Wide Web.

The Complainant holds, *inter alia*, the following trade mark registrations (the “Trade Marks”):

- European Union device/word Trade Mark ONLYFANS, registered on January 9, 2019 under No.017946559;
- European Union word Trade Mark ONLYFANS, registered on January 9, 2019 under No.017912377;
- United States word mark ONLYFANS, registered on June 4, 2019 under No. 5,769,267;
- United States word mark ONLYFANS.COM, registered on June 4, 2019 under No. 5,769,268.

The Domain Name was registered on July 18, 2021. The Domain Name resolves to a website which contains texts and pictures portraying adult-themed and pornographic content and offering subscriptions to its services.

The Complainant sent a cease-and-desist letter to the Respondent on November 18, 2021, demanding the Respondent stop using and cancel the Domain Name, to which the Respondent did not respond.

5. Parties' Contentions

A. Complainant

The Complainant submits that the Domain Name is identical or confusingly similar to the Trade Marks, as it consists of its word mark ONLYFANS without an “s”, with the addition of the term “line” and a hyphen, placed before the word mark, which does not prevent a finding of confusing similarity. Furthermore, the Complainant contends that the “.com” generic Top-Level Domain (“gTLD”) does not sufficiently distinguish the Domain Name from the Trade Marks, as it is a standard registration requirement and as such is disregarded under the confusing similarity test.

According to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name as it has no connection or affiliation with the Complainant and has not received any authorization, license, or consent to use the Trade Marks in the Domain Name or in any other manner, while the Respondent does not hold any trade marks for the Domain Name or is commonly known by the Domain Name. In addition, the Complainant states that the Respondent cannot claim a right to use the Domain Name under fair use, since it resolves to a website which offers subscriptions to adult content in direct competition with the services of the Complainant, while this neither constitutes use of the Domain Name for a *bona fide* offering of goods or services.

According to the Complainant, the Domain Name was registered in bad faith, since it is more probable than not that the Respondent was fully aware of the Trade Marks at the time of registration, as the Domain Name was registered well after the registration date of the Trade Marks. In addition, the Complainant contends that the Trade Marks are widely known, since in 2022 its website under <onlyfans.com> had more than 180 million registered users, while (according to Alexa Internet) it is the 428th most popular website on the World Wide Web, and it is the 264th most popular website in the United States. According to the Complainant, bad faith registration and use is also found in the following circumstances:

- the Respondent has not reacted to the Complainant’s cease-and-desist letter of November 18, 2021;
- there is no benign reason for the Respondent to have registered the Domain Name.

In addition, the Complainant submits that the Domain Name is being used in bad faith for a commercial website that offers goods and services in direct competition with those of the Complainant. Such use, the Complainant puts forward, is an intentional attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, affiliation, or endorsement of the Domain Name.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has shown that it has registered rights in the Trade Marks. The Domain Name is confusingly similar to the Trade Marks as it incorporates the Trade Marks in their entirety, with omission of the final letter "s". Neither this omission – which merely turns the plural ONLYFANS into the singular ONLYFAN - nor the addition of the word "line" and a hyphen in front of ONLYFAN prevents a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.8). The gTLD ".com" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11.1).

Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, the second element a complainant has to prove is that a respondent lacks rights or legitimate interests in a domain name. This 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. In order to satisfy the second element, the Complainant has to make out a *prima facie* case that the Respondent does not have rights or legitimate interests in the Domain Name. If the Complainant succeeds in doing so, 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 [WIPO Overview 3.0](#), section 2.1).

Based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has no connection or affiliation with the Complainant, has not received the Complainant's consent to use the Trade Marks as part of the Domain Name, while the Respondent has not acquired trade mark rights in the Domain Name. In assessing whether the Respondent has rights or a legitimate interest in the Domain Name, it should also be taken into account that (i) since the Domain Name is confusingly similar to the Trade Marks, it carries a risk of implied affiliation ([WIPO Overview 3.0](#), section 2.5.1); and (ii) the Respondent has not provided evidence, nor is there any indication in the record of this case, that the Respondent is commonly known by the Domain Name prior to the dispute. Furthermore, the Domain Name resolves to a website which offers subscriptions to adult content in direct competition with the services of the Complainant, which does not constitute a legitimate non-commercial or fair use of the Domain Name, as it falsely suggests affiliation with the Complainant in order to obtain commercial gain to the Respondent's benefit ([WIPO Overview 3.0](#), section 2.5).

In view of all of the above, the Panel concludes that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

Based on the undisputed information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the Domain Name the Respondent was or should have been aware of the Trade Marks, since:

- the Respondent's registration of the Domain Name occurred more than 2 years after the registration of the earliest Trade Marks;
- the incorporation of the entirety of the Trade Marks, with omission of the plural "s" at the end;
- the reputation of the Trade Marks, being widely known across the world;
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Name would have informed the Respondent of the existence of the Trade Marks.

With regard to bad faith use, the Panel finds that the following circumstances taken together warrant a finding of bad faith use of the Domain Name:

- the probability that the Respondent was aware or should have been aware of the Complainant's rights in the Trade Marks;
- the lack of a reaction to the cease and desist letter of November 18, 2021, and the lack of a formal Response of the Respondent;
- the use of the Domain Name for a website offering subscriptions to the Respondent's adult-themed services in direct competition with the Complainant, thereby creating a likelihood of confusion with the Trade Marks and the Complainant as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site and services.

Therefore, the Panel concludes on the basis of all of the above circumstances, taken together, that the Domain Name has been registered and is being used in bad faith.

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, <line-onlyfan.com>, be cancelled.

/Wolter Wefers Bettink/
Wolter Wefers Bettink
Sole Panelist
Date: March 16, 2022