

ADMINISTRATIVE PANEL DECISION

Fenix International Limited c/o Walters Law Group v. Raido Kulla
(LCENTERT84919)

Case No. D2022-0869

1. The Parties

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

The Respondent is Raido Kulla (LCENTERT84919), Estonia.

2. The Domain Name and Registrar

The disputed domain name <onlyfans-search.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 March 11, 2022. On March 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 15, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 16, 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 March 16, 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 March 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2022. The Respondent’s informal communications were received by the Center on March 16, 2022 and March 21, 2022, respectively. The Center notified the Parties

the Commencement of Panel Appointment Process on April 11, 2022.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on April 22, 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 through a website located at the domain name <onlyfans.com>, a social media platform that allows users to post and subscribe to audiovisual content online. The Complainant's website is one of the most popular worldwide, with over 180 million registered users. According to the data provided by the Complainant, it is currently the 340th most popular website worldwide, and the 93rd most popular in the United States.

The Complainant owns common law and registered trademark rights over ONLY FANS and ONLYFANS.COM, including the following:

- European Union trademark no. 17912377 over the word ONLYFANS, registered on January 9, 2019;
- European Union trademark no. 17946559 over the figurative mark ONLYFANS reproduced below, registered on January 9, 2019;



- United States trademark no. 5769267 over the word ONLYFANS, registered on June 4, 2019; and
- United States trademark no. 5769268 over the word ONLYFANS.COM, registered on June 4, 2019.

The disputed domain name was registered on November 26, 2020. It resolves to a website which displays information regarding a social media platform with adult content. The main brand affixed on this website is reproduced below. At this stage, it offers the possibility to creators to open their accounts, and the platform plans its launch when five thousand content creators have signed up.



On January 28, 2022, the Complainant sent a cease-and-desist letter to the Respondent, in which it requested in particular the transfer of the disputed domain name. The Respondent did not respond and therefore the Complainant brought this Complaint.

5. Parties' Contentions

A. Complainant

The detailed arguments of the Complainant can be summarized as follows:

On the first element of the Policy, the Complainant claims that the disputed domain name is confusingly similar to its trademarks ONLYFANS. Indeed, its trademarks are clearly recognizable within the disputed

domain name.

On the second element of the Policy, the Complainant indicates firstly that the Respondent has no connection or affiliation with the Complainant and has not received any authorization, license, or consent, whether express or implied, to use the Complainant's trademarks in the disputed domain name or in any other manner. Also, the Respondent is not commonly known by the disputed domain name and does not hold any trademarks for the disputed domain name. Secondly, the Complainant claims that the Respondent is not using the disputed domain name fairly: by reproducing its trademark ONLYFANS, with the addition of the word "search", the Respondent is indeed attempting to create a risk of implied affiliation. This is all the more true as the Respondent intends to provide a service in direct competition with the Complainant's activities, specifically in the field of adult entertainment: namely, the Respondent will offer a search engine for finding adult entertainers on the disputed domain name containing the ONLYFANS mark and the additional word "search". Also noteworthy, according to the Complainant, is the use by the Respondent of a logo which is very similar to its own. Finally, the Complainant highlights a risk of phishing activities: indeed, the log-in section of the Respondent's website may serve the purpose of illegally phishing for the log-in credentials of the Complainant's users.

On the third element of the Policy, the arguments of the Complainant are twofold:

On the bad faith registration, the Complainant argues that the Respondent did target its trademark ONLYFANS when registering the disputed domain name. Indeed, the Respondent could not ignore the existence and reputation of the trademarks ONLYFANS and the corresponding social media. Such initial confusion is enhanced by the addition of the word "search", which describes the searching functionality of a social media.

On the bad faith use, the Complainant highlights that bad faith use is found where the disputed domain name directs Internet users to a commercial website that offers goods and services in direct competition with the Complainant. Also, the Complainant underlines the adoption by the Respondent of a very similar logo, and the operation of a competing activity aimed at adult content.

To conclude, the Complainant states that "The bad faith allegations set out in the paragraphs above, combined with the Respondent's lack of interest or rights in the disputed domain name, should lead the Administrative Panel to the inevitable conclusion that there is no plausible circumstance under which the Respondent could legitimately register or use the disputed domain name and that, thus, the disputed domain name was registered and is being used by the Respondent in bad faith".

B. Respondent

The Respondent did send two emails to the Center and to the Complainant within this proceeding. Apparently, it contacted the Complainant in view of a possible settlement. But in the end, no such settlement occurred, and the Respondent did not file any formal response to the Complaint.

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in this proceeding:

(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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) 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, as a word mark and also as a word and device registration.

The disputed domain name <onlyfans-search.com> includes the Complainant's trademark in its entirety, combined with the term "search", separated with a hyphen. This addition does not prevent the Complainant's trademark from being recognizable in the disputed domain name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("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. The nature of such additional term(s) may however bear on assessment of the second and third elements."

As the disputed domain name includes the Complainant's trademark in its entirety combined with a term that does not prevent the Complainant's trademark from being recognizable in the disputed domain name, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark.

Therefore, the first element of the Policy is satisfied.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production to demonstrate rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see WIPO Overview 3.0, section 2.1).

In this case, the Respondent has not rebutted the allegations made by the Complainant. The Respondent has no rights, and no legitimate interests, in the disputed domain name.

Besides, the operation by the Respondent of a social media platform which mirrors that of the Complainant, and which uses the trademarks of the Complainant, is likely to mislead Internet users and does not amount to a *bona fide* offering of goods or services under the disputed domain name.

For this reason, and failing any specific allegation by the Respondent, the second element of the Policy is deemed to be satisfied.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances, which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or

(ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trademark or service mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location.

In this case, the Respondent has undoubtedly registered, and is using, the disputed domain name in bad faith.

The social media platform of the Complainant enjoys a strong reputation worldwide, and is subject to close scrutiny by potential competitors. The Respondent, which is a professional providing services online, could not ignore the existence of the Complainant and its trademarks. It chose to register a domain name which not only reproduces the Complainant's trademark, but also incorporates a word which enhances the confusion.

The Respondent is in the process of launching a social media platform, which is in direct competition with that of the Complainant, specifically with adult content. Its website displays the brand "OnlyFans SEARCH" with a logo highly similar to that of the Complainant: choice of colours, layout, and typeface, as is visible in the description of the facts above.

By doing so, the Respondent intends to attract Internet users by creating a likelihood of confusion with the services provided by the Complainant. It also free rides on the reputation of the Complainant's brand.

All this evidences bad faith registration and use, as per paragraph 4(b)(iv) of the Policy.

The third element of the Policy is satisfied, and pursuant to the request of the Complainant, the disputed domain name should be cancelled.

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, <onlyfans-search.com> be cancelled.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: May 4, 2022