

ADMINISTRATIVE PANEL DECISION

Fenix International Limited c/o Walters Law Group v. Privacy Service
Provided by Withheld for Privacy ehf / Nemanja Krecelj, Rocket Science
Group
Case No. D2022-1622

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, Rocket Science Group, Bosnia and Herzegovina.

2. The Domain Names and Registrar

The disputed domain names <ofleaks.net> and <topofleaked.com> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2022, with regards the disputed domain name <ofleaks.net>. On May 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 5, 2022, the Registrar transmitted by email to the Center its verification response disclosing the 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 May 6, 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 May 6, 2022, in which the Complainant requested the addition of the disputed domain name <topofleaked.com> registered by the Respondent in WIPO Case No. [D2022-1593](#) to this proceeding.

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 May 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 2, 2022.

The Center appointed Luca Barbero as the sole panelist in this matter on June 9, 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 available at the domain name <onlyfans.com>, registered on January 29, 2013, where it provides a social media platform that allows users to post and subscribe to audiovisual content.

The Complainant's website at "www.onlyfans.com" is today one of the most popular websites in the world, with more than 180 million registered users.

The Complainant is the owner of several trademark registrations for ONLYFANS, including the following, as per trademark certificates submitted as annexes to the Complaint:

- European Union trademark registration No. 017946559 for ONLYFANS (figurative mark), filed on August 22, 2018 and registered on January 9, 2019, in international classes 9, 35, 38, 41, and 42;
- European Union trademark registration No. 017912377 for ONLYFANS (word mark), filed on June 5, 2018 and registered on January 9, 2019, in international classes 9, 35, 38, 41, and 42;
- United States trademark registration No. 5769267 for ONLYFANS (word mark), filed on October 29, 2018 and registered on June 4, 2019, in international class 35; and
- United States trademark registration No. 5769268 for ONLYFANS.COM (word mark), filed on October 29, 2018 and registered on June 4, 2019 in international class 35.

The disputed domain names <ofleaks.net>, registered on October 30, 2020, and <topofleaked.com>, registered on May 28, 2021, both direct to websites offering adult entertainment services.

5. Parties' Contentions

A. Complainant

The Complainant contends that disputed domain names <ofleaks.net> and <topofleaked.com> are confusingly similar to the trademark ONLYFANS in which the Complainant has rights as they reproduce the commonly abbreviated version of the Complainant's trademark "OF" with the mere addition of the words "leaks", "top", "leaked" and the generic Top Level Domains ".net" and ".com", which are insufficient to avoid confusing similarity.

The Complainant further contends that confusing similarity can also be denoted by the use that the Respondent made of the disputed domain names, considering both websites to which the disputed domain names resolve contain various references to the Complainant's trademarks, including the use of a blue and white color scheme and, in the case of <ofleaks.net>, the Complainant's logo, which would further prove the Respondent is willing to impersonate the Complainant.

With reference to rights or legitimate interests in respect of the disputed domain names, the Complainant states that the Respondent is in no way connected or affiliated with the Complainant and has not been authorized, licensed or consented, to use the Complainant's trademarks in any way, including for use in the registration of the disputed domain names.

The Complainant further submits that, considering the use the Respondent has made of both disputed domain names, offering adult entertainment services (including content pirated from the Complainant's users) in direct competition with the Complainant's services whilst also using a logo similar to the Complainant's registered logo, there can be no finding of rights or legitimate interests in the disputed domain names and that the Respondent is not making a *bona fide* offering of goods or services without the intent to capitalize on the Complainant's fame and goodwill.

With reference to the circumstances evidencing bad faith, the Complainant indicates that, considering the content of the disputed domain names and the date of registration of such domain names, the Respondent was well aware of the Complainant at the time of registering the disputed domain names. More so because the disputed domain names direct to websites offering identical and competing services to those of the Complainant.

The Complainant also emphasizes that even the use of a logo similar to that of the Complainant is to be considered as further evidence of bad faith use and submits that the Respondent acted purposely in order to create an impression of affiliation with the Complainant in order to profit and commercialize on the Complainant's world renown and goodwill.

The Complainant informs the Panel that it sent cease-and-desist letters to the Respondent, on March 10, 2022 and March 11, 2022, demanding that it stop using the disputed domain names, but the Respondent failed to respond to such letters, which led to the filing of the present Complaint.

In view of the above, the Complainant requests the cancellation of the disputed domain names.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint 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." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain names registered by the Respondent are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain names;
and
- (iii) that the disputed domain names have been registered and are being used in bad faith.

6.1. Preliminary Procedural Issue: Addition of Domain Names to a Case prior to Complaint Notification

As stated in Section 4.12.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "As a general rule, domain names held by the same registrant(s) may be added to a complaint before notification to the respondent(s)/formal commencement of the relevant

proceeding. Particularly where the Whols-listed registrant is a privacy or proxy service, on receipt of confirmation of the underlying registrant identity from the registrar relayed by the WIPO Center to the complainant, a complainant may wish to add other relevant domain names held by the same registrant to its complaint. In the event proposed additional domain names involve marks not invoked in the original complaint, the complainant would be required to show relevant trademark rights corresponding to the new domain names. At the same time, the second and third UDRP elements may be updated where appropriate or applicable.”

The Panel finds that it is appropriate to consolidate the disputed domain names in a single proceeding, in acceptance of the Complainant’s request for addition of the disputed domain name <topofleaked.com> - originally subject of the WIPO Case No. [D2022-1593](#), for the following reasons:

- i) there appear to be *indicia* of common control of the disputed domain names since the Registrant name of both, as revealed by the Registrar to the Center, is Nemanja Krecelj, from Bosnia and Herzegovina;
- ii) both the dispute domain names include the two-letter term “of”, which can be interpreted as an abbreviation of the Complainant’s trademark ONLYFANS, and the term “leak/s”; and
- iii) both the disputed domain names are pointed to websites providing adult entertainment services.

The Panel also finds that it would be fair and practicable to consolidate both the disputed domain names in a single proceeding and that the addition will not be prejudicial to the Respondent, also in light of the fact that the Notification of the Complaint has been sent by the Center to all available Registrant contact details as provided by the Registrar to the Center and thus the Respondent has been provided with an opportunity to reply to the Complainant’s contentions, although it has failed to do so.

6.2. Substantive Issues

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark ONLYFANS based on the trademark registrations cited under section 4 above.

It is well accepted that the first element functions primarily as a standing requirement, and that the threshold test for confusing similarity involves a reasoned but relatively straightforward comparison between a complainant’s trademark and the disputed domain names to assess whether the trademark is recognizable within the disputed domain names (section 1.7 of the [WIPO Overview 3.0](#)).

The disputed domain names include the initials of the two words that form the trademark ONLYFANS (“of”) and the terms “leaks”, “top”, and “leaked”. Considering the terms combined with the abbreviation “of” in the disputed domain names, the Panel finds that there is a *prima facie* case of confusing similarity between the disputed domain names and the trademark ONLYFANS. In addition, the Panel notes that both disputed domain names resolve to websites offering adult entertainment services and <ofleaks.net> is pointed to a website displaying a logo very similar to the one of the Complainant, circumstance which confirms that the Respondent is seeking to target the trademark ONLYFANS through the registration and use of the disputed domain names. See [WIPO Overview 3.0](#), section 1.15. See also, along these lines, *Fenix International Limited v. Ladislav Hricko / 1a world Ltd, admin Me / Whois Privacy Corp.*, WIPO Case No. [D2021-2522](#).

Therefore, the Panel finds that the Complainant has proven that the disputed domain names are confusingly similar to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent may establish rights or legitimate interests in the disputed domain names by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

“(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

In the case at hand, by not submitting a Response, the Respondent has failed to invoke any circumstance that could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain names.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s trademarks.

Moreover, there is no element from which the Panel could infer a Respondent’s right over the disputed domain names, or that the Respondent, might be commonly known by the disputed domain names.

The Panel finds that the Respondent’s use of the disputed domain names to direct users to websites promoting adult entertainment services identical to the ones offered by the Complainant does not amount to a *bona fide* offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert users looking for the Complainant.

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain names according to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain names were registered and are being used by the Respondent in bad faith.

As to the bad faith at the time of the registration, the Panel notes that, in light of the prior registration and use of the Complainant’s trademark ONLYFANS online via the Complainant’s website “www.onlyfans.com” and the popularity reached by such website in the recent years, the Respondent was or ought to be aware of the Complainant’s trademark.

Moreover, the circumstances that the disputed domain names have been pointed to websites providing adult entertainment services identical to the ones of the Complainant and that a logo very similar to the one of the Complainant has been published on the website to which the disputed domain name <ofleaks.net> resolves, demonstrate that the Respondent was in all likelihood aware of the Complainant and its trademarks.

The Panel also finds that, by pointing the disputed domain names to websites offering adult entertainment services, publishing also content taken from the Complainant’s website, the Respondent has intentionally attempted to attract Internet users to its websites, likely for commercial gain, by causing a likelihood of confusion with the trademark ONLYFANS as to the source, sponsorship, affiliation or endorsement of its websites according to paragraph 4(b)(iv) of the Policy.

Finally, the Panel notes that the Respondent’s failure to reply to the Complainant’s cease-and-desist letters

and to respond to the Complaint further proves the Respondent's bad faith.

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and has been using the disputed domain names in bad faith according to 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 names <ofleaks.net> and <topofleaked.com> be cancelled.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: June 23, 2022