

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Privacy Services Provided by Withheld for Privacy ehf / Patric Kawerski
Case No. D2022-1861

1. The Parties

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

The Respondent is Privacy Services Provided by Withheld for Privacy ehf, Iceland / Patric Kawerski, Indonesia.

2. The Domain Name and Registrar

The disputed domain name <onlyfucks.org> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 24, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on May 24, 2022, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) 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 May 31, 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 also on May 31, 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 June 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 23, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on June 30, 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

Since January 2013, the Complainant has been operating a website at “www.onlyfans.com” which provides a social media platform enabling users to post and subscribe to audio-visual content on the World Wide Web.

By 2022, the Complainant’s website has more than 180 million registered users. According to Alexa Internet, the Complainant’s website is the 177th most popular website on the World Wide Web and the 75th most popular website in the United States.

Amongst other things, the Complainant holds a number of registered trademarks around the world for ONLYFANS including:

(a) United Kingdom Registered Trademark No. UK017912377, which has been registered with effect from June 5, 2018 in respect of a range of goods and services in International Classes 9, 35, 38, 41 and 42;

(b) European Union Registered Trademark No. EU017912377, which has also been registered with effect from June 5, 2018 in respect of a range of goods and services in International Classes 9, 35, 38, 41 and 42; and

(c) United States Registered Trademark No. 5,769,267, which was registered in the Principal Register on June 4, 2019 in respect of “arranging subscriptions of the online publication of others” in International Class 35, and claiming to have been first used in commerce in the United States in April 2016.

Registrations of this trademark have also been pursued in numerous other countries around the world.

The disputed domain name was created on January 17, 2021. It resolves to a website which is headed “OnlyFans leaked porn”. “Collection of porn videos leaked from OnlyFans. Here you can find the best leaked [sic] from OnlyFans porn videos selection.” Then follows a number of “buttons” for various categories such as “New”, “BDSM” etc., and images of women in various states of undress if not naked.

5. Discussion and Findings

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. The courier attempting delivery of the Written Notice was unable to complete delivery. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules

requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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 first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of numerous registered trademarks for ONLYFANS. Moreover, given the number of registered users and the website's ranking as measured by Alexa Internet, the Panel accepts its trademark is very well known.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. *e.g.* WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain (gTLD) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".org" gTLD, the disputed domain name can be seen as consisting of the first term comprised in the Complainant's trademark and an obscene or vulgar slang term for sexual intercourse. The Complainant points out that prior panels have frequently found that a mere abbreviation of a trademark is insufficient to avoid a finding of confusing similarity.

The Complainant further contends that the term "only" is the first and most significant component of its trademark. Bearing in mind that "only" is an ordinary English word in common usage, the level of acquired secondary meaning in that term would need to be very high. The size and extent of the Complainant's user base very likely crosses that threshold. In that connection, the Complainant points out that a number of previous decisions under the Policy have found domain names which have used only one or other component confusingly similar to the Complainant's trademark. See *e.g.* *Fenix International Limited v. Privacy service provided by Withheld for Privacy ehf / Nemanja Krecelj*, WIPO Case No. [D2022-0216](#) (<leakedonly.com>); *Fenix International v. Privacy Service Provided by Withheld for Privacy ehf / Eduardo Guerrero Romero*, WIPO Case No. [D2021-3180](#) (<onlypacks.net>); *Fenix International Limited v. Privacy Service Provided by Withheld for Privacy ehf / Pablo Espinoza*, WIPO Case No. [D2021-3200](#) (<only-mega-packs.com>) and *Fenix International Limited v. Nemanja Krecelj, Rocket Science Group*, WIPO Case No. [D2021-2667](#) (<leakedfanscontent.com>).

Moreover, it has been recognised that, while the content of a website is usually disregarded it is permissible to take into account the content of the website, to the extent there is any doubt, where it appears that the Respondent is seeking to target the Complainant's trademark. See e.g. [WIPO Overview 3.0](#) section 1.15. Having regard to that content as briefly summarised in section 4 above, there cannot be any doubt that the Respondent's website is seeking to target the Complainant's trademark.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

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

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Complainant states that it has not authorised the Respondent¹ to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

The Respondent registered the disputed domain name well after the Complainant began using its trademark and also after the Complainant had registered its trademark. As already discussed in section 5A above, having regard to the content of the website to which the disputed domain name resolves, it is plain that the disputed domain name and website are targeting the Complainant's trademark and service.

¹ Bearing in mind the first-named Respondent appears to be a privacy service, the Panel will refer to the second-named Respondent as the Respondent for simplicity.

Using a disputed domain name which is confusingly similar to the Complainant's trademark to provide a service in competition with, or parasitic on, the Complainant's service provided by reference to that trademark does not constitute a good faith offering of goods or services for the purposes of the Policy. Nor can the use made by the Respondent in this proceeding qualify as a legitimate noncommercial or fair use within the scope of paragraph 4(c)(iii) of the Policy.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement.

Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd* WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

Given the content of the Respondent's website including the text quoted in section 4 above, there can be no doubt that the Respondent was aware of the Complainant's trademark in this case.

There is a strong and unrebutted inference that the Respondent registered the disputed domain name with that knowledge to provide a service in competition with or parasitic on the Complainant's own service. That clearly qualifies as registration in bad faith under the Policy. And the deployment of the disputed domain name for that purpose constitutes use in bad faith.

In circumstances where the Respondent has not sought to claim, let alone establish, that he or she has rights or legitimate interests in the disputed domain name, therefore, the Panel finds the Respondent has registered and used it in bad faith.

Accordingly, the Complainant has established all three requirements under 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, <onlyfucks.org>, be cancelled.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: July 6, 2022