

ADMINISTRATIVE PANEL DECISION

Fenix International Limited c/o Walters Law Group v. Jiri Veselovsky
Case No. D2022-2352

1. The Parties

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

The Respondent is Jiri Veselovsky, Czech Republic.

2. The Domain Name and Registrar

The disputed domain name <onlythots.org> is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 28, 2022. On June 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 30, 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 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 July 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 22, 2022.

The Center appointed John Swinson as the sole panelist in this matter on July 28, 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> and has used this domain name for several years in connection with the provision of a social media platform that allows users to post and subscribe to audiovisual content, much of which would seem to be adult content.

The Complainant owns several trademark registrations for ONLYFANS including U.S. Trademark Registration No. 5769267 filed on October 29, 2018 that has a registration date of June 4, 2019. The Complainant also owns U.S. Trademark Registration No. 6253475 for the figurative mark ONLYFANS with a lock logo inside the O, registered on January 26, 2001.

The disputed domain name was registered on April 16, 2021.

The disputed domain name includes the term “thots”, which is an abbreviation for “that hoe over there” and in slang means a woman who has many casual sexual encounters or relationships.

At the time the Complainant was filed, the disputed domain name resolved to a website that had similar design elements to the Complainant’s website, including a blue colour scheme and a lock logo that looks like the Complainant’s lock logo. This website included adult content photographs.

At the present time, the disputed domain name redirects to <thotsblog.com>, which also has similar photographs. If a user clicks on a photograph from this website, a webpage is displayed that includes more photographs and text such as “@goddessangelina Full Content OnlyFans Leak”.

5. Parties’ Contentions

A. Complainant

In summary, the Complainant made the following submissions:

The Complainant owns the registered trademarks set out in section 4 above and has extensive common law rights in the trademarks. The Complainant registered its <onlyfans.com> domain name on January 29, 2013. At the present time, the Complainant’s website is very popular.

The Complainant has been successful in over 40 other decisions under the Policy.

The disputed domain name includes the first word of the Complainant’s ONLYFANS trademark.

While website content is usually disregarded when assessing confusing similarity, the panel may consider website content in determining confusing similarity if the website contains “content trading off the Complainant’s reputation” such as where the “website contains various references to the ONLYFANS mark.”

The Complainant “has achieved global fame and success in a short time” which makes it clear that the Respondent knew of the Complainant’s ONLYFANS trademark at the time of registering the disputed domain name and also knew that it had no rights or legitimate interests in the disputed domain name.

The website at the disputed domain name offers adult content, including content pirated off the Complainant’s users. This does not give rise to legitimate rights or interests.

The website at the disputed domain name includes a lock logo that is identical to the Complainant’s registered lock logo.

The Respondent has no connection or affiliation with the Complainant and has not received any authorization, license, or consent to use the ONLYFANS trademark in the disputed domain names or in any

other manner. The Respondent is not commonly known by the ONLYFANS trademark and does not hold any trademarks similar to the disputed domain names. The Respondent's use of the disputed domain names does not give rise to rights or legitimate interests because the Respondent's website hosts content similar to content on the Complainant's website.

The disputed domain names were registered long after the Complainant attained registered rights in the ONLYFANS trademark.

The Complainant sent a cease-and-desist letter to the Respondent on March 10, 2022, demanding the Respondent stop using and cancel the disputed domain name. The Respondent did not respond, thus necessitating the filing of this Complaint.

Furthermore, bad faith use is found where the disputed domain names direct Internet users to a website that offers goods and services in direct competition with the Complainant's trademark.

The Complainant requests that the disputed domain names be cancelled. Given the vast number of domain names infringing on the ONLYFAN trademark, the Complainant does not want to take possession of all the infringing domain names.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

The onus of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the 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.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant's website is well-known.

The Complainant owns trademark registrations for ONLYFANS.

Previous UDRP panels have consistently held that domain names that are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name. See, for example, *Consumer Reports, Inc. v. Wu Yan, Common Results, Inc.*, WIPO Case No. [D2017-0371](#).

Here, the disputed domain name includes half of the Complainant's trademark, being ONLY, plus another term that is not an abbreviation of FANS or a synonym of FANS. The Complainant has no trademark rights in the word ONLY alone.

In *Fenix International Limited v. Privacy Service Provided by Withheld for Privacy ehf / Pablo Espinoza*, WIPO Case No. [D2021-3200](#), the UDRP panelist decided that the domain name <only-mega-packs.com> was confusingly similar to the Complainant's ONLYFANS trademark. In that decision, the UDRP panelist stated:

"The question therefore is whether 'only' is a sufficient approximation to 'onlyfans' in the context of the case analysis at hand. The Panel accepts this may be a case-specific issue but has formed the view that this is the type of case referred to at [WIPO Overview 3.0](#) section 1.7: 'In specific limited instances, while not a replacement as such for the typical side-by-side comparison, where a panel would benefit from affirmation as to confusing similarity with the complainant's mark, the broader case context such as website content trading off the complainant's reputation, or a pattern of multiple respondent domain names targeting the complainant's mark within the same proceeding, may support a finding of confusing similarity.'"

The same logic applies in the present case.

It is well established that the content of the Respondent's website is normally disregarded when assessing confusing similarity under the first element of the Policy. The test is to be conducted by way of a side-by-side comparison of the Complainant's trademark and the disputed domain name. *Harry Winston Inc. and Harry Winston S.A. v. Jennifer Katherman*, WIPO Case No. [D2008-1267](#).

However, in certain circumstances, it is permissible for the Panel to consider the website at the disputed domain name to gain an indication of the Respondent's intention for the disputed domain name. See *Fenix International Limited v. Privacy services provided by Withheld for Privacy ehf / Darko Milosevic, Rocket Science Group*, WIPO Case No. [D2022-1875](#) (concerning <ofansfree.com> and <ofhacked.com>) and the cases cited in that decision.

The Respondent's website trades off the Complainant's reputation and includes what appears to be content stolen from the Complainant's website or intended to make consumers believe that is the case. An Internet user visiting the website at the disputed domain name would most likely understand ONLY in the disputed domain name to refer to the Complainant's ONLYFANS trademark. The Panel finds that such use supports a finding of confusing similarity.

In the very specific and limited circumstances of this case, the Panel finds that the Complainant satisfies the first element of the Policy.

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 names.

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.

Previous UDRP 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 sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden of production will shift to the respondent to rebut that *prima facie* case.

The Complainant asserts that the Respondent has no connection or affiliation with the Complainant and has not received any authorization, license, or consent to use the ONLYFANS trademark in the disputed domain name or in any other manner. The Complainant also asserts that the Respondent is not commonly known by ONLYFANS and does not hold any trademarks similar to the disputed domain name. The Complainant also asserts that the Respondent's use of the disputed domain name does not give rise to rights or legitimate interests because the Respondent's website hosts content similar to content on the Complainant's website and uses the Complainant's ONLYFANS trademark in the descriptions of such content.

The Panel considers that, based upon the above, the Complainant has established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name and thereby the burden shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name.

The Respondent has chosen not to file a Response. The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the disputed domain name. Moreover, the use to which the disputed domain name have been put, namely to create a website that confuses Internet users or takes unfair advantage as to the website's association with the Complainant, cannot be considered legitimate.

Based on the evidence before the Panel, none of the circumstances listed in paragraph 4(c) apply in the present circumstances. Accordingly, the Panel finds that the Respondent has no rights or any legitimate interests in the disputed domain name.

The Complainant succeeds on the second element of the Policy in relation to the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

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 the complainant. See *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

The Respondent's conduct as described above (e.g., using the Complainant's lock logo on the website, and now redirecting the disputed domain name to a website that refers to "OnlyFans Leak") demonstrates the Respondent's knowledge of the Complainant and its trademark.

The Panel finds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its websites by creating likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website under paragraph 4(b)(iv) of the Policy.

The Complainant succeeds on the third element of the Policy in relation to the disputed domain name.

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 <onlythots.org> be cancelled.

/John Swinson/

John Swinson

Sole Panelist

Date: August 10, 2022