

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Mark Karimovich
Case No. D2023-0426

1. The Parties

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

The Respondent is Mark Karimovich, Egypt.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2023. On January 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 31, 2023, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 1, 2023, 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 February 1, 2023.

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 February 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 23, 2023.

The Center appointed Torsten Bettinger as the sole panelist in this matter on March 2, 2023. 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 is a company incorporated in the United States and operates an online social media platform that allows users to post and subscribe to adult-oriented audiovisual content. The Complainant holds registrations for the trademark ONLYFANS and variations of it in several countries, including, for example, European Union Trade Mark Registration No. 017902377, registered on January 9, 2019 in classes 9, 35, 38, 41 and 42 and United States Trademark Registration No. 5,769,268, registered on June 4, 2019 in class 35.

The Complainant registered the domain name <onlyfans.com> on January 29, 2013.

The Respondent registered the disputed domain name on May 5, 2022. The disputed domain name directs to a commercial website that offers adult entertainment content. The Complainant sent a cease-and-desist letter to the Respondent on November 22, 2022, demanding the Respondent to stop using and cancel the disputed domain name. The Respondent did not respond to it.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has used the domain name <onlyfans.com> for several years in connection with the provision of a social media platform that allows users to post and subscribe to audiovisual content on the World Wide Web and that the website is one of the most popular websites in the world, with more than 180 million registered users.

With regard to the requirement of identity or confusing similarity between the trademark and the disputed domain name pursuant to paragraph 4(a)(i) of the Policy, the Complainant asserts that

- the disputed domain name is confusingly similar to its registered trademark ONLYFANS as the disputed domain name consists of Complainant's mark with the only difference being the insertion of the apparently random letters "ki" instead of the letter "s" in the Complainant's mark;
- the applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

With regard to the Respondent having no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy, the Complainant submitted 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 marks in the disputed domain name or in any other manner;
- the Respondent is not commonly known by the marks and does not hold any trademarks for the disputed domain name;
- the Complainant has achieved global fame and success which makes it clear the Respondent knew of the Complainant's marks and knew that it had no rights or legitimate interests in the disputed domain name;

- the Respondent will be unable to provide credible evidence that it has rights or legitimate interests in the disputed domain name as the website at the disputed domain name offers adult entertainment services, including content pirated from the Complainant's users in direct competition with the Complainant's services;
- using a disputed domain name to host commercial websites that advertise goods and services in direct competition with the trademark owner does not give rise to legitimate rights or interests;

Finally, with regard to the disputed domain name having been registered and being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy, the Complainant argues that:

- the disputed domain name was registered long after the Complainant attained registered rights in the marks ONLYFANS and long after the Complainant had common law rights in the marks which had acquired distinctiveness;
- the registration of a domain name that is confusingly similar to a widely-known trademark creates a presumption of bad faith;
- the disputed domain name can be perceived as a typosquatted version of the Complainant's marks, since the letter "s" in the Complainant's mark is replaced with the letters "ki";
- the practice of typosquatting, of itself is evidence of bad faith registration;.
- the Respondent was likely aware of the Complainant's trademark rights as it registered a confusingly similar domain name and began operating a website that provides products and services in direct competition with the Complainant;
- the Respondent's failure to not respond to the Complainant's cease and desist letter is further evidence of bad faith;
- the Respondent clearly registered the disputed domain name to divert Internet traffic from the Complainant's site to a website offering adult entertainment content (including content advertised as being pirated from Complainant's users) in direct competition with the Complainant's website;
- the website at the disputed domain name contains information about the Complainant's users obtained from the Complainant's social media platform, including the users' profile and personal information.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy states that the Complainant must prove each of the three following elements:

- (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 Complainant has demonstrated that it owns and has rights to the trademark registration for the mark ONLYFANS prior to the registration of the disputed domain name on May 5, 2022.

It is well-established that the test of identity or confusing similarity under the Policy is confined to a comparison of the disputed domain name and the trademark alone, independent of the products for which the trademark is used or other marketing and use factors usually considered in trademark infringement cases (see sections 1.1.2 and 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

In this case, the disputed domain name contains the Complainant's mark in its entirety and only differs from the Complainant's ONLYFANS mark by the insertion of the letters "ki" instead of the letter "s".

It is unclear to the Panel what the letters "ki" represent. However, as the Complainant's trademark is still recognizable within the disputed domain name, the Second-Level-Domain of the disputed domain name is confusingly similar to the Complainant's mark. The insertion of the letters "ki" instead of the letter "s" does not prevent a finding of confusing similarity.

Furthermore, the specific generic Top-Level Domain ("gTLD") designation such as ".com", ".net", ".org" is not to be taken into account when assessing the issue of identity and confusing similarity, except in certain cases where the applicable top-level suffix may itself form part of the relevant trademark (see [WIPO Overview 3.0](#), section 1.11).

For the foregoing reasons the Panel concludes that the disputed domain name is confusingly similar to the Complainant's ONLYFANS trademark, and that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy a respondent may establish its rights or legitimate interests in the domain name, among other circumstances, by showing any of the following elements;

- "(i) before any notice to you [the Respondent] 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 [the Respondent] (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 [the Respondent] are making a legitimate noncommercial 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."

The Complainant stated that the Respondent is neither affiliated with, nor authorized by the Complainant to register and use ONLYFANS mark, and is not commonly known by the disputed domain name.

The Complainant stated and provided evidence that the Respondent has used the disputed domain name to resolve to a website which displays adult entertainment content in direct competition with Complainant's website. These submissions are sufficient to establish a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent chose not to contest the Complainant's allegations and has failed to come forward with any evidence to refute the Complainant's *prima facie* showing that the Respondent lacks rights or legitimate

interests. The Panel therefore accepts the Complainant's submissions, that the Respondent has used the disputed domain name to host commercial websites that advertise goods and services in direct competition with the Complainant and therefore lacks rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- i. circumstances indicating that the Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of 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 owner of the trademark or service mark from reflecting the 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 its 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.

Bad faith registration

The Complainant holds a trademark registration for the ONLYFANS trademark in various countries that predates the registration of the disputed domain name. The evidence shows that the Complainant's trademark ONLYFANS is distinctive and that it is widely known in connection with adult entertainment through the provision of an Internet platform that allows users to post and subscribe to audiovisual content.

Given that the disputed domain name incorporates the Complainant's mark in its entirety, except for the plural "s" at the end of the mark, and that the Respondent is offering similar services to the ones offered by the Complainant (including content pirated from Complainant's users), it is difficult to imagine that the Respondent registered the disputed domain name coincidentally without knowledge of the Complainant's rights in the ONLYFANS mark. As the Respondent has not submitted a response, or offered any other explanation as to why the disputed domain name was registered, the Panel is satisfied that the Respondent registered the disputed domain name in bad faith.

Bad faith use

To prove bad faith use of the disputed domain name, the Complainant provided evidence that the disputed domain name resolved to a website offering adult entertainment in direct competition with the Complainant's website.

It is not difficult to infer, in the absence of any denial that through these activities the Respondent is using or has used a deliberately similar version of the Complainant's trademark and the Complainant's significant goodwill and reputation to improperly diverting Internet customers to its own website.

Panels have categorically held that the use of the domain name to distribute competitive content itself constitutes use of the domain name to intentionally 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, sponsorship, affiliation, or endorsement of Respondent's website. See Policy, paragraph 4(b)(iv). Such conduct is exactly the type of classic, abusive cybersquatting that the Policy was designed to prevent.

The Panel therefore finds that the Respondent also registered and used the disputed domain name 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 <onlyfanki.com> be transferred to the Complainant.

/Torsten Bettinger/

Torsten Bettinger

Sole Panelist

Date: March 16, 2023