

## **ADMINISTRATIVE PANEL DECISION**

Fenix International Limited v. Carlos Lopez

Case No. D2023-0688

### **1. The Parties**

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

Respondent is Carlos Lopez, Spain.

### **2. The Domain Name and Registrar**

The disputed domain name is <onlyfans-packs.com> which is registered with Nominalia Internet S.L. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 15, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 22, 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 those in the Complaint (Redacted for Privacy).

The Center sent an email communication to the Parties on February 22, 2023, regarding the language of the proceeding, as the Complaint was submitted in English and the language of the registration agreement for the disputed domain name is Spanish. On February 23, 2023, Complainant confirmed its request for English to be the language of the proceeding. Respondent did not comment on the language of the proceeding.

Also on February 22, 2023, the Center sent an email communication to Complainant providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on February 23, 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 Respondent of the Complaint, in Spanish and in English, and the proceedings commenced on February 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 20, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on March 21, 2023.

The Center appointed Gerardo Saavedra as the sole panelist in this matter on March 27, 2023. This Panel finds that it was properly constituted. This 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.

#### **A. Preliminary Issue: Language of the Proceedings**

The general rule under paragraph 11(a) of the Rules is that the language of the administrative proceeding shall be the language of the Registration Agreement (Spanish in this case), unless otherwise agreed to by the Parties, and subject to the authority of the panel to decide otherwise, taking into consideration the circumstances of the case. The Complaint was filed in English, and Complainant expressly asked for the proceedings to be conducted in English, pointing out that the words comprising the disputed domain name are in English and that the content of the website associated with the disputed domain name is in English as well. Respondent did not oppose to Complainant's request. The communications from the Center to the Parties including the Notification of Complaint were in both English and Spanish. Taking into account the above and, having considered all the circumstances of this case, this Panel resolves to have the proceedings conducted in English (see *Louise Rennison v. Milan Kovac*, WIPO Case No. [D2012-0211](#), and *Polaris Industries Inc. v. Pablo Jose de Pablo Limas*, WIPO Case No. [D2014-2082](#)).

#### **B. Preliminary Issue: Proper Respondent**

As regards who is the proper Respondent in this case, pursuant to paragraph 1 of the Rules "Respondent means the holder of a domain-name registration against which a complaint is initiated". The original Complaint named "Redacted for Privacy" as Respondent, as per the corresponding Whois report at the time of filing the Complaint. At the Center's request, the Registrar sent its registrar verification disclosing Carlos Lopez as the registrant of the disputed domain name, and thus on February 23, 2023, Complainant filed an amendment to the Complaint naming Carlos Lopez as additional Respondent. Since the real underlying registrant has been promptly disclosed, this Panel decides to have Carlos Lopez as the proper Respondent.

### **4. Factual Background**

Complainant operates the website linked to the domain name <onlyfans.com> in connection with the provision of a social media platform that allows users to post and subscribe to audiovisual content on the Internet.

Complainant has rights over the ONLYFANS mark for which it holds several mark registrations, such as United States Registration No. 5,769,267, registered on June 4, 2019, in class 35, with stated first use on July 4, 2016; and European Union Trade Mark Registration No. 017902377, registered on January 9, 2019, in classes 9, 35, 38, 41 and 42.

Complainant also has rights over the ONLYFANS.COM mark for which it holds United States Registration No. 5,769,268 registered on June 4, 2019, in class 35, and with stated first use on July 4, 2016.

The disputed domain name was registered on May 27, 2022. At the time the Complaint was filed, the website linked to the disputed domain name showed, among others, "Here you can find and download zip packs from OnlyFans and other webs that has previously been leaked to the internet. It is just a collection of pictures and videos that has had become public, now available for you to download", "Start browsing", along with some adult content images.

## 5. Parties' Contentions

### A. Complainant

Complainant's assertions may be summarized as follows.

Complainant owns and operates the website located at the domain name <onlyfans.com> and has used it for several years in connection with the provision of a social media platform that allows users to post and subscribe to audiovisual content. Complainant registered the <onlyfans.com> domain name on January 29, 2013.

In providing its services, Complainant has made extensive use of its ONLYFANS mark. Complainant has common law rights in the ONLYFANS mark since at least 2016, and has registered rights in the marks since 2018.

In 2023, <onlyfans.com> is one of the most popular websites in the world, with more than 180 million registered users. According to Similarweb, it is the 94th most popular website on the Internet, and it is the 7th most popular adult website in the world. Because <onlyfans.com> is one of the most visited websites in the world, it has become a prime target for cybersquatters wishing to profit from the goodwill that Complainant has garnered in its marks. Complainant's mark rights have been recognized in over forty other UDRP cases, resulting in the cancellation or transfer of the concerned domain names to Complainant.

The disputed domain name is identical or confusingly similar to Complainant's ONLYFANS marks. The disputed domain name consists of Complainant's exact mark with the only difference being the insertion of the descriptive term "packs", which does nothing to avoid confusing similarity. In fact, it enhances confusion by suggesting that the disputed domain name offers "packs" of Complainant's users' OnlyFans content. Further, the disputed domain name uses the generic Top-Level Domain ("gTLD") ".com" which is identical to Complainant's registration of the ONLYFANS.COM mark.

Respondent has neither rights nor legitimate interests in the disputed domain name. Respondent has no connection or affiliation with Complainant and has not received any authorization or consent, whether express or implied, to use Complainant's marks in the disputed domain name or in any other manner. Respondent is not commonly known by said marks or the disputed domain name and does not hold any trademarks for the disputed domain name.

The website linked to the disputed domain name contains numerous references to Complainant's marks and content pirated from Complainant's services. Not only is Respondent trading off Complainant's reputation, Respondent is actually trading in content pirated from Complainant's users.

Respondent cannot claim it has a right to use the disputed domain name under fair use since it includes Complainant's marks and the additional term "packs", which creates a risk of implied affiliation: the generic term "packs" refers to large collections ("packs") of content pirated from Complainant's services.

The website at the disputed domain name offers adult entertainment services in direct competition with Complainant's services. Using a 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. Respondent's use of the disputed domain name to offer illegal services (*i.e.* blatantly advertising "free" content that is behind a paywall on Complainant's website) is not a *bona fide* offering of goods or services.

The disputed domain name was registered and is being used in bad faith. Respondent registered and used the disputed domain name not because it refers to or is associated with Respondent, but because it is identical or confusingly similar to the <onlyfans.com> domain name and marks used by Complainant.

The disputed domain name was registered long after Complainant attained registered rights in its marks and long after Complainant had common law rights in the said marks which had acquired distinctiveness. This

acquired distinctiveness was so strong that Complainant's website is among the top 200 most popular websites in the world. Previous panels have consistently found that registration of a domain name that is confusingly similar to a widely-known trademark creates a presumption of bad faith. Complainant's marks have been recognized in numerous previous UDRP proceedings as internationally well-known<sup>1</sup> such that Respondent either knew or ought to have known of Complainant's marks and likely registered the disputed domain name to target Complainant's marks.

Respondent registered the confusingly similar disputed domain name to divert Internet traffic from Complainant's site to a website offering adult entertainment content (including content pirated from Complainant's users) in direct competition with Complainant's website. Such use is an intentional attempt to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with Complainant's marks as to the source, affiliation, or endorsement of the disputed domain name. As such, Respondent is using the disputed domain name in bad faith.

Complainant sent a cease-and-desist letter on November 22, 2022, demanding Respondent stop using and cancel the disputed domain name.<sup>2</sup> Respondent did not respond, thus necessitating the filing of this Complaint.

Complainant requests that the disputed domain name be transferred to Complainant.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel to "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".

The lack of Response from Respondent does not automatically result in a favorable decision for Complainant (see *Berlitz Investment Corp. v. Stefan Tinculescu*, WIPO Case No. [D2003-0465](#), and section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"). The burden for Complainant, under paragraph 4(a) of the Policy, is to show: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) that 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**

It is undisputed that Complainant has rights over the ONLYFANS and the ONLYFANS.COM marks. Since the addition of the gTLD ".com" in a domain name is technically required, it is well established that such element may be disregarded where assessing whether a domain name is identical or confusingly similar to a mark. The disputed domain name reflects the ONLYFANS mark in its entirety, albeit followed by "-packs". It is clear to this Panel that the ONLYFANS mark is recognizable in the disputed domain name and that the addition of such term in the disputed domain name does not avoid a finding of confusing similarity with said mark (see sections 1.7 and 1.8 of the [WIPO Overview 3.0](#)).

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<sup>1</sup> Complainant relies, among others, on *Fenix International Limited v. Kiril Kirilov*, WIPO Case No. [D2021-0853](#); *Fenix International Limited v. WhoisGuard Protected, WhoisGuard, Inc / Genadiy Ivanov*, WIPO Case No. [D2021-0828](#); *Fenix International Limited c/o Walters Law Group v. WhoisGuard, Inc., WhoisGuard Protected / Marry Mae Cerna*, WIPO Case No. [D2021-0327](#); and *Fenix International Limited v. Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-3447](#).

<sup>2</sup> Complainant attached a copy of such cease-and-desist letter sent to the Registrar.

Thus, this Panel finds that Complainant has satisfied paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

It is uncontested that Complainant's ONLYFANS mark and website linked to <onlyfans.com> are well known among the relevant segment of Internet users. Complainant contends that Respondent is not commonly known by the disputed domain name or its marks, that it has no relationship with Respondent, that it has not authorized Respondent to use its marks<sup>3</sup> and that Respondent does not hold any trademarks for the disputed domain name. The evidence in the file shows that Respondent seems to have been operating the website linked to the disputed domain name to feature some pictures and/or videos, apparently of adult entertainment nature, originally available at Complainant's website and other websites, without showing the identity of the operator thereof, and there appears to be no disclaimer as regards Complainant and its ONLYFANS mark. Further, the nature of the disputed domain name, comprising Complainant's trademark with the term "-packs" (which refers to a large collection of downloadable content) carries a risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)). This Panel further notes that there is no evidence that Respondent is commonly known by the disputed domain name. Respondent's use of the disputed domain name to offer adult entertainment services in direct competition with Complainant's services demonstrates neither a *bona fide* offering of goods or services nor a fair use of the disputed domain name.

This Panel considers that Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name (see *Intocast AG v. Lee Daeyoon*, WIPO Case No. [D2000-1467](#), and section 2.1 of the [WIPO Overview 3.0](#)). Respondent did not reply to Complainant's contentions. In the file, there is no evidence of circumstances of the type specified in paragraph 4(c) of the Policy or of any other circumstances giving rise to a possible right to or legitimate interest in the disputed domain name by Respondent.

Based on the aforesaid, this Panel concludes that paragraph 4(a)(ii) of the Policy is satisfied.

## **C. Registered and Used in Bad Faith**

Complainant contends that Respondent's registration and use of the disputed domain name is in bad faith, which Respondent chose not to rebut.

Taking into consideration that the registration and use of Complainant's marks preceded the registration of the disputed domain name, Complainant's Internet presence through "www.onlyfans.com", and the popularity of said website, this Panel is of the view that Respondent should have been aware of the existence of Complainant's mark and website at the time it obtained the registration of the disputed domain name, which is indicative of bad faith.

Complainant provided screenshots of the website linked to the disputed domain name, from which it is clear that Respondent has sought to divert Internet traffic looking for Complainant's website in order to somewhat benefit therefrom, which denotes bad faith.

Further, Respondent's failure to reply to Complainant's cease and desist letter may also be indicative of bad faith.<sup>4</sup> Such finding may still be valid where such letter is sent to the concerned registrar since such third

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<sup>3</sup> See *Casio Keisanki Kabushiki Kaisha (Casio Computer Co., Ltd.) v. Jongchan Kim*, WIPO Case No. [D2003-0400](#): "There is no evidence that the Complainant authorized the Respondent to register the disputed domain name or to use the CASIO trademark, with or without immaterial additions or variants. These circumstances are sufficient to constitute a *prima facie* showing by the Complainant of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent".

<sup>4</sup> See *Fenix International Limited v. Oleg Zabugrovskiy*, WIPO Case No. [D2021-3386](#): "failure by the Respondent to answer the Complainant's cease and desist letter suggests that the Respondent was aware that he has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith". See also *Ebay Inc. v. Ebay4sex.com and Tony Caranci*, WIPO Case No. [D2000-1632](#).

party would be expected to forward such cease and desist letter to the underlying registrant for whom there is no public contact information in the corresponding Whois record.

In sum, this Panel concludes that the overall evidence indicates that Respondent's choice of the disputed domain name was deliberate for its confusing similarity with, and with the likely intention to benefit from the reputation and goodwill of, Complainant's marks, which denotes bad faith.<sup>5</sup>

In light of the above, this Panel finds that Complainant has satisfied 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, this Panel orders that the disputed domain name <onlyfans-packs.com> be transferred to Complainant.

*/Gerardo Saavedra/*  
**Gerardo Saavedra**  
Sole Panelist  
Date: April 10, 2023

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<sup>5</sup> See *Jafra Cosmetics, S.A. de C.V. and Jafra Cosmetics International, S.A. de C.V. v. ActiveVector*, WIPO Case No. [D2005-0250](#): "due to the intrinsically distinctive character of Complainants' trademarks, it is inconceivable that the contested domain name would have been registered and used if it were not for exploiting the fame and goodwill of Complainants' marks by diverting Internet traffic intended for Complainant".