

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. DAVID STABOLITO, XTREME
Case No. D2022-0343

1. The Parties

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

The Respondent is DAVID STABOLITO, XTREME, United States.

2. The Domain Name and Registrar

The disputed domain name <fansonly.club> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2022. On February 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 2, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 3, 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 on February 3, 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 February 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 1, 2022.

The Center appointed William F. Hamilton as the sole panelist in this matter on March 7, 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 Respondent and the Complainant are based in the United States. The Complainant owns numerous trademark registrations in numerous countries for the trademark ONLYFANS (the "Mark") the earliest of which is United States Patent and Trademark Reg. No. 5769267, registered on June 4, 2019. In addition to ONLYFANS, the Complainant owns numerous trademark registrations for the trademark ONLYFANS.COM.

The Complainant owns and operates the popular website "www.onlyfans.com" which has more than 180 million registered users. The Complainant's website features recorded online performances posted by "creators". "Fans" subscribe to view the creator's content. *Fenix International Limited v. Privacy Service Provided by Withheld for Privacy ehf / Andrei Ivanov*, WIPO Case No. [D2021-3384](#).

The disputed domain name was registered on July 13, 2021. The Complainant sent a cease-and-desist letter to the Respondent on November 8, 2021. There was no response to the cease-and-desist letter. The Complainant subsequently initiated this proceeding. At the time of filing the Complaint, the disputed domain name resolved to a website offering adult entertainment services including advertising of a website of a Complainant's competitor. The disputed domain name no longer resolves to an active website.

5. Parties' Contentions

A. Complainant

The Complainant asserts the disputed domain name is identical to the Mark because, for the purposes of the Policy, the disputed domain name's generic Top-Level Domain ("gTLD") ".club" is disregarded.

The Complainant asserts that the Complainant never authorized the Respondent to use the disputed domain name, that the Respondent is not generally known by the disputed domain name, and that the Respondent has never engaged in any *bona fide* commercial activity in connection with the disputed domain name. Due to the similarity of the disputed domain name and the Complainant's Mark, the Complainant asserts that there is a high likelihood of implied affiliation.

The Complainant further asserts that the disputed domain name was registered in bad faith to confuse and direct unsuspecting Internet users seeking the Complainant's website to the Respondent's website.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (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 was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's Mark.

The disputed domain name adopts the Mark entirely . The difference between the disputed domain name and the Mark is the altered order of the terms composing the trademark, as the disputed domain name consists of "fans only" instead of ONLYFANS (which does not prevent a finding of confusing similarity), and the appendage of the gTLD ".club"; however, the gTLD of a disputed domain name is disregarded for the purposes of assessment under the first element. The gTLD is a standard registration requirement. See [WIPO Overview 3.0](#), section 1.11.1; *Monster Energy Company, a Delaware Corporation v. J.H.M. den Ouden*, WIPO Case No. [D2016-1759](#); *International Business Machines Corporation v. Sledge, Inc. / Frank Sledge*, WIPO Case No. [D2014-0581](#).

The Complainant has met its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has specifically disavowed providing the Respondent with permission to use the disputed domain name or the Mark. The Respondent is not affiliated with the Complainant in any way and does not have any business relationship with the Complainant. There is no evidence that the Respondent has conducted any *bona fide* business under the disputed domain name or is commonly known by the disputed domain name. *Compagnie de Saint Gobain v. Com-Union Corp.*, WIPO Case No. [D2000-0020](#).

The Complainant has thus established a *prima facie* case in its favor, which shifts the burden of production on this point to the Respondent. The Respondent, however, has failed to come forth with any evidence showing any rights or legitimate interests in the disputed domain name.

The facts and circumstances presented to the Panel demonstrate that the Respondent does not have any rights or legitimate interests in the disputed domain.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, bad faith may be established by any one of the following scenarios:

(i) circumstances indicating that the respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the 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 on-line 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.

The Panel finds the disputed domain name was registered and is being used in bad faith.

A simple Internet search, normally undertaken before registering a domain name, would have disclosed the Complainant's Mark. Common sense compels the conclusion that the Respondent was quite aware of the Complainant's Mark when registering the disputed domain name. The Annex E to the Complaint establishes that the disputed domain name resolves to a website directly competitive with the Complainant's service offering. Even if one were to accept the unbelievable proposition that the Respondent was unaware of the Mark, willful blindness is no excuse and does not avoid a finding of bad faith registration and use. *Instagram, LLC v. Contact Privacy Inc. / Sercan Lider*, WIPO Case No. [D2019-0419](#).

Given the wholesale adoption of the Mark in the disputed domain name, it is difficult to conceive of any use that the Respondent might make of the disputed domain name without the Complainant's consent that would not involve bad faith. *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Verner Panton Design v. Fontana di Luce Corp*, WIPO Case No. [D2012-1909](#) (where the reputation of a complainant in a given mark is significant and the mark bears strong similarities to the disputed domain name, the likelihood of confusion is such that bad faith may be inferred); *DPDgroup International Services GmbH & Co. KG v. Wise One, Wilson TECH*, WIPO Case No. [D2021-0109](#); *Monster Energy Company v. PrivacyDotLink Customer 116709 / Ferdinand Nikolaus Kronschnabl*, WIPO Case No. [D2016-1335](#).

Additionally, under the circumstances of this case, an adverse inference may be drawn from the Respondent's failure to take part in the present proceeding, and the Respondent's failure to respond to the Complainant's cease-and-desist letter. See [WIPO Overview 3.0](#), sections 3.6 and 4.3.

It appears that the disputed domain name no longer resolves to an active website. The current passive holding of the disputed domain name does not absolve the Respondent of bad faith registration and use, and, in fact, under the circumstances of this case is further evidence of bad faith registration and use. See [WIPO Overview 3.0](#), section 3.3. *Medtronic, Inc. v. Roohi B Rasheed, Roohi B Rasheed Rasheed*, WIPO Case No. [D2020-1161](#).

The Complainant has met its burden under 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 name <fansonly.club> be transferred to the Complainant.

/William F. Hamilton/
William F. Hamilton
Sole Panelist
Date: March 15, 2022