

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Dan Sirbu

Case No. D2023-1410

1. The Parties

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

The Respondent is Dan Sirbu, Romania.

2. The Domain Name and Registrar

The disputed domain name <vidsonlyfans.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 March 31, 2023. On April 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 3, 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 April 6, 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 amended Complaint on April 10, 2023.

The Center verified that the Complaint together with the amended 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 April 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 5, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on May 16, 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 United Kingdom (UK) company, which operates an online platform at the website “www.onlyfans.com” where users post and subscribe to audiovisual content since July 4, 2016. In 2023, the Complainant’s website has more than 180 million registered users and is ranked as the 9th most popular website in the US.

The Complainant is the owner of the following trademarks:

- ONLYFANS (word), European Union registration No. 017912377 (word), filed on June 5, 2018 and registered on January 9, 2019, for goods and services in classes 9, 35, 38, 41 and 42;
- ONLYFANS (figurative), European Union registration No. 017946559, filed on August 22, 2018 and registered on January 9, 2019, for goods and services in classes 9, 35 38, 41 and 42;
- ONLYFANS (word), UK registration No.00917912377 (word), filed on June 5, 2018 and registered on January 9, 2019, for goods and services in classes 9, 35, 38, 41 and 42;
- ONLYFANS (figurative), UK registration No. 00917946559, filed on August 22, 2018 and registered on January 9, 2019, for goods and services in classes 9, 35 38, 41 and 42 ONLYFANS (word), US registration No. 5769267, filed on October 29, 2018 and registered on June 4, 2019, claiming a first use in commerce of July 4, 2016, and covering services in class 35;
- ONLYFANS.COM (word), US registration No. 5769268, filed on October 29, 2018 and registered on June 4, 2019, claiming a first use in commerce of July 4, 2016, and covering services in class 35;
- ONLYFANS (word), US registration No. 6253455, filed on November 2, 2019 and registered on January 26, 2021, covering services in classes 9, 35, 38, 41 and 42;
- ONLYFANS (figurative), US registration No. 6253475, filed on November 2, 2019 and registered on January 26, 2021, covering goods and services in classes 9, 35, 38, 41 and 42;
- ONLYFANS (word), International registration No. 1507723 of November 2, 2019, covering goods and services in classes 9, 35, 38, 41 and 42, and designating several countries worldwide;
- ONLYFANS (figurative), International registration No. 1509110 of November 2, 2019, covering goods and services in classes 9, 35, 38, 41 and 42, and designating several countries worldwide.

The disputed domain name was registered on September 28, 2022 and resolves to a website offering adult entertainment services, including content pirated from the Complainant’s users. On December 8, 2022, the Complainant sent a cease and desist letter to the Respondent demanding to stop using and cancel the disputed domain name to which the Respondent did not reply.

5. Parties’ Contentions

A. Complainant

The Complainant maintains that the disputed domain name is confusingly similar to its ONLYFANS mark as the only difference lies in the additional term “vids”, which is the abbreviation of “videos” and cannot prevent a finding of confusing similarity.

The Complainant further maintains that the Respondent lacks rights or legitimate interests in the disputed domain name as the Respondent has no connection nor affiliation with the Complainant, and has received no authorization, license or consent to use the Complainant’s mark in the disputed domain name or in any

other manner. Furthermore, according to the Complainant, the Respondent is not commonly known by the name “vidsonlyfans” and does not hold any trademark for the disputed domain name. The use of the disputed domain name by the Respondent does not amount to fair use as the Respondent has registered a domain name that incorporates the Complainant’s trademark and includes the term “vids”, which creates a risk of implied affiliation. As such, the Respondent is impersonating the Complainant, and the disputed domain name suggests sponsorship or endorsement by the Complainant. Furthermore, the Respondent is using the disputed domain name to access a website offering services in competition with those of the Complainant, including content pirated from the Complainant’s users. Such use cannot amount to a legitimate and fair use of the disputed domain name.

Lastly, the Complainant maintains that the disputed domain name has been registered and is being used in bad faith. The Complainant’s ONLYFANS trademark long predates the registration of the disputed domain name and enjoys substantial reputation. The Complainant’s website is among the 100 most popular websites in the world. The addition of the word “vids” to the disputed domain name enhances the confusing similarity with the Complainant’s mark, and shows that the Respondent was aware of the Complainant’s mark at the time of the registration of the disputed domain name. The use of the disputed domain name in the way described above demonstrates the Respondent’s intention to divert traffic from the Complainant’s website to its own website, as such depriving the Complainant of revenue. Further indications of bad faith lie in the facts that the Complainant sent a cease and desist letter to which the Respondent did not reply, and the Respondent concealed his identity behind a privacy service.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the Complainant has duly substantiated its rights over the trademark ONLYFANS, registered in various countries before the date of registration of the disputed domain name. The disputed domain name consists of the term “vids” followed by the Complainant’s trademark. According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), “[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element”. Thus, the addition of the term “vids” to the Complainant’s mark ONLYFANS does not prevent a finding of confusing similarity, especially considering that the Complainant’s mark is well recognizable within the disputed domain name.

Thus, the Panel is satisfied that the first condition under the policy is met.

B. Rights or Legitimate Interests

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the instant case, the Complainant states that the Respondent has no connection or affiliation with the Complainant, and has received no authorization, license or consent to use the Complainant’s mark in the disputed domain name or in any other manner. Furthermore, there is no evidence in the file that the Respondent is commonly known by the name “vidsonlyfans” or has acquired trademark or service mark rights on this name. The disputed domain name incorporates the Complainant’s trademark preceded by the

word “vids”, which is the abbreviation for “videos”. This term refers to the Complainant’s activity. Moreover, the disputed domain name resolves to a website offering audiovisual adult entertainment services, including videos pirated from the Complainant’s users. Through the disputed domain name, the Respondent is therefore impersonating the Complainant for undue personal profit. Such use cannot amount to a fair and legitimate use of the disputed domain name.

Therefore, the Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. As such, the burden of production now shifts to the Respondent to provide convincing arguments that it owns rights or legitimate interests in the disputed domain name.

The Respondent has chosen to remain silent in this case and not to file a Response. In light of the foregoing, the Panel concludes that the Complainant has successfully proved the requirement under Paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, the Complainant must establish both that the disputed domain name was registered in bad faith and that it has been used in bad faith (the so-called “conjunctive requirement”). The Complainant submits that the Respondent was likely aware of the Complainant and of its ONLYFANS trademark when it registered the disputed domain name. The Panel agrees with the Complainant. When the disputed domain name was registered, the trademark ONLYFANS had already achieved a high level of online recognition. The disputed domain name incorporates the Complainant’s trademark entirely in association with the descriptive term “vids”, which refers to the Complainant’s activity. It is therefore clear that at the time of the registration of the disputed domain name, the Respondent had the Complainant and its trademark and activity very clear in mind.

The Complaint has shown that the disputed domain name resolves to a website offering adult entertainment services. The Panel, in compliance with the limited powers conferred by paragraphs 10 and 12 of the Rules, has visited the Respondent’s website and has so found that the disputed domain name leads to a website featuring pornographic content. In the absence of rights or legitimate interests in the disputed domain name, the Panel finds that the disputed domain name <onlyfansvids.com> has been registered and is being used in bad faith, to take advantage of the Complainant’s renown trademark ONLYFANS, and to divert online traffic originally intended for the Complainant to the Respondent’s website. The Respondent has thus created a likelihood of confusion of the disputed domain name with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website. The deployment of a privacy shielding service to conceal the Respondent’s identity corroborates the Panel’s finding of the Respondent’s 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, <vidsonlyfans.com> be transferred to the Complainant.

/Angelica Lodigiani/
Angelica Lodigiani
Sole Panelist
Date: May 30, 2023