

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. M.R.

Case No. D2023-3988

1. The Parties

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

The Respondent is M.R., Spain.

2. The Domain Names and Registrar

The disputed domain names <onlyfans-chat.com>, <onlyfans-finland.com>, <onlyfansfinland.com>, <onlyfans-mallit.com>, <onlyfansmallit.com>, <onlyfans-suomi.com>, <onlyfanssuomi.com>, <onlyfans-suomi.net>, <onlyfans-sweden.com>, <onlyfans-treffit.com> and <onlyfanstreffit.com> are registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 22, 2023. On September 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 25, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 26, 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 September 28, 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 September 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2023. The Respondent sent informal

communications on September 26, 2023, and October 2, 2023. The Center notified the commencement of Panel Appointment on October 20, 2023.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on October 27, 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 registered the domain name <onlyfans.com> on January 29, 2013. According to the Complaint, the Complainant has been using the domain name since at least June 4, 2016, to host a social media platform that enables users to post and subscribe to audiovisual content on the World Wide Web.

By 2023, there were more than 180 million registered users of the Complainant's website. According to "Similarweb", a website and applications data analytics provider, the Complainant's website is ranked the 94th most popular website in terms of traffic in the world and ranked seventh in the "Adult" category in the United States.

The Complainant claims ownership of a number of registered trademarks around the world including:

- (a) European Union Trademark No. 017912377, ONLYFANS, ("EUTM") which was registered on January 9, 2019 with effect from June 5, 2018 in respect of a wide range of goods and services in International Classes 9, 35, 38, 41, and 42;
- (b) United Kingdom Registered Trademark No. UK00917912377 corresponding to the EUTM;
- (c) United States Registered Trademark No. 5769267, ONLYFANS, which was registered on June 4, 2019 in the Principal Register in respect of "Arranging subscriptions of the online publications of others" in International Class 35 and claiming a first use in commerce on July 4, 2016; and
- (d) United States Registered Trademark No. 6253455, ONLYFANS, which was registered in the Principal Register on January 26, 2021 in respect of a wide range of goods and services in International Classes 9, 35, 38, 41, and 42.

The disputed domain names were registered:

- (1) on January 13, 2023 - <onlyfans-suomi.com> and <onlyfans-suomi.net>;
- (2) on January 18, 2023 - <onlyfans-finland.com>, <onlyfans-chat.com>, and <onlyfans-sweden.com>;
- (3) on April 20, 2023 - <onlyfansfinland.com>, <onlyfans-mallit.com>, <onlyfansmallit.com>, <onlyfans-treffit.com>, and <onlyfanstreffit.com>; and
- (4) on August 15, 2023 - <onlyfanssuomi.com>.

The disputed domain names <onlyfans-finland.com>, <onlyfansfinland.com>, <onlyfans-mallit.com>, <onlyfansmallit.com>, <onlyfans-suomi.com>, <onlyfans-sweden.com>, <onlyfans-treffit.com> and <onlyfanstreffit.com> redirect to a website at "www.onlyfanssuomi.com".

The website is in what the Panel assumes is Finnish. It is headed "ONLYFANS FINLAND" with the two words separate by a representation of the Finnish flag. The website features pages of images which in at least some cases appear to be links to channels that subscribers can choose to view and interact with. At least on the first few pages, the images are of scantily-clothed or naked women. Some of the images have a

price displayed in USD such as USD 6 per month or USD 16.69. The extent to which the links do actually direct to active pages is not explored in the evidence.

The disputed domain names <onlyfans-chat.com> and <onlyfans-suomi.net> do not resolve to active websites.

On March 3, 2023, the Complainant sent a cease and desist letter in respect of the then registered disputed domain names. Subsequently, on May 25, 2023, the Complainant sent a further cease and desist letter in respect of the further disputed domain names registered in April 2023.

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of a disputed domain name, the Complainant must demonstrate each of the following:

- (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.

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

As noted in section 4 above, the Complainant has proven ownership of registered trademarks for ONLYFANS. Given the very large user base of its online platform and the number of years it has been in use, the Panel also accepts that the Complainant has common law rights or rights in the expression ONLYFANS as an unregistered trademark arising from its extensive use. [WIPO Overview 3.0](#), section 1.3.

In undertaking the comparison between the Complainant's trademark and the disputed domain names, it is permissible in the present circumstances to disregard the generic Top Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".com" or ".net" gTLDs, the disputed domain names consist of the Complainant's registered trademark and various additional terms. In some cases, the additional term is a geographical reference such as "Finland", "Suomi" or "Sweden". In the other cases, it is an ordinary dictionary word – "chat" in English or "mallit" and "treffit" in Finnish.

While the addition of these other terms may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain names.

Based on the available record, therefore, the Panel finds the first element of the Policy has been established.

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 a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control 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 on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain names well after the Complainant began using its trademark and also several years after the Complainant had registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain names. Nor is the Respondent affiliated with it.

The disputed domain names are not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain names could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain names.

Those disputed domain names which do redirect to an active website are being used in connection with a service of people, or self-described models, uploading images and other content about themselves in at least some cases apparently for reward.

In that connection, the website is in Finnish and calls itself “Onlyfans Finland”. At least at the *prima facie* level, that conduct appears to conflict directly with the Complainant's rights under its EUTM. The use of someone's trademark without their permission to provide the same goods or services does not usually qualify as a good faith offering of goods or services under the Policy.

In this case, the Respondent contends that the Respondent's website serves as a promotional platform for Finnish content creators on the Complainant's OnlyFans platform. The Respondent says these creators voluntarily list their profiles on the Respondent's website, free of charge, in the hopes of amplifying their reach and attracting more subscribers. According to the Respondent's email, the Respondent does not charge for this service. The Respondent also contends that “our intent is not to act as or impersonate [the Complainant]. The domain names have been chosen to reflect this purpose accurately.”

The Panel cannot accept this explanation as a rebuttal of the Complainant's *prima facie* case. Apart from anything else, it involves use of the Complainant's trademark to divert potential customers to the Respondent's website and the channels of the various models. Clicking on some of the links for these models directed the browser to inactive pages. At least one link, via a button “seksiseuraa” (which according to Google Translate translates into “sex club” in English) diverted to a page at “www.victoriarnilan.dating” which promotes a service called “Victoria Milan” and boasts that it has “5.8 million Married & Attached Members Seeking Secret SEX Tonight!”.

Panels have repeatedly held that the use of a domain name for illegal activity (including, e.g.,

impersonation/passing off, or other types of fraud) does not confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, therefore, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The reasons for the Panel's conclusion that the Respondent does not have rights or legitimate interests in the disputed domain names also lead to findings that the disputed domain names have been registered and used in bad faith.

The Respondent's own explanation for its registration of the disputed domain names shows that it was well aware of the Complainant's trademark before registering the disputed domain names – even before receipt of the cease and desist letters.

It is well established under the Policy that registering and using a disputed domain name for illegal activity such as impersonation or passing off constitutes bad faith under the Policy. See e.g. [WIPO Overview 3.0](#), section 3.4.

This conclusion of registration and use in bad faith applies also to the two disputed domain names which have not been used yet.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

In the present case, the Complainant's trademark is very well-known having regard to the number of registered users and its global and adult rankings. While the Respondent has provided a statement in defence of its registrations, the Panel has found that statement does not support a finding of actual or contemplated good faith use. In addition, the close resemblance of the disputed domain names in question to the Complainant's trademark carries with it a risk of impersonation.

Accordingly, the Panel finds that in the circumstances of this case the passive holding of the disputed domain names, <onlyfans-chat.com> and <onlyfans-suomi.net>, does not prevent a finding of bad faith under the Policy.

Based on the available record, therefore, the Panel finds the third element of the Policy has been established.

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 names, <onlyfans-chat.com>, <onlyfans-finland.com>, <onlyfansfinland.com>, <onlyfans-mallit.com>, <onlyfansmallit.com>, <onlyfans-suomi.com>, <onlyfanssuomi.com>, <onlyfans-suomi.net>, <onlyfans-sweden.com>, <onlyfans-treffit.com>, and <onlyfanstreffit.com> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: November 10, 2023