

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Benjamin Maufront
Case No. D2023-4498

1. The Parties

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

The Respondent is Benjamin Maufront, Malta.

2. The Domain Name and Registrar

The disputed domain name <onlyfan-leaks.com> is registered with eNom, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 28, 2023. On October 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 30, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 3, 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 November 3, 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 November 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 7, 2023.

The Center appointed Torsten Bettinger as the sole panelist in this matter on December 14, 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. 017912377, registered on January 9, 2019 in classes 9, 35, 38, 41 and 42 and United States Trademark Registration for ONLYFANS.COM No. 5,769,268, registered on June 4, 2019 in class 35.

The disputed domain name was registered on June 20, 2023, and resolved to a website offering adult entertainment in direct competition with the Complainant's website.

The Complainant sent a cease-and-desist letter to the Respondent on September 12, 2023, demanding the Respondent to stop using and cancel the disputed domain name. The Respondent did not respond to this letter.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, 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 the Complainant's mark with the only difference being the insertion of the descriptive term "leaks" and the omission of the letter "s" from 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;

- the website at the disputed domain name offers adult entertainment services (including content advertised as “leaked” or 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;
- the registration of a domain name that is confusingly similar to a widely-known trademark creates a presumption of bad faith;
- bad faith registration has also been found where the disputed domain name includes the complainant’s mark and an additional word that “enhances the likelihood of confusion with the Complainant” and thereby “suggests that the website at the disputed domain name is authorized by the complainant” to provide access to the Complainant’s services;
- 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 leaked or pirated from the Complainant’s users) in direct competition with the Complainant’s website.

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

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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here “leaks”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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

B. Rights or Legitimate Interests

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

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.

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.

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 confusingly similar version of the Complainant's trademark and the Complainant's significant goodwill and reputation to improperly divert 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 the 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.

Based on the available record, the Panel finds that the Complainant has also established the third element 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 <onlyfan-leaks.com> be transferred to the Complainant.

/Torsten Bettinger/

Torsten Bettinger

Sole Panelist

Date: December 29, 2023