

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Huy Nguyen, Viet Nam
Case No. D2022-3469

1. The Parties

The Complainant is Fenix International Limited, United Kingdom, represented by Walters Law Group, United States of America (“United States” or “US”).

The Respondent is Huy Nguyen, Viet Nam, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <onlyfansleaks.info> 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 September 19, 2022. On September 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Registration Private, Domains by Proxy, LLC). The Center sent an email communication to the Complainant on September 26, 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 October 4, 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 October 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 27, 2022.

The Center appointed Peter Burgstaller as the sole panelist in this matter on November 8, 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 Complainant owns various trademark registrations for the mark ONLYFANS in the European Union and the United States, including:

- EU Registration (figurative) No 17946559, registered January 9, 2019, in classes 9, 35, 38, 41, and 42;
- EU Registration (word) No 17912377, registered January 9, 2019, in classes 9, 35, 38, 41, and 42;
- US Registration (word) No 5,769,267, registered June 4, 2019, in class 35; and
- US Registration (word) for ONLYFANS.COM, No 5,769,268, registered June 2019 in class 35 (Annex C to the Complaint).

The Complainant also owns the domain name <onlyfans.com> for addressing its social media platform that allows users to post and subscribe to audiovisual content on the world wide web, mostly with erotic or pornographic character; the Complainant's platform is highly frequented with more than 180 million registered users (Annexes B and D to the Complaint).

The disputed domain name was registered on December 30, 2021 (Annex A to the Complaint).

The disputed domain name directs to a commercial website that offers adult entertainment content, including non-downloadable video, photographs and images, mostly of erotic or pornographic character (Annex E to the Complaint). A cease-and-desist letter by the Complainant to the Respondent remained unanswered at the time of filing the Complaint.

5. Parties' Contentions

A. Complainant

The Complainant owns and operates the website located at the domain name <onlyfans.com> and has used its domain name for several years in connection with its social media platform that allows users to post and subscribe to audiovisual content on the world wide web.

The Complainant has registered rights in the ONLYFANS mark in the European Union, the United Kingdom, and the United States; moreover, the Complainant has developed extensive common law rights throughout the world. In 2022, the Complainant's platform is one of the most popular websites in the world.

The Complainant's rights in the ONLYFANS mark pre-date the Respondent's registration of the disputed domain name.

The disputed domain name is identical or at least confusingly similar to the Complainant's marks since it only adds the term "leaks" after the ONLYFANS mark, which does nothing to avoid confusing similarity.

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 mark in the disputed domain name or in any other manner. The Respondent is moreover not commonly known by the disputed domain name or the ONLYFANS mark and does not hold any rights in the disputed domain name. Therefore, the Respondent has no rights or legitimate interests in the disputed domain name.

The disputed domain name was registered long after the Complainant attained registered rights in the ONLYFANS mark and long after the Complainant had common law rights in the ONLYFANS mark which had acquired distinctiveness. The Complainant's ONLYFANS mark are well known with a strong Internet presence; hence, the Respondent has registered the disputed domain name in bad faith, since it must be aware of the existence of the Complainant and its ONLYFANS mark, when registering the disputed domain name.

Finally, the disputed domain name directs Internet users to a commercial website that offers goods and services in direct competition with the Complainant. Such use is an intentional attempt to 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, affiliation, or endorsement of the disputed domain name; thus, the disputed domain name is being used by the Respondent in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that

- (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 with respect to 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

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the trademark ONLYFANS.

The disputed domain name is confusingly similar to the Complainant's registered trademark ONLYFANS since it entirely contains this distinctive mark and only adds the word "leaks".

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition "[WIPO Overview 3.0](#)").

Finally, it has also long been held that generic Top-Level-Domains ("gTLDs") are generally disregarded when evaluating the confusing similarity of a disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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 (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the Respondent's use of the disputed domain name cannot be considered fair seeing as the Respondent has used the confusingly similar disputed domain name to offer identical commercial services in direct competition with the Complainant. (see section 2.5.3 of the [WIPO Overview 3.0](#)).

Noting the above and all of the evidence put forward by the Complainant in the Complaint, as well as the Complainant's contentions that the Respondent has no rights to or legitimate interests in the disputed domain name, that the Respondent has no connection or affiliation with the Complainant, and the Respondent has not received any license or consent, express or implied, to use the Complainant's trademark ONLYFANS in a domain name or in any other manner, and in the absence of any Response or allegations from the Respondent, it is undeniable for this Panel that the conditions set out in paragraph 4(a)(ii) of the Policy have been met by the Complainant.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith; and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has rights and is the owner of the distinctive and widespread used registered trademark ONLYFANS, which is used around the world. Moreover, the Complainant registered and is using the domain name <onlyfans.com> to address its social media platform which is highly frequented with more than 180 million registered users around the world.

It is inconceivable for this Panel that the Respondent registered or has used the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's distinctive trademark ONLYFANS entirely.

Moreover, the disputed domain name contains the term "leaks", which in fact even strengthens the impression that the Respondent must have known the mark ONLYFANS when registering the disputed domain name since the Complainant's trademark registrations and use of the marks pre-date the registration of the disputed domain name.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The disputed domain name is actively used by the Respondent since it directs to a commercial website that offers adult entertainment content, including non-downloadable video, photographs and images, mostly with erotic or pornographic character, in direct competition with the Complainant: hence, the Respondent intentionally attracted Internet users to a website supposedly providing services by the Complainant, obviously for commercial gain.

Moreover, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating a distinctive mark plus a descriptive term) to a widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith use (see section 3.1.4 of the [WIPO Overview 3.0](#)).

Furthermore, this Panel also finds bad faith use, putting emphasis on the following:

- the Complainant's trademark ONLYFANS is distinctive and has widespread use globally;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name;
- the disputed domain name incorporates the Complainant's trademark in its entirety, and is thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant's website);
- the Respondent did not reply to the Complainant's cease-and-desist letter sent prior to the filing of the Complaint; and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain name.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain name has been registered and is being used in bad faith 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 <onlyfansleaks.info> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: November 22, 2022