

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Dan Sirbu

Case No. D2022-4535

1. The Parties

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

The Respondent is Dan Sirbu, Romania.

2. The Domain Names and Registrar

The disputed domain names <onlyfansfull.com>, <onlyfansleaks.live>, <onlyfansvideos.net>, <onlyfansxvideo.com>, and <watchonlyfans.com> are registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 28, 2022 regarding the <onlyfansleaks.live>, <onlyfansvideos.net>, <onlyfansxvideo.com>, and <watchonlyfans.com> disputed domain names. On November 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the four above-mentioned disputed domain names. On November 29, 2022, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 1, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On December 1, 2022, the Complainant requested the consolidation of the present procedure with the Complaint subject of the WIPO Case No. [D2022-4434](#) which was filed regarding the <onlyfansfull.com> disputed domain name, as the disclosed registrant was the same in both procedures. On December 16, 2022, the Complainant filed an amended Complaint.

On December 10 and 11, 2022 (see section 4. below), the Respondent sent communications and the Center asked the Parties, on December 19, 2022, whether they wished to explore settlement options.

On December 20, 2022, the Complainant sent a communication requesting the proceeding continue.

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 December 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 9, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified with the Commencement of Panel Appointment Process on January 11, 2023.

The Center appointed Fabrice Bircker as the sole panelist in this matter on January 23, 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 owns and operates the website entitled ONLYFANS which is notably available through the domain name <onlyfans.com>.

This website provides since 2016 the services of a social media platform that allows users to post and subscribe to audiovisual content, including in the field of adult entertainment.

According to the uncontested data provided by the Complainant, its website counts among the most popular worldwide, with over 180 million registered users. Besides, in April 2022, it was the 177th most visited website worldwide, and the 75th most visited website in the United States.

The Complainant’s activities are notably protected through the following trademarks:

- ONLYFANS, United States Registration No. 5769267, with first use on April 7, 2016, filed on October 29, 2018, registered on June 4, 2019, and designating services of class 35,
- ONLIFANS, European Union Trade Mark No. 017912377, filed on June 5, 2018, registered on January 9, 2019, and designating products and services of classes 9, 35, 38, 41, and 42.

The disputed domain names were registered on the following dates:

- <onlyfansvideos.net>, on August 18, 2021;
- <onlyfansxvideo.com>, on October 11, 2021;
- <watchonlyfans.com>, on October 11, 2021;
- <onlyfansfull.com>, on October 31, 2021;
- <onlyfansleaks.live>, on July 19, 2022.

They all resolve to pornographic websites, some of them claiming to offer contents taken from the Complainant’s website.

On May 31, 2022 and on September 23, 2022, the Complainant sent cease and desist letters to the Respondent, notably requesting the cancellation of the disputed domain names.

No reply was given to these cease and desist letters.

Then, the Complainant brought this Complaint.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain names. In substance, its main arguments are as follows:

The Complainant contends that the disputed domain names are confusingly similar to its ONLYFANS trademark, because they reproduce it, and the added elements do not prevent it from being recognizable.

Then, the Complainant claims that the Respondent has no rights or legitimate interests in respect with the disputed domain names because i) the Respondent has no connection or affiliation with the Complainant and has not received any authorization, license, or consent to use the ONLYFANS trademark in the disputed domain names or in any other manner, ii) the Respondent is not commonly known by the ONLYFANS trademark and does not hold any trademarks for the disputed domain names, iii) the disputed domain names unduly suggest an affiliation with the Complainant, and iv) the websites available through the disputed domain names offer adult entertainment services (including content pirated from the Complainant's users) in direct competition with the Complainant's services, and such use of said disputed domain names gives a false impression that they are associated with and/or endorsed by the Complainant and are therefore capable of misleading and diverting Internet users away from the Complainant's website.

Besides, the Complainant argues that the disputed domain names have been registered in bad faith because i) they have been registered long after the Complainant's trademark which is globally well-known, ii) they are confusingly similar with the Complainant's trademark, iii) the elements added to the Complainant's trademark within the disputed domain names refer to the Complainant, iv) said disputed domain names are used in relation with websites directly competing with the Complainant, v) the Respondent did not reply to the cease and desist letters sent by the Complainant, and vi) the Respondent has proceeded with the registration of the disputed domain names using a privacy service.

At last, the Complainant puts forward that the Respondent is using the disputed domain names in bad faith because i) they direct the Internet users to websites directly competing with the Complainant, and such use constitutes an intentional attempt to attract, for commercial gain, Internet users to the Respondent's websites by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the disputed domain names, and ii) the Respondent, not only did not respond to the cease and desist letters sent by the Complainant, but has also directed the disputed domain names to other pornographic websites further to the filing of the Complaint.

B. Respondent

The Respondent did send three emails to the Center and to the Complainant within this proceeding:

- on December 10, 2022: "hello, i will terminate the domain, and i will redirect at new domain right now" (*sic*)
- on December 11, 2022: "i redirected all domain, its no longer active now" (*sic*)
- also on December 11, 2022: "lets suspend all disputes, i terminated all sites, you can check, its all right ???" (*sic*)

The Respondent did not file any formal response to the Complaint.

6. Discussion and Findings

6.1. Preliminary Issue – Does the Respondent’s communications amount to an informal or unilateral consent for the transfer of the disputed domain names to the Complainant?

Given the substance of the communications sent by the Respondent, the Panel wondered whether said communications may amount to an informal or unilateral consent for the transfer of the disputed domain names to the Complainant.

In this respect, the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.10 states “[w]here parties to a UDRP proceeding have not been able to settle their dispute prior to the issuance of a panel decision using the “standard settlement process” [...], but where the respondent has nevertheless given its consent on the record to the transfer (or cancellation) remedy sought by the complainant, many panels will order the requested remedy solely on the basis of such consent”.

In the present case, the Panels finds that:

- the substance of the Respondent’s communications is equivocal and, therefore, the will of the latter is not clear: in particular, he has indicated first that he wanted to “terminate the domain” (sic) and then he proposed to “suspend all disputes”,
- in the same time, the Respondent’s position is inconsistent because although he claimed that the disputed domain names were “no longer active now”, it actually appears that all of them are still directing to websites competing with the Complainant’.

In such circumstances, the Panel cannot consider the Respondent’s communications as an informal or unilateral consent for the remedy requested by the Complainant, all the more that i) the Complainant replied to the Respondent’s communications in indicating that “[t]he parties are unable to reach a settlement and the proceeding may continue” and ii) in this case it appears appropriate to proceed to a substantive decision on the merits, in particular in view of the conduct of the Respondent (see [WIPO Overview 3.0](#), section 4.10 and section 6.2.C *in fine* below).

6.2 Substantive Issues

Pursuant to paragraph 4(a) of the Policy, for obtaining the transfer of the disputed domain names, the Complainant must establish each of the following three elements:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Besides, paragraph 15(a) of the Rules provides that “[a] Panel shall decide a 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.”

Paragraphs 10(b) and 10(d) of the Rules also provide that “[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case” and that “[t]he Panel shall determine the admissibility, relevance, materiality, and weight of the evidence”.

Besides, the Respondent’s failure to reply to the Complainant’s contentions does not automatically result in a decision in favor of the Complainant, although the Panel is entitled to draw appropriate inferences therefrom,

in accordance with paragraph 14(b) of the Rules (see [“WIPO Overview 3.0”](#), section 4.3).

Taking the foregoing provisions into consideration the Panel finds as follows.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first establish rights in a trademark or service mark and secondly establish that the disputed domain names are identical or confusingly similar to its trademark.

It results from the documents supporting the Complaint, and in particular from Annex C, that the Complainant is the owner of trademark registrations for ONLYFANS, notably those detailed in section 4 above.

Turning to whether the disputed domain names are identical or confusingly similar to the Complainant's trademark, as indicated in [WIPO Overview 3.0](#), section 1.7, “[w]hile each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark [...], the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.”

This test is satisfied here, as all the disputed domain names identically reproduce the ONLYFANS trademark in its entirety, and the added elements, respectively “videos”, “xvideo”, “watch”, “full” and “leak” do not prevent the Complainant's trademark to remaining recognizable. Indeed, there is a consensus view among UDRP panels that where the relevant trademark is recognizable within the disputed domain names, the addition of other terms would not prevent a finding of confusing similarity under the first element of the Policy (see [WIPO Overview 3.0](#), section 1.8).

Besides, the generic Top-Level Domains may be ignored for the purpose of assessing the confusing similarity, because they play a technical function.

Consequently, the first element under the Policy set for by paragraph 4(a)(i) is fulfilled.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain names. Once such a *prima facie* case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain names. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant contends that it has not given its consent for the Respondent to use its ONLYFANS trademark in domain names registrations or in any other manner.

Besides, there is nothing in the record of the case likely to indicate that the Respondent may be commonly known by the disputed domain names.

Furthermore, the Complainant's trademark is intrinsically distinctive and well-known (see for instance *Fenix International Limited v. creator creator*, WIPO Case No. [D2022-4230](#), *Fenix International Limited v. Huy Nguyen, Viet Nam*, WIPO Case No. [D2022-3469](#), or *Fenix International Limited v. Whois Privacy, Private by Design, LLC / KHALID ZAROUAL, SMART TECH ELEC*, WIPO Case No. [D2022-2931](#)) and the Respondent is using the disputed domain names, which are confusingly similar with the Complainant's prior rights, in relation with websites directly competing with the latter. It necessarily results from this situation that the Respondent is making a commercial use of the disputed domain names for commercial gain in misleadingly diverting Internet users. Such a use is not a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use of the disputed domain names.

At last, the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain names.

Taking all the above into consideration, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain names, and therefore that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and is using the disputed domain names in bad faith.

In the present case, the Panel finds that:

- the disputed domain names reproduce the Complainant's trademark in its entirety, and this trademark predates the registration of the disputed domain names by years, is distinctive and well known,
- the Respondent has proceeded with the registration of several disputed domain names, all containing the ONLYFANS trademark with the addition of terms referring to the Complainant's website,
- the websites to which the disputed domain names redirect not only directly compete with the Complainant's, but also make direct and express reference to the latter (some even claim to be proposing content coming from the Complainant's website).

It necessarily results from the above findings that the Respondent registered the disputed domain names being fully aware of the Complainant's rights, and that he is intentionally using the said disputed domain names i) for the purpose of disrupting the business of a competitor, and ii) for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of his websites and of the services offered therein.

In sum, this case clearly falls within the scope of paragraphs 4(b)(iii) and 4(b)(iv) of the Policy.

Besides, the Panel is all the more convinced of the Respondent's bad faith that the latter:

- concealed its identity using a privacy service,
- while implying that the case could be amicably settled and claiming to have deactivated all the disputed domain names, the Respondent has actually redirected them to other websites, which also compete with the Complainant and indicate proposing content coming from the Complainant's website.

In conclusion, for all the reasons set out above, the Panel concludes that the disputed domain names were registered and are being used in bad faith, within the meaning of 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 names, <onlyfansfull.com>, <onlyfansleaks.live>, <onlyfansvideos.net>, <onlyfansxvideo.com>, and <watchonlyfans.com>, be transferred to the Complainant.

/Fabrice Bircker/

Fabrice Bircker

Sole Panelist

Date: February 6, 2023