

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Domain Admin, Privacy Protect, LLC / Yossri Ben Salah, to leaks
Case No. D2022-0872

1. The Parties

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

The Respondent is Domain Admin, Privacy Protect, LLC, U.S. / Yossri Ben Salah, to leaks, Tunisia.

2. The Domain Name and Registrar

The disputed domain name <fansleaks.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 11, 2022. On March 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 15, 2022, 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.

The Center sent an email communication to the Complainant on March 17, 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 March 18, 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 March 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 19, 2022. Aside from four informal communications, the Respondent did not submit any substantial response. Accordingly, the Center notified the Commencement of Panel Appointment Process April 21, 2022.

The Center appointed John Swinson as the sole panelist in this matter on April 28, 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 and operates the website located at the domain <onlyfans.com> and has used this domain name for several years in connection with the provision of a social media platform that allows users to post and subscribe to audiovisual content much of which would seem to be pornographic.

The Complainant owns several trademark registrations for ONLYFANS including U.S. Trademark Registration No. 5769267 filed on October 29, 2018 that has a registration date of June 4, 2019.

The disputed domain name was registered on January 8, 2021.

According to the case file, on February 16, 2022, and at the time of this decision, the disputed domain name resolved to a website titled “FansLeaks”, that appears to include pornographic videos. Some of the videos have descriptions such as “Sam Paige Nude Dress Strip OnlyFans Video Leaked”. The description of this website, as set out in the website’s metatags as at the date of this decision, is “Watch Nude New here on Fansleaks.com now! 🌟 We post the best nudes from Onlyfans And TikTok. Only 18+ please!”

The Respondent did not file a substantive Response, so little is known about the Respondent.

5. Parties’ Contentions

A. Complainant

In summary, the Complainant made the following submissions:

The Complainant owns the registered trademark and has extensive common law rights in the trademark that commenced at the latest by July 4, 2016. The Complainant’s unregistered common law rights in the trademark have been recognized by a previous panel as having accrued and acquired distinctiveness by no later than May 30, 2017.

The majority of the Complainant’s ONLYFANS trademark is present in the disputed domain name. Past cases have found confusing similarity where the disputed domain name consists of a “condensed version” of the Complainant’s ONLYFANS trademark.

While website content is usually disregarded when assessing confusing similarity, the panel may consider website content in determining confusing similarity if the website contains “content trading off the complainant’s reputation” such as where the “website contains various references to the ONLYFANS mark.”

The Complainant “has achieved global fame and success in a short time” which makes it clear that the Respondent knew of the Complainant’s ONLYFANS trademark and knew that it had no rights or legitimate interests in the disputed domain name.

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. The Respondent is not commonly known by ONLYFANS and does not hold any trademarks similar to the disputed domain name. The Respondent’s use of the disputed domain name does not give rise to legitimate rights or interests because the Respondent’s website hosts content similar to content on the Complainant’s website and uses the Complainant’s ONLYFANS trademark in the descriptions of such content.

The websites at the disputed domain name offers adult entertainment services (including content pirated from Complainant's users) in direct competition with the Complainant's services, including "providing entertainment services ... in the nature of a website featuring non-downloadable video, photographs, images, audio, and ... in the field of adult entertainment."

From all available evidence, the disputed domain name was registered in early 2021, long after the Complainant attained registered rights in the ONLYFANS trademark.

The Complainant sent a cease-and-desist letter to the Respondent on February 2, 2022, demanding the Respondent stop using and cancel the disputed domain name. The Respondent did not respond, thus necessitating the filing of this Complaint.

Bad faith use is found where the disputed domain name directs users to a commercial website that offers goods and services in direct competition with the trademark owner.

The Complainant requests that the disputed domain name be cancelled. Given the vast number of domains infringing on the ONLYFAN trademark, the Complainant does not want to take possession of all the infringing domains and is aware that the disputed domain name can potentially be re-registered after cancellation.

B. Respondent

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

The Respondent sent emails to the Center, such as "please i don't understand, what can be done for this problem, please clarify task" and "I will cancel domain name, give me 4 days".

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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.

The *onus* of proving these elements is on the Complainant.

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

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant's website is well-known.

The Complainant owns trademark registrations for ONLYFANS. The disputed domain name includes the word "fans", but rather than include the word "only" at the beginning, ends with the word "leaks" at the end.

An Internet user who is familiar with the Complainant's popular website would likely understand the disputed domain name to mean leaked videos from the Complainant's website. One reason for this is that there are or have been many websites that include the term "leaks" and words similar to the Complainant's trademark that have such content. (See, for example, *Fenix International Limited c/o Walters Law Group v. Domain Administrator, Privacy Guardian / Shan Talpur*, WIPO Case No. [D2021-2714](#).)

In *Fenix International Limited v. Privacy Service Provided by Withheld for Privacy ehf / Pablo Espinoza*, WIPO Case No. [D2021-3200](#) the Panelist found <only-mega-packs.com> to be similar to the Complainant's ONLYFANS trademark. In *Fenix International Limited v. Nemanja Kreceelj / Nemanja Kreceelj, Rocket Science Group*, WIPO Case No. [D2021-2667](#), the Panelist found <leakedfanscontent.com> to be similar to the Complainant's ONLYFANS trademark. Although the facts of these two cases have differences to the present case, overall the views presented in these two cases are persuasive on this element.

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name. See, for example, *Consumer Reports, Inc. v. Wu Yan, Common Results, Inc.*, WIPO Case No. [D2017-0371](#).

Previous UDRP panels have also found domain names confusingly similar to a trademark for the purposes of the Policy where the domain name includes a dominant part of the trademark in the domain name. See, for example, *8848 Altitude AB v. Constance Siddiqui*, WIPO Case No. [D2017-2001](#).

It is well established that the content of the Respondent's website is normally disregarded when assessing confusing similarity under the first element of the Policy. The test is to be conducted by way of a side-by-side comparison of the Complainant's trademark and the disputed domain name. *Harry Winston Inc. and Harry Winston S.A. v. Jennifer Katherman*, WIPO Case No. [D2008-1267](#).

However, in certain circumstances, it is permissible for the Panel to consider the website at the disputed domain name to gain an indication of the intended meaning of the disputed domain name. See *Zippo Manufacturing Company v. Domains by Proxy, LLC and Paul Campanella*, WIPO Case No. [D2014-0995](#), cited with approval in *VF Corporation v. Vogt Debra*, WIPO Case No. [D2016-2650](#); and *Gravity Co., LTD. and Gravity Interactive, Inc. v. Domain Privacy Service FBO Registrant / Junior Silva*, WIPO Case No. [D2021-2648](#).

In the present case, the Panelist reviewed the website at the disputed domain name and can draw the conclusion that the content of the website, as well as the website's metatags, confirm confusing similarity since it appears *prima facie* that the Respondent sought to target the ONLYFANS trademark through the disputed domain name and the word "fans" in the disputed domain name is a clear reference to the Complainant's trademark ONLYFANS. See section 1.15 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

In the circumstances, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's ONLYFANS trademark.

The Complainant succeeds on the first element of the Policy.

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 name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or

(iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The *onus* of proving this requirement, like each element, falls on the Complainant.

Previous UDRP panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden of production will shift to the respondent to rebut that *prima facie* case.

The Complainant asserts that 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. The Complainant also asserts that the Respondent is not commonly known by ONLYFANS and does not hold any trademarks similar to the disputed domain name. The Complainant also asserts that the Respondent's use of the disputed domain name does not give rise to legitimate rights or interests because the Respondent's website hosts content similar to content on the Complainant's website and uses the Complainant's ONLYFANS trademark in the descriptions of such content.

The Panel considers that, based upon the above, the Complainant has established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name and thereby the burden shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name.

The Respondent has chosen not to file a formal Response. The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the disputed domain name. Moreover, the use to which the disputed domain name has been put, namely to leak pirated content, cannot be considered legitimate.

Based on the evidence before the Panel, none of the circumstances listed in paragraph 4(c) apply in the present circumstances. Accordingly, the Panel finds that the Respondent has no rights or any legitimate interests in the disputed domain name.

The Complainant succeeds on the second element of the Policy in relation to the disputed domain name.

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 subsequently used the disputed domain name in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant. *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

The Respondent's conduct as described above (leaking pirated content and referring to ONLYFANS on the Respondent's website and in the metatags for the Respondent's website) demonstrates the Respondent's knowledge of the Complainant and its trademark.

The Panel finds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website under paragraph 4(b)(iv) of the Policy.

The Complainant succeeds on the third element of the Policy in relation to the disputed domain name.

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 <fansleaks.com> be cancelled.

/John Swinson/

John Swinson

Sole Panelist

Date: May 12, 2022