

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Warsita Saptono

Case No. D2022-1064

1. The Parties

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

Respondent is Warsita Saptono, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <onlyfaps.club> is registered with NETIM SARL (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 25, 2022. On March 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 Respondent of the Complaint, and the proceedings commenced on April 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 21, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 27, 2022.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on May 3, 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

Complainant is a company organized under the laws of the United States which provides a social media platform under the brand ONLYFANS, allowing users to post and subscribe to audiovisual content on the Internet, mostly of erotic or pornographic character.

Complainant has provided evidence that it is the registered owner of numerous trademarks worldwide relating to its brand ONLYFANS, including, but not limited to, the following:

- Word mark ONLYFANS, European Union Intellectual Property Office (“EUIPO”), trademark number: 017946559, registration date: January 9, 2019, status: active;
- Word/device mark ONLYFANS, EUIPO, trademark number: 017946559, registration date: January 9, 2019, status: active;
- Word mark ONLYFANS.COM, United States Patent and Trademark Office (“USPTO”), registration number: 5,769,268, registration date: June 4, 2019, status: active.

Moreover, Complainant has demonstrated to own since January 29, 2013, the domain name <onlyfans.com> which Complainant has used already since June 2016 to run its social media platform “OnlyFans” at “www.onlyfans.com”.

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of Malaysia who registered the disputed domain name on February 12, 2021, which resolves to a website at “www.faps.club” offering adult content under the heading “OnlyFaps”, with numerous references being made to the term “OnlyFans”.

On February 2, 2022, Complainant sent a cease-and-desist letter to Respondent, demanding to stop using and to cancel the disputed domain name, to which Respondent did not respond.

Complainant requests that the disputed domain name be cancelled.

5. Parties’ Contentions

A. Complainant

Complainant contends that its social media platform at “www.onlyfans.com” is one of the most popular websites in the world, with more than 180 million registered users in 2022.

Complainant submits that the disputed domain name is at least confusingly similar to Complainant’s ONLYFANS trademark, as it simply is a typo-squatted version of the latter, thereby creating the word “faps” which means “masturbation” and so relates to Complainant’s offering of adult entertainment services. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Respondent has no connection or affiliation with Complainant and has not received any authorization, license, or consent, whether express or implied, to use Complainant’s ONLYFANS trademark in the disputed domain name or in any other manner, (2) Respondent is not commonly known by the ONLYFANS trademark and does not hold any such trademark rights for the disputed domain name, (3) Complainant’s ONLYFANS trademark has achieved global fame and success in

a short time which makes it clear that Respondent knew of such trademark when registering the disputed domain name, and finally (4) the website under the disputed domain name offers adult entertainment services in direct competition with Complainant's services, such as "providing entertainment services [...] in the nature of a website featuring non-downloadable videos, photographs, images, audio, and [...] in the field of adult entertainment". Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Respondent registered the disputed domain name long after Complainant has obtained registered rights in the ONLYFANS trademark, (2) Complainant's website under the ONLYFANS trademark is among the top 500 most popular websites in the world, (3) the disputed domain name is confusingly similar to Complainant's widely known ONLYFANS trademark and consists of a typo-squatted version thereof, and (4) the website under the disputed domain name provides products and services in direct competition with those provided by Complainant, including content pirated from Complainant's users.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

A. Identical or Confusingly Similar

The Panel concludes that the disputed domain name is confusingly similar to the ONLYFANS trademark in which Complainant has rights.

The disputed domain name incorporates the ONLYFANS trademark in its entirety, with a simple misspelling caused by substituting the second letter "n" by the letter "p". Numerous UDRP panels have recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark (see *e.g.*, *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)). Moreover, the fact that the disputed domain name obviously includes a misspelling of Complainant's ONLYFANS trademark is not at all inconsistent with such finding of confusing similarity. UDRP panels take the majority view that domain names, which consist of a common, obvious, or intentional misspelling of a trademark, are considered to be confusingly similar thereto, for purposes of the first element, as these domain names contain sufficiently recognizable aspects of the relevant trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9).

Therefore, Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent has neither been granted a license nor has it been otherwise authorized by Complainant to use its ONLYFANS trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name, and Respondent does not appear to have any trademark rights associated with the term "OnlyFans" or "OnlyFaps" on its own. Finally, the disputed domain name resolves to a commercially active website at "www.faps.club" which offers adult entertainment services in direct competition with Complainant's services (apparently even including content pirated from Complainant's users), and thereby repeatedly making references to the term "OnlyFans" (as it is reflected in Complainant's ONLYFANS trademark), and more specifically to Complainant's own website at "www.onlyfans.com". Such use of the disputed domain name obviously neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of paragraph 4(c) of the Policy.

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. Now, the burden of production shifts to Respondent to come forward with appropriate evidence demonstrating to the contrary (see WIPO Overview, section 2.1). Given that Respondent has defaulted, it has not met that burden.

The Panel, therefore, finds that Respondent has no rights or legitimate interests in respect of the disputed domain name and that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

The circumstances to this case leave no reasonable doubt that Respondent was fully aware of Complainant's business in the adult entertainment industry and its rights in the ONLYFANS trademark (notwithstanding the claimed reputation of such trademark) when registering the disputed domain name and that the latter clearly is directed thereto. Moreover, using the disputed domain name – which constitutes an obvious misspelling of Complainant's ONLYFANS trademark – to run a website offering adult entertainment services that are identical or at least confusingly similar to those of Complainant, and thereby repeatedly making references to the term "OnlyFans" (as it is reflected in Complainant's ONLYFANS trademark), and more specifically to Complainant's own website at "www.onlyfans.com", is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusing with Complainant's ONLYFANS trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

In this context, the Panel has also noted that Respondent apparently provided fault or incomplete contact information in the Whois register for the disputed domain name since, according to information by the postal courier DHL, the Written Notice on the Notification of Complaint dated April 1, 2022, could not be delivered due to a provided ZIP code that did not match the named city, and also due to an invalid phone number. These facts at least throw a light on Respondent's behavior which supports the Panel's bad faith finding.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy as set forth by paragraph 4(a)(iii).

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 <onlyfaps.club> be cancelled.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: May 16, 2022