

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Jean Valjean
Case No. D2023-3488

1. The Parties

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

The Respondent is Jean Valjean, Canada.

2. The Domain Name and Registrar

The disputed domain name <ofleaked.net> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 17, 2023. On August 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 17, 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, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 25, 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 August 26, 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 August 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 19, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on September 20, 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 a social media platform at the domain name <onlyfans.com>, registered on January 29, 2013, that allows users to post and subscribe to audiovisual content worldwide.

The Complainant is the owner of several trademark registrations for ONLYFANS, including the following, as per trademark certificates submitted as Annex C to the Complaint:

- European Union trade mark No. 017912377 for ONLYFANS (word mark), filed on June 5, 2018, and registered on January 9, 2019, in classes 9, 35, 38, 41, and 42;

- European Union trade mark No. 017946559 for ONLYFANS (figurative mark), filed on August 22, 2018, and registered on January 9, 2019, in classes 9, 35, 38, 41, and 42; and

- United States trademark registration No. 5769267 for ONLYFANS (word mark), filed on October 29, 2018, and registered on June 4, 2019, in class 35.

The disputed domain name was registered on October 26, 2022, and is pointed to a website offering free downloading services for the content included in the Complainant's social media website and requesting users to complete commercial offers and provide product reviews to receive access to the leaked content.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the trademark ONLYFANS in which the Complainant has rights as it reproduces the initials of the Complainant's trademark with the mere addition of the generic term "leaked" and the generic Top-Level Domain ("gTLD") ".net".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent is in no way affiliated with the Complainant, has in no way been licensed or authorized by the Complainant to use its marks in the disputed domain name or in any other manner and is not commonly known by the disputed domain name.

The Complainant further underlines that a domain name comprising the Complainant's trademark and certain additional terms cannot constitute fair use, when doing so effectively impersonates or suggests sponsorship or endorsement by the Complainant and submits that, in the present case, the Respondent cannot claim the right to use the disputed domain name under fair use, since it includes the initials of the Complainant's mark and the additional term "leaked", which creates a risk of implied affiliation.

The Complainant also states that the Respondent's use of the disputed domain name does not amount to a *bona fide* offering of goods or services or a legitimate noncommercial or fair use as the Respondent is pointing the disputed domain name to a website providing adult entertainment services in direct competition with the Complainant's services. The Complainant also highlights that the Respondent is offering illegal services, purporting to provide stolen content from the Complainant's users in exchange for completion of offers and provision of product reviews.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the disputed domain name was registered long after the Complainant attained registered rights in its marks and submits that, considering its world renown and the fact that the disputed domain name contains a word that “enhances the likelihood of confusion with the Complainant”, the Respondent not only was well aware of the Complainant at the time of registering the disputed domain name but deliberately chose to register the same to suggest that the website was authorized by the Complainant, which he is not.

The Complainant emphasizes that the Respondent’s offer of services which are in direct competition with the Complainant and illegal in nature, as the Respondent is offering access to otherwise pay-wall protected content on the Complainant’s website and is also requiring users to complete multiple commercial offers which require disclosure of personal information before granting user access to the leaked ONLYFANS content, amounts to bad faith use.

The Complainant informs the Panel that it also sent a cease-and-desist letter to the Respondent, on May 24, 2023, demanding that the Respondent stop using and cancel the disputed domain name, but never received a reply to its communication.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: “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.” Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the 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.

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. Indeed, as highlighted in section 4 above, the Complainant is the owner of several trademark registrations for ONLYFANS.

The Panel notes that the disputed domain name includes the initials of the two words that form the ONLYFANS mark (“of”) and the term “leaked”, which clearly references to content leaked from, or content on, the Complainant’s ONLYFANS website. In these circumstances, the Panel considers that there is a *prima facie* case of confusing similarity between the disputed domain name and the ONLYFANS mark.

In addition, the Panel notes that the website to which the disputed domain name resolves displays the ONLYFANS mark and offers download services of content made available on the Complainant’s subscription-only ONLYFANS website, which confirms that the Respondent is seeking to target the

ONLYFANS trademark through the disputed domain name. See [WIPO Overview 3.0](#), section 1.15, and the prior decisions *Fenix International Limited v. Ladislav Hricko / 1a world Ltd, admin Me / Whois Privacy Corp.*, WIPO Case No. [D2021-2522](#), and *Fenix International Limited v. Nemanja Krecelj / Nemanja Krecelj, Rocket Science Group*, WIPO Case No. [D2021-2667](#).

Therefore, 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.

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 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the 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 Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s trademarks.

Moreover, there is no element from which the Panel could infer the Respondent’s rights and legitimate interests over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel finds that the Respondent’s use of the disputed domain name to promote adult content entertainment services in direct competition with the Complainant and specifically providing access to content pirated from the Complainant’s users in exchange for completing alleged offers and product reviews does not amount to a *bona fide* use or a legitimate noncommercial or fair use of the disputed domain name without intention to misleadingly divert the consumers or to tarnish the Complainant’s trademark.

Indeed, Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Therefore, based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the case at hand, the Panel notes that, in light of the prior registration and use of the trademark ONLYFANS in connection with the Complainant's adult entertainment services, provided via the website at the domain name <onlyfans.com>, and considering the popularity reached in the recent years by the Complainant's website, the Respondent was more likely than not aware of the Complainant's trademark at the time of the registration of the disputed domain name, which occurred on October 26, 2022. Moreover, the explicit reference made by the Respondent to the Complainant's ONLYFANS mark on the website to which the disputed domain name resolves supports the finding that the Respondent indeed registered the disputed domain name to target the Complainant's trademark.

Furthermore, in view of the use of the disputed domain name to divert users to the website described above, offering free download of contents shared on the Complainant's subscription-only website and requesting users to complete multiple commercial offers and reviews which require disclosure of personal information, the Respondent intentionally attempted to attract Internet users to his website, for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of his website, according to paragraph 4(b)(iv) of the Policy.

The Panel also notes that the Respondent's failure to respond to the Complainant's cease-and-desist letter and to file a Response further demonstrates the Respondent's bad faith.

Therefore, based on the available record, the Panel finds the third element of the Policy has been established.

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 <ofleaked.net> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: October 4, 2023