

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Onlyfans ht, Onlyfans Ht
Case No. D2023-3887

1. The Parties

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

The Respondent is Onlyfans ht, Onlyfans Ht, Haiti.

2. The Domain Name and Registrar

The disputed domain name <onlyfansht.online> is registered with eNom, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 17, 2023. On September 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 18, 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 (Proxy Protection LLC (903601283), Proxy Protection LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 20, 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 September 20, 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 September 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 17, 2023. The Center received an informal communication from the Respondent on September 27, 2023, in which the Respondent just stated that it does not understand anything and asked what is going on. The Center acknowledged receipt of October 2, referring to the notification of complaint for further details of the UDRP proceeding. On October 19, 2023, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Mladen Vukmir as the sole panelist in this matter on November 9, 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

(i) the Complainant owns and operates the website created under its domain name <onlyfans.com>. The Complainant's website provides a social media platform that allows users to post and subscribe to audiovisual adult-oriented content on the Internet. The Complainant has used the mark ONLYFANS to identify its service which is accessible through the Complainant's website. In 2023, <onlyfans.com> is one of the most popular websites in the world, with more than 180 million registered users. The Complainant registered the domain name <onlyfans.com> on January 29, 2013;

(ii) the Complainant is the owner of a numerous registered ONLYFANS trademarks ("ONLYFANS trademarks"), notably:

Trademark	Trademark Scope	Reg. no. / Status	Date of registration
	European Union	017946559/registered	January 9, 2019
ONLYFANS (word)	European Union	017912377/registered	January 9, 2019
ONLYFANS (word)	United Kingdom ("UK")	00917912377/registered	January 9, 2019
	UK	00917946559/registered	January 9, 2019
ONLYFANS.COM	USA	5769268	June 4, 2019

(iii) the Complainant asserts common law rights arising from the use of its ONLYFANS mark since 2016;

(iv) the Respondent has registered the disputed domain name on January 24, 2023, and it has been used in connection with a website offering adult entertainment services in direct competition with the Complainant;

(v) Before initiating the present procedure, on July 27, 2023, the Complainant sent a cease-and-desist letter to the Respondent. The Respondent failed to respond.

5. Parties' Contentions

A. Complainant

The Complainant, essentially, asserts that:

(i) under its domain name <onlyfans.com> the Complainant operates the 94th most popular website on the Internet, and 53rd most popular website in the USA. The Complainant states that it is the owner of

numerous earlier ONLYFANS trademarks registered in various jurisdictions and asserts common law rights arising from the use of its trademarks since 2016. The Complainant's common law rights have been recognized in previous UDRP Panel decisions having acquired distinctiveness by no later than May 30, 2017;

(ii) the disputed domain name is confusingly similar to the Complainant's earlier ONLYFANS trademarks as it contains the entire ONLYFANS trademarks with the only difference being the insertion of the descriptive or meaningless word "ht" after the Complainant's ONLYFANS trademark;

(iii) the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has no connection or affiliation with the Complainant, and has not received any authorization, license, or consent, whether expressed or implied, to use the ONLYFANS trademarks in the disputed domain name or in any other manner. The Respondent is not commonly known by ONLYFANS trademarks and does not hold any trademarks for the disputed domain name. There are no evidence indicating that the Respondent is known by the disputed domain name;

(iv) the Respondent has registered and used the disputed domain name in bad faith. The Respondent registered the disputed domain name long after the Complainant registered its ONLYFANS trademarks and long after the Complainant's common rights in ONLYFANS acquired distinctiveness. The Complainant argues that the Respondent has acted in bad faith while the website created under the disputed domain name offers adult entertainment services in direct competition with the Complainant's services (including content pirated from the Complainant's users). The Complainant states that there is no benign reason for the Respondent to have registered the disputed domain name and that it is clear that the Respondent registered the disputed domain name to target ONLYFANS trademarks.

B. Respondent

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

As referenced above in the Procedural History, the Center received an informal communication from the Respondent on September 27, 2023, in which the Respondent did not reply to any of the Complainant's contentions.

6. Discussion and Findings

The Panel now proceeds to consider this matter on the merits in light of the Complaint, the lack of the Response, the Policy, the Rules, the Supplemental Rules, and any rules and principles of law that it deems applicable pursuant to paragraph 15(a) of the Rules.

Paragraph 4(a) of the Policy provides that the Complainant must prove, with respect to the disputed domain name, each of the following:

- (i) the disputed domain name is confusingly similar to a trademark 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.

A. Identical or Confusingly Similar

Section 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), provides that it is generally accepted that ownership of a registered trademark by a complainant is sufficient to satisfy the threshold requirement of having the trademark rights for purposes of standing to file a UDPR case.

The Complainant has submitted evidence to show that it is the holder of a number of ONLYFANS trademarks registered before the competent authorities worldwide. As such, these trademarks provide to the Complainant all the exclusive rights that are granted with such trademark registrations.

It is well established that the threshold test for confusing similarity under the UDRP involves a comparison between the complainant's trademark and the disputed domain name to determine if it is identical or confusingly similar. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name, with the addition of descriptive or geographical terms typically being disregarded as insufficient to prevent a finding of confusing similarity. Application of the confusing similarity test under the UDRP typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the trademark is recognizable within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant trademark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see sections 1.7 and 1.8 of the [WIPO Overview 3.0](#)).

After performing the side-by-side comparison of the disputed domain name and ONLYFANS trademarks, it is evident to the Panel that the disputed domain name incorporates the Complainant's ONLYFANS trademark in its entirety, with the addition of word "ht" which does not prevent a finding of confusing similarity. The generic Top-Level Domain ".com" is a standard registration requirement for the disputed domain name and as such may be disregarded under the first element confusing similarity test (see section 1.11.1. of the [WIPO Overview 3.0](#)).

Accordingly, the Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the ONLYFANS trademarks and in showing that the disputed domain name is confusingly similar to that trademark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out a number of circumstances which, without limitation, may be effective for a respondent to demonstrate that it has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy. Those circumstances are:

- (i) Before any notice to the respondent of the dispute, use by the respondent 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) Where 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) Where the respondent is making a legitimate non-commercial 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."

As noted by previous UDRP Panels on the onus of proof under paragraph 4(a)(ii) of the Policy, and as summarized in section 2.1 of the [WIPO Overview 3.0](#): "While the overall burden of proof in UDRP proceedings is on the complainant, 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."

In present case, the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of Paragraph 4(a) of the Policy. The Respondent is not authorized by the Complainant to use ONLYFANS trademarks, and there is no indication that the Respondent is known under the disputed domain name. There is no apparent relation from the records between the Respondent and the Complainant, nor does it arise that the Complainant has ever licensed or otherwise permitted the Respondent to use its ONLYFANS trademarks, or to apply for or use any domain name incorporating the same trademark.

There is no evidence in the case file or otherwise apparent to the Panel that the Respondent has been using the disputed domain name in connection with a *bona fide* offering of goods or services or making a legitimate noncommercial or fair use of the disputed domain name. The Respondent has failed to provide any substantive reply to the Complaint, and accordingly failed to prove that it has rights or legitimate interests in the disputed domain name.

As there is no evidence that the Respondent is in any way permitted by the Complainant to use the ONLYFANS trademarks, nor is there any evidence that the Respondent has made any *bona fide*, fair or otherwise legitimate use of ONLYFANS trademarks, the Panel concludes that the Respondent has no rights or legitimate interests to use the disputed domain name which includes the Complainant's ONLYFANS trademarks.

The Panel finds that the requirements set forth in paragraph 4(a)(ii) of the Policy have been fulfilled by the Complainant making the *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and by the Respondent's failing to produce any arguments or evidence to the contrary.

C. Registered and Used in Bad Faith

For the purpose of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular, but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

“(i) circumstances indicating that the holder has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or
(ii) the holder has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or
(iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
(iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the holder's website or location or of a product or service on the holder's website or location.”

The Panel accepts the Complainant's arguments that the Respondent has registered and used the disputed domain name in bad faith. The Complainant's website has more than 180 million registered users and it is one of the most popular websites in the world. The disputed domain name was registered long after the Complainant started to use its ONLYFANS trademark, and long after the Complainant registered its ONLYFANS trademarks with competent authorities worldwide.

Earlier UDRP panels in their decisions determined that ONLYFANS trademarks acquired distinctiveness (see *Fenix International Limited v. c/o who is privacy.com/Tulip Trading Company, Tulip Trading Company Limited*, WIPO Case No. [DCO2020-0038](#)), and in this Panel's view ONLYFANS trademarks are well-known. Considering all the facts of the present case, the Panel finds that it is highly unlikely that the Respondent was

unaware of the Complainant and its ONLYFANS trademarks when it registered the disputed domain name. In this Panel's view, the Respondent chose to register the disputed domain name that reproduces the Complainant's trademark to take advantage of the reputation of the Complainant's ONLYFANS trademark without any authorization or rights, and to divert Internet users to its own website (or website under its control).

The Panel has found that the Respondent uses the disputed domain name to direct users to a website that offers services complementary to services provided by the Complainant. The website created under the disputed domain name offers adult entertainment services (including content pirated from the Complainant's users) in direct competition with the Complainant's services. The Panel concludes that the intention of the Respondent is one of bad faith, as it is more likely than not that the Respondent has registered and used the disputed domain name primarily due to its similarity and association with the Complainant's services and ONLYFANS trademarks. It is clear from the evidence that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the ONLYFANS trademark.

Accordingly, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith, and that the Complainant has fulfilled the third element 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, <onlyfansht.online> be transferred to the Complainant.

/Mladen Vukmir/

Mladen Vukmir

Sole Panelist

Date: November 23, 2023