

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Thanawat boonchai
Case No. D2024-0340

1. The Parties

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

The Respondent is Thanawat boonchai, Thailand.

2. The Domain Name and Registrar

The disputed domain name <onlyfanstarth.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 25, 2024. On January 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 26, 2024, the Registrar transmitted by email to the Center its verification disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Registration Private) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 30, 2024, 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 January 30, 2024.

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 February 1, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 21, 2024. The Respondent sent an email communication to the Center on February 6, 2024, in Thai language stating to have cancelled the disputed domain name together with two others. Pursuant to paragraph 6 of the Rules, on February 22, 2024, the Center informed the Parties that it would proceed with the panel appointment process.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on March 1, 2024. 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 in this proceeding is Fenix International Limited.

The Complainant owns and operates a social media platform whereby users can pay to upload their own content and view the content of others, including physical fitness, music, and adult entertainment. As of 2024, the Complainant's website "www.onlyfans.com" is ranked as the 97th most popular website in the world, and it is the 55th most popular website in the United States, according to Similarweb.

The Complainant is, inter alia, the owner of;

- European Union Trade Mark ONLYFANS (device), registration number 017946559, registered on January 9, 2019;
- European Union Trade Mark ONLYFANS (word), registration number 017912377, registered on January 9, 2019;
- United States Trademark ONLYFANS (word), registration number 5,769,267, registered on June 4, 2019.
- United States Trademark ONLYFANS.COM (word), registration number 5,769,268, registered on June 4, 2019.
- United States Trademark ONLYFANS (device), registration number 6,253,475, registered on January 26, 2021.

The Complainant uses the ONLYFANS trademark in particular through the website "www.onlyfans.com" which has been in use since July 4, 2016. The domain name <onlyfans.com> was registered on January 29, 2013.

The disputed domain name was registered on August 15, 2023.

The disputed domain name directs Internet users to a website where adult entertainment services are offered. The website at the disputed domain name also contains a logo that is identical to the Complainant's registered trademark ONLYFANS (device) US registration number 6,253,475.

The Complainant sent a cease and desist letter to the Respondent on September 27, 2023 requesting the Respondent to stop using and cancel the disputed domain name. However, the Respondent did not respond to this letter.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark, that the Respondent has no legitimate interests in the disputed domain name, and particularly that the Respondent was aware of the Complainant's trademark when registering the disputed domain name, and that the Respondent registered and used the disputed domain name to redirect Internet users to a website offering adult entertainment services in direct competition with the Complainant's services (namely including "providing entertainment services ... in the nature of a website featuring non-downloadable video, photographs, images, audio, and ... in the field of adult entertainment"), and that this is clear inference of bad faith use and registration of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions. In fact, the Respondent only sent an informal email communication to the Center on February 6, 2024, in Thai, stating that it had canceled (or at least that it had asked GoDaddy to cancel) the disputed domain name together with two other domain names, i.e., <onlyfanscute.com> and <onlyfansfree.asia>.

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or 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

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.

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.

The entirety of the mark is reproduced and recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "tarth", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available 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. Indeed, the Respondent's informal response appears to confirm Respondent's lack of any rights or legitimate interests in the disputed domain name.

Moreover, Panels have held that the use of a domain name for illegal activity here, claimed as impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name 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 present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark.

The disputed domain name reproduces, without any authorization or approval, the Complainant's registered ONLYFANS trademarks (word and device). The disputed domain name was registered several years after the Complainant's ONLYFANS trademark was registered and built its reputation on social media platforms and in adult entertainment content.

Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainant's earlier rights to the ONLYFANS trademark, and chose the disputed domain name intentionally in order to misleadingly attract Internet users to its own website for commercial gain, by creating a likelihood of confusion with the Complainant's trademark, and this amounts to bad faith use and registration of the disputed domain name.

The Respondent's lack of any rights or legitimate interests in the disputed domain name, and the use of the disputed domain name incorporating the Complainant's trademark to misleadingly direct Internet users to a website where adult entertainment services in direct competition with Complainant's services are offered and the Complainant's ONLYFANS (word and logo) trademark is displayed is, in the view of the Panel, sufficient evidence of bad faith registration and use under paragraph 4(b)(iv) of the Policy.

The bad faith registration and use of the disputed domain name are also affirmed by the fact that the disputed domain name prominently displays videos labelled with the Complainant's ONLYFANS trademark.

The Panel finds that the Complainant has established the third element 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 <onlyfanstarth.com> be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: March 12, 2024