

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Privacy Services Provided by Withheld for Privacy ehf / Nanci Nette
Case No. D2022-1659

1. The Parties

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

The Respondent is Privacy Services Provided by Withheld for Privacy ehf, Iceland / Nanci Nette, United States.

2. The Domain Name and Registrar

The disputed domain name <1onlyfans.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 6, 2022. On May 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 6, 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 May 13, 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 amended Complaint on May 13, 2022.

The Center verified that the Complaint, together with the amended 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 May 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 8, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 9, 2022.

The Center appointed William R. Towns as the sole panelist in this matter on June 20, 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 a popular website at “www.onlyfans.com”, used by the Complainant with a social media platform enabling users to subscribe to audiovisual content. The Complainant is the holder of European Union (“EU”), United Kingdom (“UK”), and United States (“US”) trademark registrations for its ONLYFANS and ONLYFANS.COM marks (and logos), including International registrations and design marks under the Madrid Protocol.¹

The Complainant asserts common law rights in its ONLYFANS mark dating back as far as July 4, 2016, and well before the disputed domain name was registered on February 24, 2021, according to the Registrar’s Whois database. The record reflects that the disputed domain name has been used by the Respondent in the nature of offering adult entertainment services, including video, photographs, images, and audio offered by the Respondent free of charge.

The Complainant subsequently directed a cease and desist letter to the Respondent; however, the Respondent appears to have pointed the disputed domain name to a website containing pay-per-click (“PPC”) advertising.

5. Parties’ Contentions

A. Complainant

The Complainant submits that the disputed domain name is identical or confusingly similar to the Complainant’s ONLYFANS mark. According to the Complainant, when the Complainant’s mark is recognizable within the disputed domain name the addition of other terms, whether descriptive, geographical, meaningless or otherwise, does not prevent a finding of confusing similarity and is seen as a standard registration requirement. The Complainant accordingly maintains it has satisfied the requirements of paragraph 4(a)(i) of the Policy.

The Complainant asserts that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent has no affiliation with the Complainant and has neither been authorized or otherwise licensed to register or use the Complainant’s ONLYFANS mark. The Complainant explains however that the Respondent previously has been found to have targeted the Complainant’s mark, including offering adult entertainment services, which was used by the Respondent in association with the Complainant’s services.

The Complainant maintains that the disputed domain name was registered by the Respondent in bad faith and is being used by the Respondent in bad faith. According to the Complainant, the Respondent registered the disputed domain name in order prevent the Complainant from registering the ONLYFANS mark in a corresponding domain name, seeking to disrupt the business of a competitor and attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant’s mark. The Complainant

¹ See, e.g., EU017912377 and EU017946559; UK00917912377 and UK00917946559, all registered on January 9, 2019. See also International Registration Nos. 1507723 and 1509110; and United States Patent and Trademark Registrations US Reg. Nos. 5769267, 5769268, and 6253455. When the United Kingdom formally exited from the European Union in the year 2020, the Complainant’s EU registrations automatically generated two identical national trademark registrations in the UK.

stresses that the disputed domain name was registered by the Respondent long after the Complainant previously had acquired rights in its ONLYFANS mark.

B. Respondent

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

6. Discussion and Findings

A. Scope of the Policy

The Policy is addressed to resolving disputes concerning allegations of abusive domain name registration and use. *Milwaukee Electric Tool Corporation v. Bay Verte Machinery, Inc. d/b/a The Power Tool Store*, WIPO Case No. [D2002-0774](#). Accordingly, the jurisdiction of this Panel is limited to providing a remedy in cases of "the abusive registration of domain names", also known as "cybersquatting". *Weber-Stephen Products Co. v. Armitage Hardware*, WIPO Case No. [D2000-0187](#). See Final Report of the First WIPO Internet Domain Name Process, April 30, 1999, paragraphs 169-177. The term "cybersquatting" is most frequently used to describe the deliberate, bad faith abusive registration of a domain name in violation of rights in trademarks or service marks. *Id.* at paragraph 170. Paragraph 15(a) of the Rules provides that the panel shall decide a complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the panel deems applicable.

Paragraph 4(a) of the Policy requires that the complainant prove each of the following three elements to obtain a decision that a domain name should be either cancelled or transferred:

- (i) the 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 with respect to the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

Cancellation or transfer of the domain name is the sole remedy provided to the complainant under the Policy, as set forth in paragraph 4(i).

Paragraph 4(b) of the Policy sets forth four situations under which the registration and use of a domain name is deemed to be in bad faith, but does not limit a finding of bad faith to only these situations.

Paragraph 4(c) of the Policy in turn identifies three means through which a respondent may establish rights or legitimate interests in a domain name. Although the complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily, if not exclusively, within the knowledge of the respondent. Thus, the view is that the burden of production shifts to the respondent to come forward with evidence of a right or legitimate interest in the domain name, once the complainant has made a *prima facie* showing. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

B. Identical or Confusingly Similar

The Panel finds that the disputed domain name <1onlyfans.com> is confusingly similar to the Complainant's ONLYFANS mark, in which the Complainant has established rights through registration and extensive use.

In considering identity and confusing similarity, the first element of the Policy serves essentially as a standing requirement.² The threshold inquiry under the first element of the Policy involves a relatively straightforward comparison between the complainant's trademark and the domain name. See [WIPO Overview 3.0](#), section 1.7.

In this case, the Complainant's ONLYFANS mark is clearly recognizable in the disputed domain name.³ Top-Level Domains ("TLDs"), in this case ".com", generally are disregarded in determining identity or confusing similarity under paragraph 4(a)(i) of the Policy, irrespective of any ordinary meaning that might be ascribed to the TLD.⁴ The Panel further notes that the Complainant had acquired rights in its ONLYFANS mark years before the Respondent registered the disputed domain name.

Accordingly, the Panel finds the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

As noted above, once the complainant makes a *prima facie* showing under paragraph 4(a)(ii) of the Policy, the burden of production shifts to the respondent to come forward with evidence of rights or legitimate interests in a domain name. The Panel is persuaded from the record of this case that a *prima facie* showing under paragraph 4(a)(ii) of the Policy has been made. It is undisputed that the Respondent has not been authorized to use the Complainant's ONLYFANS mark. Nevertheless, the Respondent has registered the disputed domain name, which appropriates the Complainant's ONLYFANS mark in its entirety.

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent has not submitted a formal response to the Complaint, in the absence of which the Panel may accept all reasonable inferences and allegations in the Complaint as true. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#). Regardless, the Panel has carefully reviewed the record in this case, and finds nothing therein that would bring the Respondent's registration and use of the disputed domain name within any of the "safe harbors" of paragraph 4(c) of the Policy.

Having regard to the relevant circumstances, the Panel finds that the Respondent has neither used or demonstrated preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy, and is not making a legitimate noncommercial or other fair use of the disputed domain name for purposes of paragraph 4(c)(iii) of the Policy. The Respondent has not been authorized to use the Complainant's ONLYFANS mark, and there is no indication that the Respondent has been commonly known by the disputed domain name within the meaning of paragraph

² See [WIPO Overview 3.0](#), section 1.7.

³ *Id.* When the relevant trademark is recognizable in the disputed domain name, the domain name normally will be considered confusingly similar to the mark for purposes of paragraph 4(a)(i) of the Policy.

⁴ See [WIPO Overview 3.0](#), section 1.11.2 and cases cited therein.

4(c)(ii) of the Policy. In short, nothing in the record supports a claim by the Respondent of rights or legitimate interests in the disputed domain name.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant for valuable consideration in excess of respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent 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 respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

For the reasons discussed under this and the preceding heading, the Panel finds the Respondent's conduct in this case to constitute bad faith registration and use of the disputed domain name within the meaning of paragraph 4(a)(iii) of the Policy. The Panel concludes that the Respondent was aware of the Complainant and had the Complainant's ONLYFANS mark in mind when registering the disputed domain name, at all times seeking to exploit and profit from the Complainant's ONLYFANS mark.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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 <1onlyfans.com> be transferred to the Complainant.

/William R. Towns/
William R. Towns
Sole Panelist
Date: July 1, 2022