

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Privacy services provided by Withheld for Privacy ehf / Darko Milosevic, Rocket Science Group
Case No. D2022-1875

1. The Parties

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

The Respondent is Privacy services provided by Withheld for Privacy ehf, Iceland / Darko Milosevic, Rocket Science Group, Bosnia and Herzegovina.

2. The Domain Names and Registrar

The disputed domain names <ofansfree.com> and <ofhacked.com> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 25, 2022. On May 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name <ofansfree.com>. On May 25, 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 27, 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 31, 2022, which also requested that the disputed domain name <ofhacked.com> be added to this case.

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 June 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 30, 2022.

The Center appointed John Swinson as the sole panelist in this matter on July 7, 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 the website located at the domain name <onlyfans.com> and has used this domain name for several years in connection with the provision of a social media platform that allows users to post and subscribe to audiovisual content, much of which would seem to be adult content.

The Complainant owns several trademark registrations for ONLYFANS including U.S. Trademark Registration No. 5769267 filed on October 29, 2018 that has a registration date of June 4, 2019.

The disputed domain name <ofhacked.com> was registered on January 11, 2021. This disputed domain name resolves to a website that includes the following prominent text: "ONLYFANS HACKED CONTENT – GET FOR FREE! If you want to avoid paying to OnlyFans creators. Check out our base of more than 1 million photos and videos from different OnlyFans creators. We got huge hacked OnlyFans base that is available for free to anyone. Use search bar below, you can type username or full name of OnlyFans profile and if that person has content hacked, it will show up and you will be free to use it and share with others."

The disputed domain name <ofansfree.com> was registered on January 26, 2021. This disputed domain name resolves to a website that includes the following prominent text: "FREE ONLYFANS PHOTOS AND VIDEOS – GET FRESH ONLYFANS LEAKS FOR FREE. YES, THAT'S CORRECT! WE HAVE MORE THAN 1 MILLION ONLYFANS LEAKS AVAILABLE FOR FREE! AND THAT'S NOT ALL, WE ARE UPDATING OUR WEBSITE DAILY. MORE THAN 500 LEAKED PHOTOS AND VIDEOS ARE ADDED EVERY SINGLE DAY! YES IT'S FREE ACCESS TO ONLYFANS"

Both websites appear to include pornographic videos. Some of the videos have descriptions such as "Free [name] OnlyFans Photos and Videos". The description of one of the websites, as set out in the website's metatags as at the date of this decision, is "Don't want to pay subscription to OnlyFans creators? Come to us and get OnlyFans free access to more than million photos and videos. We have base of more than 100k OnlyFans creators for free."

The Respondent did not file a substantive Response, so little is known about the Respondent.

5. Parties' Contentions

A. Complainant

In summary, the Complainant made the following submissions:

The Complainant owns the registered trademark set out in section 4 above and has extensive common law rights in the trademark. The Complainant registered its <onlyfans.com> domain name on January 29, 2013. At the present time, the Complainant's website is very popular.

The Complainant has been successful in over 40 other decisions under the Policy.

The disputed domain names include an abbreviation of the Complainant's ONLYFANS trademark. Past cases have found confusing similarity where the disputed domain name consists of a "condensed version" of the Complainant's ONLYFANS trademark.

While website content is usually disregarded when assessing confusing similarity, the panel may consider website content in determining confusing similarity if the website contains “content trading off the complainant’s reputation” such as where the “website contains various references to the ONLYFANS mark.”

The Complainant “has achieved global fame and success in a short time” which makes it clear that the Respondent knew of the Complainant’s ONLYFANS trademark and knew that it had no rights or legitimate interests in the disputed domain names.

The Respondent has no connection or affiliation with the Complainant and has not received any authorization, license, or consent to use the ONLYFANS trademark in the disputed domain names or in any other manner. The Respondent is not commonly known by the ONLYFANS trademark and does not hold any trademarks similar to the disputed domain names. The Respondent’s use of the disputed domain names does not give rise to legitimate rights or interests because the Respondent’s websites hosts content similar to content on the Complainant’s website.

The websites at the disputed domain names offer adult entertainment services (including content pirated from the Complainant’s users) in direct competition with the Complainant’s services.

The disputed domain names were registered long after the Complainant attained registered rights in the ONLYFANS trademark.

The Complainant sent a cease-and-desist letter to the Respondent on March 10, 2022, demanding the Respondent stop using and cancel the disputed domain name <ofansfree.com>. The Respondent did not respond, thus necessitating the filing of this Complaint.

Bad faith use is found where the disputed domain names direct users to a commercial website that offers goods and services in direct competition with the trademark owner.

The Complainant requests that the disputed domain names be cancelled. Given the vast number of domain names infringing on the ONLYFAN trademark, the Complainant does not want to take possession of all the infringing domain names.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain names are 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 in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The *onus* of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the 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.

The Panel considers that it is appropriate to consider the two disputed domain names in this decision because they are both owned by the same Respondent and the websites at the disputed domain name have similar content.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant's website is well-known.

The Complainant owns trademark registrations for ONLYFANS. Both disputed domain names include the letters "of" and one of the disputed domain names includes the word "fans".

An Internet user who is familiar with the Complainant's popular website would likely recognize the abbreviated-form of the Complainant's trademark within the disputed domain names. One reason for this is that there are or have been many websites that include the term "of" (signifying OnlyFans) along with words such as "free", "hacked", "leaked", "nudes" and other similar words that have content copied from the Complainant's website.

For example, there have been cases decided under the Policy in favour of the Complainant in relation to the following domain names: <ofans.party>, <buyofansubs.com>, <freeofnudes.com>, <leakedof.com>, <leakedofworld.com>, <myofleaks.com>, <of-leaked.com>, and <ofleakedcontent.com>. See, for example, *Fenix International Limited v. Nemanja Krecelj / Nemanja Krecelj, Rocket Science Group*, WIPO Case No. [D2021-2667](#).

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name. See, for example, *Consumer Reports, Inc. v. Wu Yan, Common Results, Inc.*, WIPO Case No. [D2017-0371](#).

It is well established that the content of the Respondent's website is normally disregarded when assessing confusing similarity under the first element of the Policy. The test is to be conducted by way of a side-by-side comparison of the Complainant's trademark and the disputed domain name. *Harry Winston Inc. and Harry Winston S.A. v. Jennifer Katherman*, WIPO Case No. [D2008-1267](#).

However, in certain circumstances, it is permissible for the Panel to consider the website at the disputed domain name to gain an indication of the Respondent's intention with the disputed domain name. See *Zippo Manufacturing Company v. Domains by Proxy, LLC and Paul Campanella*, WIPO Case No. [D2014-0995](#), cited with approval in *VF Corporation v. Vogt Debra*, WIPO Case No. [D2016-2650](#); and *Gravity Co., LTD. and Gravity Interactive, Inc. v. Domain Privacy Service FBO Registrant / Junior Silva*, WIPO Case No. [D2021-2648](#); *Fenix International Limited v. Nemanja Krecelj / Nemanja Krecelj, Rocket Science Group*, WIPO Case No. [D2021-2667](#); and *Fenix International Limited v. Domain Admin, Privacy Protect, LLC / yossri ben salah, to leaks*, WIPO Case No. [D2022-0872](#).

In the present case, the Panel reviewed the websites at the disputed domain names and can draw the conclusion that the content of the websites, as well as the websites' metatags, confirm confusing similarity since it appears *prima facie* that the Respondent sought to target the ONLYFANS trademark through the disputed domain names. Further, the letters "of" in the disputed domain names, and the word "fans" in one of the disputed domain names, are clearly references to the Complainant's trademark ONLYFANS. See section 1.15 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

In the circumstances, the Panel concludes that the disputed domain names are confusingly similar to the Complainant's ONLYFANS trademark.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain names.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use 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) [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) [the Respondent] is making a legitimate noncommercial 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.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The *onus* of proving this requirement, like each element, falls on the Complainant.

Previous UDRP panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden of production will shift to the respondent to rebut that *prima facie* case.

The Complainant asserts that the Respondent has no connection or affiliation with the Complainant and has not received any authorization, license, or consent to use the ONLYFANS trademark in the disputed domain names or in any other manner. The Complainant also asserts that the Respondent is not commonly known by ONLYFANS and does not hold any trademarks similar to the disputed domain names. The Complainant also asserts that the Respondent's use of the disputed domain names does not give rise to rights or legitimate interests because the Respondent's website hosts content similar to content on the Complainant's website and uses the Complainant's ONLYFANS trademark in the descriptions of such content.

The Panel considers that, based upon the above, the Complainant has established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain names and thereby the burden shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain names.

The Respondent has chosen not to file a Response. The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the disputed domain names. Moreover, the use to which the disputed domain names have been put, namely to publish leak pirated content, cannot be considered legitimate.

Based on the evidence before the Panel, none of the circumstances listed in paragraph 4(c) apply in the present circumstances. Accordingly, the Panel finds that the Respondent has no rights or any legitimate interests in the disputed domain names.

The Complainant succeeds on the second element of the Policy in relation to the disputed domain names.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain names in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant. See *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

The Respondent's conduct as described above (e.g., hacking content from the Complainant's website, and using the Complainant's trademark on the websites at the disputed domain names) demonstrates the Respondent's knowledge of the Complainant and its trademark.

The Panel finds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its websites by creating likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website under paragraph 4(b)(iv) of the Policy.

The Complainant succeeds on the third element of the Policy in relation to the disputed domain names.

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 names <ofansfree.com> and <ofhacked.com> be cancelled.

/John Swinson/

John Swinson

Sole Panelist

Date: July 13, 2022