

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Privacy services provided by Withheld for Privacy ehf / Pablo Espinoza
Case No. D2022-2400

1. The Parties

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

The Respondent is Privacy services provided by Withheld for Privacy ehf, Iceland / Pablo Espinoza, Bolivia (Plurinational State of).

2. The Domain Name and Registrar

The disputed domain name <only-girls-packs.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 1, 2022. On July 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 1, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 4, 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 July 8, 2022.

On July 4, 2022, the Respondent sent an email to the Center. The Center replied to the Respondent on July 5, 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 July 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 2, 2022. The Respondent did not submit any formal response. The Center notified the Parties of the Commencement of Panel Appointment Process on August 9, 2022.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on August 25, 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 private social media platform that allows users to exchange and view mostly adult content. The website of the Complainant is available at “www.onlyfans.com” which, according to a screen capture produced by the Complainant from Alexa Internet dated April 28, 2022, is ranked 177th in global Internet traffic and engagement.

The Complainant is the owner of several ONLYFANS trade marks, including the following:

- European Union Trade Mark ONLYFANS registered under no. 17912377 on January 9, 2019, in classes 9, 35, 38, 41, and 42; and
- United States Trade Mark ONLYFANS registered under no. 5769267 on June 4, 2019, in class 35.

Prior decisions under the Policy have recognized the Complainant’s common law trade mark rights in the ONLYFANS trade mark since 2017 and its first use in commerce since 2016, as well as the fame of the Complainant’s social media platform and renown of the ONLYFANS trade mark.

The Complainant owns the domain name <onlyfans.com>, which was registered on January 29, 2013, and it is linked to its main website.

The Domain Name was registered on February 5, 2021, and points to a website containing adult content and numerous references to the Complainant’s ONLYFANS trade mark.

The Complainant sent a cease-and-desist letter to the Respondent on March 10, 2022, demanding that the Respondent stop using and cancel the Domain Name. No response was received.

5. Parties’ Contentions

A. Complainant

In essence, the Complainant argues that the Domain Name includes the first word of its well-known ONLYFANS trade mark and that the insertion of the terms “girls” and “packs” do not avoid confusing similarity. To reach this conclusion the Complainant points to the fact that whilst website content is usually disregarded when assessing confusing similarity, a panel under the Policy may consider website content in determining confusing similarity if the website has content trading off a complainant’s reputation such as where the website contains various references to a complainant’s trade mark.

Turning to the issue of whether the Respondent has rights or legitimate interests in the Domain Name, the Complainant considers that it has achieved global fame and success in a short time which makes it clear that the Respondent knew of the Complainant’s ONLYFANS trade mark at the time of registering the Domain Name and also knew that it had no rights or legitimate interests in the Domain Name. The Complainant submits that the website at the Domain Name offers adult content, including content pirated off the

Complainant's users and that this does not give rise to legitimate rights or interests. The Complainant also contends that the Respondent has no connection or affiliation with the Complainant and has not received any authorization, license, or consent to use the ONLYFANS trade mark in the Domain Name or in any other manner. The Complainant also argues that the Respondent is not commonly known by the ONLYFANS trade mark and does not hold any trade marks similar to the Domain Name.

Finally, the Complainant considers that the Domain Name was registered and is being used in bad faith. The Complainant essentially argues that given the extensive popularity and renown of the Complainant at the time of registration of the Domain Name, the Respondent must have been well aware of the Complainant. The Complainant contends that this is further confirmed by the fact that the Respondent is a serial cyber squatter who previously registered another domain name targeting the Complainant's trade mark without authorization which resulted in a cancellation decision in favor of the Complainant under the Policy. In terms of use of the Domain Name in bad faith, the Complainant contends that the Respondent's use of the Domain Name is an intentional attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trade mark as to the source, affiliation, or endorsement of the Domain Name. The Complainant also points to the fact that it addressed a cease and desist letter to the Respondent, who simply ignored it.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However a very short informal communication was received by the Center from the Respondent on July 4, 2022, stating:

"Cheers I want to present the formal complaint, so that these data are modified."

6. Discussion and Findings

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met for the Domain Name, namely:

- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

In the case of default by a party, as is the case here, paragraph 14(b) of the Rules makes it clear that if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

In the absence of a formal Response from the Respondent whereby the Respondent did not object to any of the contentions from the Complainant, the Panel will have to base its decision on the basis of the Complaint and supporting Annexes.

A. Identical or Confusingly Similar

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in the ONLYFANS trade mark.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the ONLYFANS trade mark in which the Complainant has rights. The only part of the Complainant's trade mark reproduced in the Domain Name is the term "only", a widely used adverb or adjective in the English language. The Complainant does not own any rights in the term "only" alone. However, in a previous case involving both the Complainant and the Respondent (*Fenix International Limited v. Privacy Service Provided*

by *Withheld for Privacy ehf / Pablo Espinoza*, WIPO Case No. [D2021-3200](#)) the panel decided that the domain name <only-mega-packs.com> was confusingly similar to the Complainant's ONLYFANS trade mark. In that decision, the panel stated: "The question therefore is whether 'only' is a sufficient approximation to 'onlyfans' in the context of the case analysis at hand. The Panel accepts this may be a case-specific issue but has formed the view that this is the type of case referred to at [WIPO Overview 3.0](#) section 1.7: 'In specific limited instances, while not a replacement as such for the typical side-by-side comparison, where a panel would benefit from affirmation as to confusing similarity with the complainant's mark, the broader case context such as website content trading off the complainant's reputation, or a pattern of multiple respondent domain names targeting the complainant's mark within the same proceeding, may support a finding of confusing similarity.'"

Consistent with recent decisions from other panels under the Policy, the Panel has decided to follow the same logic in the present case and thus, looking at the broader context including the website content associated with the Domain Name which reproduces the Complainant's ONLYFANS trade mark abundantly and includes what appears to be content stolen from the Complainant's website or intended to make consumers believe that the content is authorized by the Complainant, the Panel considers that an Internet user visiting the website associated with the Domain Name would most likely perceive the term "only" in the Domain Name as referring to the Complainant's ONLYFANS trade mark and that the Respondent registered the Domain Name precisely because it believed that the Domain Name was confusingly similar to the ONLYFANS trade mark. The Panel finds that such use supports a finding of confusing similarity for the purpose of the Policy.

Thus, the Panel finds that, in the very specific and limited circumstances of this case, the Complainant satisfies the first element of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] 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] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark 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 trade mark or service mark at issue."

Numerous previous panels have found under the UDRP that once the complainant makes a *prima facie* showing that the respondent does not have rights or legitimate interests in the domain name, the burden of production shifts to the respondent to rebut the showing by providing evidence of its rights or legitimate interests in the domain name.

Having reviewed the Complainant's assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent does not have rights or legitimate interests in the Domain Name.

There is no indication that the Respondent is commonly known by the Domain Name. The Complainant has stated that the Respondent has no rights in the Domain Name and has not been authorized by the Complainant to make any use of its ONLYFANS trade mark.

Finally, the fact that the Domain Name points to a website in competition with the Complainant and trading off the Complainant's trade mark, goodwill and business cannot be considered *bona fide*, legitimate, or fair.

Finally, the informal communication sent by the Respondent to the Center gives no indication as to how the Respondent could possibly be seen as intending to use the Domain Name for a legitimate purpose.

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

“(i) circumstances indicating that [the respondent has] registered or [the respondent 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 trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] registered the domain name in order to prevent the owner of the trade mark 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) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] web site or location or of a product or service on [the respondent's] web site or location.”

Given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel finds that the Domain Name was registered in bad faith.

Indeed, considering the conduct of the Respondent described above, including the Respondent's involvement in a previous case under the Policy which also targeted the Complainant, the Panel finds that the Respondent registered the Domain Name in a deliberate effort to target the Complainant and thus in bad faith.

In terms of use of the Domain Name in bad faith, given the overall circumstances of the present case, the Panel finds that the Respondent is seeking to attract customers by creating a likelihood of confusion with the Complainant's ONLYFANS trade mark.

In addition, the fact that the Respondent simply ignored the Complainant's cease-and-desist letter further demonstrates the Respondent's bad faith.

Finally the Respondent did not file a formal Response thus failing to avail himself of the opportunity to present any case of good faith that he might have. The Panel infers that none exists.

Thus, the Panel finds that the Domain Name is being used in bad faith.

Accordingly, the Complainant has met its burden of showing that the Domain Name was registered and is being used in bad faith.

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 Domain Name <only-girls-packs.com> be cancelled.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: September 8, 2022