

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. creator creator
Case No. D2022-4230

1. The Parties

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

The Respondent is creator creator, Egypt.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 3, 2022. On November 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Whois Privacy Protection Service, Inc.) and contact information in the Complaint. The Center sent an email communication to Complainant on November 9, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on the same day.

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 November 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 7, 2022.

The Center appointed Nathalie Dreyfus as the sole panelist in this matter on December 9, 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

Complainant is an US-based company owning and operating the website at the domain name <onlyfans.com>, which is a social media platform, allowing users to post and subscribe to audiovisual content.

Complainant has provided its services of arranging subscriptions of the online publications of others under the trademark ONLYFANS since July 4, 2016.

Complainant notably owns the following trademarks:

- European Union trademark ONLYFANS + device No. EU017946559, registered on January 9, 2019, for goods and services in classes 9, 35, 38, 41, and 42;
- European Union trademark ONLYFANS No. EU017912377, registered on January 9, 2019, for goods and services in classes 9, 35, 38, 41, and 42;
- US trademark ONLYFANS No. 5,769,267, registered on June 4, 2019, for services in classes 35;
- US trademark ONLYFANS.COM No. 5,769,268, registered on June 4, 2019, for services in classes 35.

The domain name <onlyfansheaven.com> (hereinafter referred to as the “Disputed Domain Name”) has been registered on September 28, 2021, and resolves to a website offering competing services with the Complainant.

5. Parties’ Contentions

A. Complainant

First, Complainant alleges that the Disputed Domain Name is identical or confusingly similar to the ONLYFANS trademarks of which Complainant is the owner.

To support this claim, Complainant asserts that the Disputed Domain Name consists of Complainant’s trademark in entirety, with the addition of the descriptive term “heaven”, which is “a laudatory non-distinctive element that would not reduce any risk of confusion amongst Internet users”.

Furthermore, Complainant argues that the generic Top-Level Domain (“gTLD”) <.com> is considered a standard registration requirement and has to be disregarded under the confusing similarity test. Moreover, the Disputed Domain Name uses the gTLD <.com> that is identical to Complainant’s registration of the ONLYFANS.COM trademark. Therefore, the gTLD <.com> does not sufficiently distinguish the Disputed Domain Name from Complainant’s trademarks.

Secondly, Complainant claims that Respondent has no rights or legitimate interests in the Disputed Domain Name.

Complainant states that Respondent has no connection or affiliation with Complainant, no implicit or explicit authorization, license, or consent from Complainant, to use the latter’s trademark in the Disputed Domain Name, or in any other manner. Further, there is no evidence demonstrating that Respondent is known by the Disputed Domain Name and Respondent must have known of Complainant’s trademarks due to its global fame and success.

Moreover, Complainant emphasizes that Respondent uses the Disputed Domain Name to offer and advertise adult entertainment services, in direct competition with those of Complainant. Such action does not give rise to legitimate rights and interests, but it gives a false impression that the Disputed Domain Name is associated with and/or endorsed by Complainant and may mislead visitors and divert them away from Complainant.

Finally, Complainant asserts that Respondent registered and uses the Disputed Domain Name in bad faith, as follows:

1. Bad faith registration

Complainant underlines that the Disputed Domain Name was registered on September 28, 2021, after Complainant's registrations of the trademarks, and long after its first and widespread use of trademarks.

Complainant also contends that the registration of a domain name, which is confusingly similar to a widely-known trademark, such as those of Complainant, creates a presumption of bad faith registration.

Furthermore, Complainant argues that Respondent registered the Disputed Domain Name to operate a website providing competitive products and services with those of Complainant and that Respondent has even pirated the content material from Complainant's official website.

Lastly, Respondent uses a privacy service to hide his/ her identity and also failed to reply to the cease-and-desist letter from Complainant.

2. Bad faith use

Complainant emphasizes that the Disputed Domain Name resolves to a commercial website, offering adult entertainment services in direct competition with those of Complainant, including pirated content from its famous original website.

Complainant also alleges that the apparent misappropriation of copyright-protected content on Complainant's website and the diversion of Internet traffic by Respondent disrupts Complainant's business and deprives Complainant's and its users of revenue. In addition to the use of the Disputed Domain Name, Respondent's failure to reply to Complainant's cease-and-desist letter also demonstrates bad faith use of the Disputed Domain Name.

B. Respondent

The Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

According to the Policy 4(a) there are three conditions that Complainant must satisfy in order to obtain that the disputed domain name registered by Respondent be deleted or transferred to Complainant:

- (i) the disputed domain name is identical or confusingly similar to a mark in which Complainant has rights,
- (ii) Respondent lacks any right or legitimate interest in the disputed domain name; and
- (iii) the disputed domain name was registered and is used in bad faith.

A. Identical or Confusingly Similar

Complainant has registered several ONLYFANS and ONLYFANS.COM trademarks in the United States and the European Union.

The Disputed Domain Name reproduces Complainant's trademarks in their entirety and is therefore likely to cause confusion with the ONLYFANS and ONLYFANS.COM trademarks. Long-standing case law shows that the risk of confusion is established where the Disputed Domain Name reproduces a trademark entirely (see for instance *Skorpio Limited v. Jianhua Xing*, WIPO Case No. [D2022-0555](#)).

The addition of the term "heaven" would not prevent a finding of confusing similarity under Policy 4(a)(i). The Panel agrees with Complaint that the Disputed Domain Name reproduces the whole trademark ONLYFANS with the only difference being the addition of the term "heaven" which does not prevent confusing similarity (See *Nokia Corporation v. Nick Holmes t/a E Type Media*, WIPO Case No. [D2002-0001](#)).

Furthermore, the gTLD ".com" only responds to a material requirement to register a domain name and is usually disregarded to assess confusing similarity between a domain name and a trademark (See *Société Air France v. Registration Private, Domains By Proxy, LLC, DomainsByProxy.com / Carolina Rodrigues*, WIPO Case No. [D2019-0578](#)). However, it can be taken into consideration in certain cases where it has an impact. Here, the choice of the ".com" gTLD affirms confusing similarity given the prior US trademark ONLYFANS.COM owned by Complainant.

As a result, the Panel considers that the Disputed Domain Name is confusingly similar to Complainant's trademarks and that Complainant has satisfied Policy 4(a)(i).

B. Rights or Legitimate Interests

Complainant underlines that Respondent was not authorized in any way to register and use the Disputed Domain Name and that there is no relationship of any kind between Complainant and Respondent.

Long-standing case law has considered these circumstances to be sufficient to make a *prima facie* case that Respondent lacks rights or legitimate interests in the Disputed Domain Name (see, for instance, *Linklaters LLP v. WhoisGuard Protected / Cindy Smith*, WIPO Case No. [D2019-0941](#)).

Moreover, Complainant claims that Respondent is not commonly known by the Disputed Domain Name. Respondent has not filed a response to try to rebut such argument, which is an indicator of a lack of rights or legitimate interests in a domain name. (see *Multi Media, LLC v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / John Holmes*, WIPO Case No. [D2020-1213](#)).

In addition, Respondent's use of the Disputed Domain Name to resolve users to its website, displaying content that is pirated from Complainant's website or in competition with it, does not support the possibility of rights or legitimate interests (See section 2.5.3 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#))). Moreover, the use of the confusingly similar disputed domain name, which features the entirety of the Complainant's ONLYFANS and ONLYFANS.COM trademarks, for competing (or copied) services affirms the Respondent's intention of taking unfair advantage of the likelihood of confusion between the disputed domain name and Complainants as to the origin or affiliation of the website at the disputed domain name.

Further, Complainant claims that Respondent has misappropriated copyrighted images from its website. The Panel finds that the evidence provided by Complainant is relevant in this regard and can support such contention.

The Panel agrees and finds that Respondent does not have rights or legitimate interests in The Disputed Domain Name.

Therefore, the Panel finds that Complainant has satisfied Policy 4(a)(ii).

C. Registered and Used in Bad Faith

Complainant underlines that the Disputed Domain Name is confusingly similar to its widely-known ONLYFANS trademark. Respondent must therefore have had knowledge of Complainant's trademark prior to the registration of the Disputed Domain Name.

Previous Panels have already found that the trademarks ONLYFANS enjoy a well-known reputation (*Fenix International Limited v. premium onlyfans*, WIPO Case No. [D2022-0125](#), *Fenix International Limited c/o Walters Law Group v. WhoisGuard, Inc., WhoisGuard Protected / Marry Mae Cerna*, WIPO Case No. [D2021-0327](#)). Therefore, the Panel agrees and considers that the well-known character of the ONLYFANS trademarks is established and that Respondent knew or ought to have known of such prior rights.

Besides, the latter did not reply to Complainant's cease and desist letter before the lodging of the proceeding and neither did they reply to the present Complaint, which is a further indicator of bad faith.

The Disputed Domain Name resolves to a website that displays content that competes with that of Complainant as well as content that is pirated from that of Complainant's website users, which strongly shows that Respondent is acting in bad faith (see for example *Surecom Corporation NV v. Privacy service provided by Withheld for Privacy ehf / Alex Veremeenko*, WIPO Case No. [D2022-1172](#)).

Finally, and as underlined by Complainant, Respondent did use a privacy shield for the registration of the Disputed Domain Name. In these circumstances, Respondent's use of the Disputed Domain Name amounts to use in bad faith. See section 3.6 of the [WIPO Overview 3.0](#).

The Panel thus finds that the Disputed Domain Name has been registered and is being used in bad faith in accordance with 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, <onlyfansheaven.com>, be transferred to Complainant.

/Nathalie Dreyfus/

Nathalie Dreyfus

Sole Panelist

Date: December 23, 2022