

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Klay Rose

Case No. D2023-0687

1. The Parties

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

The Respondent is Klay Rose, United Kingdom (“UK”).

2. The Domain Name and Registrar

The disputed domain name <onlyfansnude.xyz> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 15, 2023. On February 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 16, 2023, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 24, 2023, 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 February 24, 2023.

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 March 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 4, 2023.

The Center appointed Oleksiy Stolyarenko as the sole panelist in this matter on April 14, 2023. 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 is a US company, that owns and operates a social media platform website located at the domain name <onlyfans.com> that allows users to post and subscribe to audio-visual content, mostly adult, content. The users of this platform pay a subscription fee to see exclusive content and live streaming from their favourite content creators. According to the analytical service SimilarWeb in 2023, the Complainant's website is the 94th most popular website worldwide, and the 53rd most popular website in the United States. Based on the information from the Complainant, its platform has more than 180 million registered users.

The Complainant holds trademark registrations that comprise the term "onlyfans" in various jurisdictions around the world, including the following:

- European Union ("EU") Trade Mark Registration No. 17912377 for ONLYFANS, registered on January 9, 2019, in classes 9, 35, 38, 41 and 42;
- US Trademark Registration No. 5769267 for ONLYFANS, registered on June 4, 2019, in class 35;
- US Trademark Registration No. 6253455 for ONLYFANS, registered on January 26, 2021, in classes 9, 35, 38, 41, and 42; and,
- UK Trademark Registration No. 917912377 for ONLYFANS, word, registered on January 9, 2019, in classes 9, 35, 38, 41 and 42 (collectively the "ONLYFANS mark").

Prior Panels recognized the Complainant's common law trademark rights in the ONLYFANS mark since 2017 and its first use in commerce since 2016, as well as the global fame and success of the Complainant's social media platform and the consequent well-known character of the ONLYFANS mark. See *Fenix International Limited v. c/o who is privacy.com / Tulip Trading Company, Tulip Trading Company Limited*, WIPO Case No. [DCO2020-0038](#); and *Fenix International Limited v. WhoisGuard Protected, WhoisGuard, Inc. / Samuel Walton*, WIPO Case No. [D2020-3131](#).

The Complainant is the owner of the domain name <onlyfans.com>, that was registered on January 29, 2013 and it has been used by the Complainant for its social media platform website.

The disputed domain name was registered on July 23, 2022, and at the time of the decision it is not resolving to an active webpage. According to the Complainant's evidence, the disputed domain name was linked to a commercial website that offered adult entertainment content (including content pirated from the Complainant's users). This website included various references to the ONLYFANS mark and numerous posts from various creators, with photographs and videos of adult content, in particular, on its frontpage the website claimed to contain "The Latest Free OnlyFans Hot Models Leaked Nude Videos".

5. Parties' Contentions

A. Complainant

The Complainant contends that it has established rights in the ONLYFANS trademark by virtue of intensive use and registration in numerous jurisdictions worldwide. Furthermore, the Complainant has unregistered common law rights that have been recognized in previous WIPO decisions as having accrued and acquired distinctiveness by no later than May 30, 2017.

The trademark ONLYFANS is distinctive and well-known globally.

The disputed domain name reproduces the ONLYFANS mark adding the descriptive term “nudes”, which does nothing to avoid confusing similarity and the Complainant’s trademark being recognizable within the disputed domain name.

The Respondent has no rights or legitimate interests in the disputed domain name. No evidence indicates that the Respondent is known by the terms included in the disputed domain name, and the Respondent has not received any authorization, license, or consent, whether express or implied, to use the Complainant’s trademark or to download and post any content from the Complainant’s social media platform. The use of the disputed domain name in connection to an illegal activity, particularly in connection to a website that displays copyright-protected content allegedly misappropriated from the Complainant’s social media platform, can never confer rights or legitimate interests. The Respondent’s website uses the ONLYFANS mark and offers pirated content from the Complainant’s platform in direct competition with the Complainant’s services.

The disputed domain name was registered and is being used in bad faith. Due to the popularity of the Complainant’s platform, the Respondent was likely aware of the ONLYFANS mark when it registered the disputed domain name. The fact that the Respondent’s website offers pirated content from the Complainant’s website corroborates the Respondent knew of the ONLYFANS mark at the time of registration of the disputed domain name.

The disputed domain name contains the Complainant’s ONLYFANS mark supplemented by the additional term “nudes” that only increases the confusing similarity with the Complainant’s mark, and is an additional evidence of the bad faith.

In addition to that the Respondent’s bad faith is confirmed by the lack of response to the cease and desist letter sent by the Complainant on December 12, 2022.

Therefore, according to the Complainant, the Respondent intentionally registered and used the disputed domain name in an attempt to divert Internet traffic from the Complainant’s website to a site providing access to misappropriated copyright-protected content from the Complainant’s platform, which disrupts the Complainant’s business, depriving the Complainant and its users of revenue, and evidences the Respondent’s bad faith.

The Complainant has cited previous decisions under the Policy and various sections of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)) that it considers supportive of its position.

The Complainant seeks a decision that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the ONLYFANS trademark, based on its European Union, United States and United Kingdom trademark registrations. The Panel also takes note of the the Complainant’s common law trademark rights in the ONLYFANS trademarks confirmed by the previous Panels.

Therefore, the Panel considers that the Complainant has satisfied the threshold requirement of having trademark rights.

The disputed domain name features the Complainant's ONLYFANS trademark with the added dictionary word "nudes" and is combined with the generic Top-level Domain ("gTLD") ".xyz".

The gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#). Therefore, the Panel disregards the gTLD for the purposes of this comparison.

The Panel notes that added dictionary word "nudes" after the Complainant's mark does not prevent the Complainant's trademark from being recognizable in the disputed domain name.

The disputed domain name incorporates the Complainant's ONLYFANS trademark entirely.

Based on that, the Panel considers that the disputed domain name is confusingly similar to the Complainant's ONLYFANS trademark.

For all the foregoing reasons, the Panel finds that the first element of paragraph 4(a)(i) of the Policy has therefore been satisfied by the Complainant.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to establish that the Respondent has no rights or legitimate interests in the disputed domain name. Once the Complainant establishes a *prima facie* case against the Respondent under this ground, the burden of production shifts to the Respondent to rebut it. See section 2.1 of the [WIPO Overview 3.0](#). In this case, the Respondent did not rebut the Complainant's *prima facie* case regarding the lack of rights or legitimate interests.

However, the overall burden of proof remains with the Complainant. Paragraph 4(c) of the Policy provides circumstances that demonstrate the respondent's rights or legitimate interests to the disputed domain name, and that the complainants frequently address to show that the activities of the respondent does not fall under the *bona fide* offering of goods or services (paragraph 4(c)(i) of the Policy), that the respondent is not commonly known by the disputed domain name (paragraph 4(c)(ii) of the Policy) and that the respondent is not involved into a legitimate noncommercial or fair use of the disputed domain name (paragraph 4(c)(iii) of the Policy).

According to the Complainant, the Respondent is not an authorized or licensed to use the ONLYFANS trademark in the disputed domain name.

Based on the provided by the Complainant evidence, the disputed domain name used to resolve to a website which impersonated the official website of the Complainant, prominently displaying the ONLYFANS trademark, copyright-protected text and videos misappropriated from the Complainant's website.

The fact that the Respondent's website under the disputed domain name used to refer to the Complainant's trademarks and content confirms that the Respondent was well aware of the Complainant, and of the Complainant's products and services.

The Panel notes, that as it was found by the previous UDRP panels any type of impersonation or passing off supports finding that the respondent has no rights or legitimate interests in the domain name. See section 2.13.1 of the [WIPO Overview 3.0](#).

Moreover, given that the disputed domain name includes the Complainant's trademark completely with added dictionary word "nudes", the Panel struggles to conceive any legitimate interests of the Respondent in the disputed domain name because the disputed domain name effectively impersonates or suggests

sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#). Under such circumstances, any use of the disputed domain name by the Respondent only increases the possibility of the Internet users' to falsely attribute the disputed domain name to the activities of the Complainant.

The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

Taking into account the fame and intensive of use of the Complainant's ONLYFANS trademark, and in the corresponding Complainant's domain name and website, and in the absence of evidence to the contrary, the Panel finds that the Respondent is not involved in a *bona fide* offering of goods or services (under paragraph 4(c)(i) of the Policy) and the Respondent's activities does not fall under a legitimate noncommercial use (under paragraph 4(c)(iii) of the Policy).

The Panel did not find any evidence that the Respondent is commonly known by the disputed domain name and concludes that the Respondent is not commonly known by the disputed domain name under paragraph 4(c)(ii) of the Policy.

Thus, the Panel finds that the Complainant has satisfied the second element of the Policy, namely paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

As the Panel established above, the Complainant's ONLYFANS trademark was registered and widely used in commerce well before the registration of the disputed domain name on July 23, 2022.

Numerous previous UDRP panels have already recognized the wide reputation of the ONLYFANS trademark: "It is uncontested that Complainant's ONLYFANS mark and website linked to are well known among the relevant segment of Internet users." See *Fenix International Limited v. Carlos Lopez*, WIPO Case No. [D2023-0688](#).

Another UDRP panel also noted: "Moreover, it has been proven to the Panel's satisfaction that the Complainant's ONLYFANS trademark is well known and unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of products and services under this trademark. In sum, the Respondent in all likelihood registered the Domain Name with the expectation of taking advantage of the reputation of the Complainant's ONLYFANS trademark." See *Fenix International Limited v. Aleksandr V Stepanov*, WIPO Case No. [D2022-3483](#).

The Panel agrees and considers that the well-known character of the ONLYFANS trademark is established.

It has been established by previous panels that the mere registration of a domain name that is confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#). Such presumption would apply here as well.

Among additional bad faith consideration factors panels previously indicated registration of the domain name incorporating the complainant's mark plus an additional term that corresponds to the complainant's area of activity. See section 3.2.1 of the [WIPO Overview 3.0](#). In this particular case the disputed domain name consists of the Complainant's trademark plus dictionary word "nudes" that directly refers to the Complainant's adult content social media platform services.

Respectively, the Panel finds that the Respondent knew of the Complainant's ONLYFANS trademark when registering the disputed domain name. This conclusion is supported by the facts that the disputed domain name is confusingly similar to the Complainant's well-known ONLYFANS trademark, that the disputed domain name was linked to a page prominently displaying the ONLYFANS trademark, and it was advertising

the content from the Complainant's website. Furthermore, the Respondent was notified by the Complainant of its trademark rights by the cease and desist letter sent on December 12, 2022.

Previous panels found that bad faith is demonstrated when the Respondent registered the disputed domain name with the purpose of using it for unlawful purposes, profiting from the attempts to solicit business transactions with third parties while impersonating the Complainant, creating a likelihood of confusion and aiming to take undue advantage of the Complainant's reputation and goodwill. See *Minerva S.A. v. TT Host*, WIPO Case No. [D2016-0384](#).

The Panel finds here as well that the Respondent's intention has always been to use the disputed domain name to intentionally attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location (see paragraph 4(b)(iv) of the Policy).

Furthermore, the Panel finds it implausible that the disputed domain name could be used by the Respondent in good faith considering that it is confusingly similar to the Complainant's well-known trademark.

The Respondent failed to submit a response or provide any evidence of a good-faith use or to show rights or legitimate interests in the disputed domain name.

Therefore, based on the reputation, fame and intensive use of the Complainant's ONLYFANS trademark, and in the absence of the response from the Respondent providing any explanation or evidence of actual or contemplated good-faith use, the Panel finds the Respondent registered and used the disputed domain name in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, 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, <onlyfansnude.xyz> be transferred to the Complainant.

/Oleksiy Stolyarenko/

Oleksiy Stolyarenko

Sole Panelist

Date: April 28, 2023