

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Salhi Yassine

Case No. D2023-1412

1. The Parties

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

The Respondent is Salhi Yassine, Tunisia.

2. The Domain Name and Registrar

The disputed domain name <youonlyfans.com> is registered with OVH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 31, 2023. On April 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 3, 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 April 19, 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 April 21, 2023.

The Registrar confirmed that the language of the registration agreement of the disputed domain name is French. On April 19, 2023, the Center sent an email communication to the Complainant inviting it to provide satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceedings should be in English, to submit the Complaint translated into French, or submit a request for English to be the language of the administrative proceedings. On April 21, 2023, the Complainant requested that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and in French the Respondent of the Complaint, and the proceedings commenced on April 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 22, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on May 25, 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.

On May 25, 2023, after notifying the Panel's appointment, the Center received a communication from the hosting provider of the disputed domain name, whose contact email address was indicated by the Respondent at the time of the registration of the disputed domain name. This communication was sent both in English and in French, and read as follows: "Hello, Please don't send us this anyway we are not the owner of the domaine. The owner of the domaine is salhi yassine". The hosting provider also sent a contact email address from the Respondent, which differed from the one provided at the time of the registration of the disputed domain name.

4. Factual Background

The Complainant is a United Kingdom (UK) company, which operates an online platform at the website "www.onlyfans.com" where users post and subscribe to audiovisual content since July 4, 2016. In 2023, the Complainant's website has more than 180 million registered users and is ranked as the 94th most popular website on the web and the 53rd in the United States.

The Complainant is the owner of the following trademarks:

- ONLYFANS (word), European Union registration No. 017912377 (word), filed on June 5, 2018 and registered on January 9, 2019, for goods and services in classes 9, 35, 38, 41 and 42;
- ONLYFANS (figurative), European Union registration No. 017946559, filed on August 22, 2018 and registered on January 9, 2019, for goods and services in classes 9, 35, 38, 41 and 42;
- ONLYFANS (word), UK registration No. 00917912377 (word), filed on June 5, 2018 and registered on January 9, 2019, for goods and services in classes 9, 35, 38, 41 and 42;
- ONLYFANS (word), United States registration No. 5769267, filed on October 29, 2018 and registered on June 4, 2019, claiming a first use in commerce of July 4, 2016, and covering services in class 35;
- ONLYFANS.COM (word), United States registration No. 5769268, filed on October 29, 2018 and registered on June 4, 2019, claiming a first use in commerce of July 4, 2016, and covering services in class 35;
- ONLYFANS (word), United States registration No. 6253455, filed on November 2, 2019 and registered on January 26, 2021, covering services in classes 9, 35, 38, 41 and 42;
- ONLYFANS (figurative), United States registration No. 6253475, filed on November 2, 2019 and registered on January 26, 2021, covering goods and services in classes 9, 35, 38, 41 and 42;
- ONLYFANS (word), International registration No. 1507723, registered on November 2, 2019, covering goods and services in classes 9, 35, 38, 41 and 42, and designating several countries worldwide;

- ONLYFANS (figurative), International registration No. 1509110 registered on November 2, 2019, covering goods and services in classes 9, 35, 38, 41 and 42, and designating several countries worldwide.

The Complainant is also the owner of the domain name <onlyfans.com>, registered on January 29, 2013.

The disputed domain name was registered on October 29, 2022. Prior to the filing of the Complaint, the disputed domain name resolved to a website displaying adult entertainment videos, including content pirated from the Complainant's users. After the filing of the Complaint, the website displayed soccer related videos but the headings of the website's navigation system remained the same as before.

On December 16, 2022, the Complainant sent a cease and desist letter to the Respondent demanding to stop using and cancel the disputed domain name to which the Respondent never replied.

5. Parties' Contentions

A. Complainant

Preliminary, the Complainant requested that the language of this administrative proceedings be changed from French to English. The Complainant's request is based on several grounds which, for an easier reading of this decision, are explained in detail under paragraph 6 A. below.

The Complainant maintains that the disputed domain name is confusingly similar to its trademark ONLYFANS, as it reproduces it entirely, with the addition of the term "you", which cannot prevent a finding of confusing similarity.

The Complainant further maintains that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has no connection nor affiliation with the Complainant. The Complainant has not authorized, licensed or consented the Respondent to use the ONLYFANS trademark. The Respondent is not commonly known by the disputed domain name and does not own trademark rights for the disputed domain name. As the disputed domain name reproduces the Complainant's trademark entirely, the Respondent is impersonating the Complainant or suggesting sponsorship or endorsement by the Complainant, and is thus creating a risk of implied affiliation with the Complainant. The disputed domain name resolves to a website offering adult entertainment services in direct competition with the Complainant's services, including content purportedly pirated from the Complainant's users. The content previously published at the Complainant's website is offered free of charge by the Respondent, without remunerating the Complainant or the respective creators. Therefore, the Complainant is not 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 at issue, nor is using the disputed domain name in connection with a *bona fide* offering of goods or services.

Lastly, the Complainant maintains that the disputed domain name has been registered and is being used in bad faith. The ONLYFANS trademark enjoys strong reputation on the web, as it is used in connection with one of the top 100 websites of the world. The disputed domain name fully includes the Complainant's trademark, which, by itself, already creates a presumption of bad faith. The addition of the word "you" to the Complainant's mark in the disputed domain name enhances the confusing similarity as the Internet users are induced to believe that the disputed domain name originates from, or has been approved by, the Complainant.

The disputed domain name is used to offer adult entertainment services in the form of non-downloadable videos, photographs, images, audio, etc., in competition with the Complainant's services. The Respondent's website contains multiple references to "leaked" content, which indicates that the Respondent pirated the Complainant's website content.

The Complainant sent a cease and desist letter to the Respondent, but received no answer. Furthermore, the Respondent has hidden its identity behind a privacy service provider. Both these circumstances are further evidence of the Respondent's bad faith.

In light of the foregoing, the Complainant concludes that there is no plausible circumstance under which the Respondent could legitimately register or use the disputed domain name. Thus, the Complainant argues that the Respondent has registered and used the disputed domain name to divert Internet traffic from the Complainant's site to a website offering adult entertainment content (including content pirated from the Complainant's users) in direct competition with the Complainant's website.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However, the Center received a communication from the hosting provider of the disputed domain name, whose contact email address was indicated by the Respondent at the time of the registration of the disputed domain name. This communication read as follows: "Hello, Please don't send us this anyway we are not the owner of the domaine. The owner of the domaine is salhi yassine".

6. Discussion and Findings

A. Preliminary Matter – Change of Language

Pursuant to paragraph 11 of the Rules, in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceedings shall be the language of the registration agreement. In the instant case, the language of the registration agreement is French, but the Complainant requested to change the language of the proceeding from French to English based on the following circumstances:

- the Respondent understands English and this is shown by the fact that before filing the Complaint, the headings of the videos displayed on the website associated with the disputed domain name were in English. Subsequent to the filing of the Complaint, the Respondent changed the wording of its website to Arabic, but the website maintains the same English navigation system as before;
- the Respondent's website does not contain any French language;
- the disputed domain name consists of three English words, namely "you", "only" and "fans";
- consequently, it would not be unfair to the Respondent, to conduct the proceeding in English;
- instead, if the Complaint had to be translated into English, the Complainant would incur substantial additional expenses and the proceeding would be unnecessarily delayed.

In exercising its discretion to use a language other than that of the registration agreement, the Panel shall keep in mind its duty to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case. Moreover, the Panel shall ensure that the proceeding is conducted with due expedition.

In the case at issue, the Panel notes that the language of the website associated with the disputed domain name has changed from English to Arabic after the filing of the Complaint, while certain parts of the website are still in English. Moreover, prior to its change, the Respondent's website contained the word "leaked" next to various video descriptions, which suggests that these videos were unauthorized copies of videos uploaded on the Complainant's website, which is in English. Hence, in the Panel's view, it is more likely than not that the Respondent knows English. The Respondent could object to the Complainant's request of change of language but chose not to do so. In light of these circumstances, the Panel is of the opinion that

the Respondent would not suffer any prejudice from the change of the language of the proceedings requested by the Complainant. At the same time, it would be unfair to request the Complainant to file a translation of the documents of this proceeding and the proceeding would be unnecessarily delayed.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceedings shall be English.

B. Identical or Confusingly Similar

The Panel finds that the Complainant has duly substantiated its rights over the trademark ONLYFANS, registered in various countries before the date of registration of the disputed domain name. The disputed domain name consists of the term “you” followed by the Complainant’s trademark. According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), “[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element”. In the instant case, the Complainant’s mark is fully recognizable within the disputed domain name and the addition of the term “you” cannot prevent a finding of confusing similarity.

Thus, the Panel is satisfied that the first condition under the policy is met.

C. Rights or Legitimate Interests

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the instant case, the Complainant states that the Respondent has no connection or affiliation with the Complainant, and has received no authorization, license or consent to use the Complainant’s mark in the disputed domain name or in any other manner. Furthermore, there is no evidence in the file that the Respondent is commonly known by the name “youonlyfans”, or has acquired trademark or service mark rights on this name. The disputed domain name incorporates the Complainant’s trademark preceded by the word “you”, which is a pronoun indicating “the one or ones being addressed”. Therefore, this term refers to the website’s visitors and enhances the presence of the Complainant’s mark in the disputed domain name. Before the filing of the Complaint, the disputed domain name resolved to a website offering audiovisual adult entertainment services, including unauthorized ONLYFANS videos, namely videos most probably pirated from the Complainant’s users. The Complainant’s trademark appeared multiple times on the Respondent’s website under the general heading “ONLYFANS free”, suggesting that the videos could be viewed free of charge, thus depriving the Complainant of a possible income. In the absence of any consent from the Complainant, such use cannot amount to a *bona fide* offering of goods or services, or to a 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. Rather, the registration of a domain name reproducing the Complainant’s trademark carries a high risk of implied affiliation, and the disputed domain name, which includes the Complainant’s trademark plus an additional term, impersonates the Complainant or suggests sponsorship or endorsement of the Complainant (see in this respect, paragraph 2.5.1. of the [WIPO Overview 3.0](#)). Through the disputed domain name, the Respondent is therefore misleadingly diverting the Complainant’s consumers and damaging the Complainant’s business.

The fact that after the filing of the Complaint the Respondent has removed from its website the infringing videos does not change the aforementioned conclusions. This is so, not only because the assessment of the Policy requirements must be made at the time of the filing of the Complaint, but also because the new website still reproduces the Complainant’s trademark and headings, making clear reference to the Complainant and its business. It therefore appears to the Panel that the mere purpose of the change of the

website content is to convince the Panel of the Respondent's fair use of the disputed domain name in order to avoid the transfer of the disputed domain name to the Complainant.

Therefore, the Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. As such, the burden of production now shifts to the Respondent to provide convincing arguments that it owns rights or legitimate interests in the disputed domain name. The Respondent has chosen to remain silent in this case by not filing a Response. In light of the foregoing, the Panel concludes that the Complainant has successfully proved the requirement under Paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, the Complainant must establish both that the disputed domain name was registered in bad faith and that it has been used in bad faith (the so-called "conjunctive requirement").

The Complainant submits that the Respondent was likely aware of the Complainant and of its ONLYFANS trademark when it registered the disputed domain name. The Panel agrees with the Complainant. When the disputed domain name was registered, the trademark ONLYFANS had already achieved a high level of online recognition. The disputed domain name incorporates the Complainant's trademark entirely and was used to offer adult entertainment services in the form of allegedly free of charge videos, most probably pirated from the Complainant's platform. It is therefore clear that at the time of the registration of the disputed domain name, the Respondent had the Complainant and its trademark and activity very clear in mind. Moreover, the Respondent's use of the disputed domain name as described above is clearly aimed at diverting the online traffic originally intended for the Complainant to the Respondent's website by creating a likelihood of confusion of the disputed domain name with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Whether the videos available on the Respondent's website are offered free of charge or not has no impact on the assessment of the Respondent's bad faith. Indeed, through the registration and use of the disputed domain name, the Respondent is unduly exploiting the reputation of the ONLYFANS trademark to attract Internet users to the Respondent's website, inducing them to believe that such website belongs to the Complainant or is in some way connected to it. As such, the Respondent is illegitimately diverting traffic from the Complainant's website and disrupting the Complainant's business.

The lack of reply to the Complainant's cease and desist letter, and the deployment of a privacy shielding service and incorrect contact information to conceal the Respondent's identity corroborates the Panel's finding of the Respondent's 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 disputed domain name <youonlyfans.com> be transferred to the Complainant.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: June 8, 2023