

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Maddis Jones

Case No. D2023-1478

1. The Parties

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

The Respondent is Maddis Jones, India.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2023. On April 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same April 5, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 April 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 6, 2023. The Response was filed with the Center on May 6, 2023.


The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on May 15, 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 owns and operates the website to which the domain name <onlyfans.com> resolves, and which is used as a social media platform that allows users to post and subscribe to audiovisual content.

The Complainant's website to which the domain name <onlyfans.com> resolves is one of the most popular websites in the world with over 180 million registered users. That, according to similarweb, it is the 94th most popular website on the Internet and the 53rd most popular website in the United States.

The Complainant is the owner of several trademark registrations around the world, among others, the following:

Trademark	No. Registration	Jurisdiction	Date of Registration	International Classes
ONLYFANS 	017946559	European Union	January 9, 2019	9, 35, 38, 41, and 42
ONLYFANS 	UK00917946559	United Kingdom	January 9, 2019	9, 35, 38, 41, and 42
ONLYFANS	UK00917912377	United Kingdom	January 9, 2019	9, 35, 38, 41, and 42
ONLYFANS	5769267	United States	June 4, 2019	35
ONLYFANS.COM	5769268	United States	June 4, 2019	35
ONLYFANS 	6253475	United States	January 26, 2021	9, 35, 38, 41, and 42

The disputed domain name <xpornonly.com> was registered on August 30, 2021. It currently resolves to a website with pornographic content.

The Complainant sent a cease-and-desist letter to the Respondent on March 8, 2022, without having any response.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends the following:

I. Identical or Confusingly Similar

That the disputed domain name is identical or confusingly similar to the Complainant's trademarks.

That it is well established under UDRP precedents that the mere abbreviation of a trademark, or a portion thereof, is not enough to prevent confusing similarity.

That the use of the term "only" rather than the Complainant's full mark does not prevent a finding of confusing similarity

That, on the website to which the disputed domain name resolves, there are several references to the Complainant's trademark, like video watermarks which include the ONLYFANS.COM trademark on certain videos of the Respondent shows that the Respondent is targeting the Complainant.

That the disputed domain name incorporates an "x", as well as the additional term "porn" which does nothing to avoid confusing similarity under the first element.

That the use of the Top-Level Domain ("TLD") ".com" does not change the result in the confusing similarity analysis since it does not sufficiently distinguish the disputed domain name from the Complainant's trademark.

II. Rights or Legitimate Interests

That the Respondent has no connection to or affiliation with the Complainant, and that the Respondent has not received any authorization, license, or consent to use the Complainant's trademark in the disputed domain name, or in any other manner.

That the Respondent is not commonly known by the Complainant's trademarks and does not hold any trademark rights to the disputed domain name.

That the Complainant has achieved global fame and success in a short time, which makes it clear that the Respondent knew of the Complainant's trademark and knew that it had no rights to, or legitimate interests in the disputed domain name.

That there is no evidence indicating that the Respondent is known by the text of the disputed domain name.

That once a complainant asserts that a respondent has no rights or legitimate interests, the burden of production then shifts to the respondent to provide concrete evidence showing rights to, or legitimate interests in the disputed domain name at hand.

That a disputed domain name comprising the complainant's trademark and certain additional terms cannot constitute fair use, when doing so effectively impersonates or suggests sponsorship or endorsement by the Complainant.

That in the present case, the Respondent cannot claim the right to use the disputed domain name under fair use since it includes the abbreviated mark (sic.), and the additional terms "x" and "porn", which create a risk of implied affiliation.

That the website to which the disputed domain name resolves offers adult entertainment services in direct competition with those of the Complainant, which does not constitute rights or legitimate interests.

That the website to which the disputed domain name resolves offers pirated content from the Complainant's users.

That the Respondent registered and used the disputed domain name not because it refers to, or is associated with the Respondent, but because the disputed domain name is identical or confusingly similar to the <onlyfans.com> domain name and the trademarks used by the Complainant in association with its services.

III. Registered and Used in Bad Faith

a) Registered in Bad Faith

That the disputed domain name was registered on August 30, 2021, after the Complainant secured registered rights to the trademarks, and long after the Complainant had acquired common law rights to said trademarks, which have acquired distinctiveness. That this acquired distinctiveness is so strong that the Complainant's website is among the Top 100 most popular websites in the world.

That previous UDRP panels have found that the registration of a domain name that is confusingly similar to a widely known trademark may create a presumption of bad faith.

That the Complainant's trademark ONLYFANS has been recognized in numerous previous cases decided under the Policy as "internationally well-known amongst the relevant public", such that the Respondent either knew or ought to have known of the Complainant's trademark, and likely registered the disputed domain name to target said trademark.

That bad faith registration has also been found when a disputed domain name includes part of a complainant's trademark plus an additional term that "enhances the likelihood of confusion with the Complainant", such as the Respondent's use of the Complainant's trademark plus the additional terms "x" and "porn".

That the Respondent was likely aware of the Complainant's trademark when it registered the disputed domain name to offer services in direct competition with those of the Complainant (including content pirated from the Complainant's users).

That the Complainant sent a cease-and-desist letter to the Respondent on March 8, 2022, but that the Respondent did not reply, which is further evidence of bad faith.

That the Respondent registered the disputed domain name to divert Internet traffic from the Complainant's website to a website offering adult entertainment content (including content pirated from the Complainant's users), in direct competition with the Complainant's website.

b) Used in Bad Faith

That since the Complainant's trademarks are well-recognized, bad faith should be found.

That use in bad faith is found where a disputed domain name directs users to a commercial website that offers goods and services in direct competition with those of the trademark owner.

That the Respondent's attempts to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the disputed domain name, constitutes bad faith use.

B. Respondent

I. Identical or Confusingly Similar

On May 6, 2023, the Respondent replied to the Complainant's contentions.

That the allegations made by the Complainant are factually and subjectively false, erroneous, and/or misleading, and as such do not meet the criteria for transferring or canceling the disputed domain name as stated in the Policy.

That the Respondent asserts that the disputed domain name is not identical nor confusingly similar to the Complainant's trademark.

That "xpornonly" is a short form of saying "X-Rated Porn Only", as it is easier to remember <xpornonly.com> than <xratedpornonly.com>

That the disputed domain name includes the term "porn" which is not owned as a trademark by any entity.

That, in addition, the letter "X" is usually used like "XXX" to show the usage of adult movies.

That the disputed domain name resolves to a website (among countless others) that shares legal x-rated pornographic videos within a community.

That there is no connection between the disputed domain name and the trademarks claimed by the Complainant.

That there is no attempt to use the Complainant's trademark or any other confusingly similar.

II. Rights or Legitimate Interests

That since no entity holds a trademark for the term "porn", the disputed domain name should be considered fair use, without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark or service mark, under the Policy.

That the disputed domain name was registered and is being operated to share X-Rated Pornographic Videos, only within a community.

III. Registered and Used in Bad Faith

That the Respondent did not register the disputed domain name with the intent to sell, rent, or otherwise transfer it to the Complainant, its competitors, or any other party.

That, prior to these proceedings, the Respondent has not attempted to communicate with the Complainant about any matter, and was unaware of who the Complainant's representatives were.

That the disputed domain name in no way prevents the Complainant from reflecting its mark in any corresponding domain name.

That the Respondent and the Complainant are not competitors, nor was the disputed domain name registered to disrupt the Complainant's business.

That the disputed domain name was not registered to intentionally (or unintentionally) attract for commercial gain, internet users by creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement.

That the disputed domain name resolves to an online community created to upload and share X-Rated Pornographic Videos.

That the Complainant has failed to establish that the Respondent had actual knowledge of the Complainant's trademark and actively selected the trademark to target the Complainant and its customers.

That the Respondent submits that based on UDRP rules and prior decisions, the disputed domain name was neither created in bad faith nor is it being used in bad faith, and that the Complainant has failed to provide sufficient or credible evidence to support such a claim.

That the Complainant has failed to show that the disputed domain name is identical or confusingly similar to the Complainant's trademark, and likewise failed to show that the Respondent lacks legitimate interests in the disputed domain name.

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant is required to prove that each of the three following elements is satisfied:

- (i) the disputed domain name is 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 name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has filed evidence showing that it owns registrations for the trademark ONLYFANS in different jurisdictions, among others, in the United States, the European Union, and the United Kingdom.

The Complainant argues that the disputed domain name is identical or confusingly similar to the ONLYFANS trademark since it includes a portion of it, namely "only".

Sections 1.7 and 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), state that, generally speaking, the test under the first element involves a side-by-side comparison of the disputed domain name and the relevant trademark to assess whether the mark is recognizable within the disputed domain name. The [WIPO Overview 3.0](#) also mentions that the incorporation of additional terms to the disputed domain name does not prevent a finding of confusing similarity under the first element.

In the present case, the disputed domain name, <xpornonly.com>, is composed of the letter "x", the term "porn", and a portion of the Complainant's trademark, *i.e.*, "only", which term, taken independently, is a commonly used adverb or adjective of the English language, and a term that has not been coined, nor is it exclusively owned by the Complainant.

Under section 1.7 of the [WIPO Overview 3.0](#) "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 confusingly 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". The consensus view among WIPO panelists is that panel may undertake limited factual research if it deems it necessary to reach a decision based on the powers granted to the Panel, pursuant to paragraph 10 of the Rules and section 4.8 of the [WIPO Overview 3.0](#), see *Mark Overbye v. Maurice Blank, Gekko.com B.V.*, WIPO Case No. [D2016-0362](#), and *CNH Industrial N.V. v. Claus Norbert Hennen*, WIPO Case No. [D2021-4008](#)). Therefore, the Panel conducted an inspection of the website to which the disputed domain name resolves and found that said website offers a pornographic video-sharing platform. However, the Panel found no apparent uses of the Complainant's trademark that may indicate that the Respondent is trading off the Complainant's reputation.

The Panel notes the Complainant's claim that "the associated website contains various references to the Complainant's marks including video watermarks which include the ONLYFANS.COM Mark on certain of Respondent's videos (see Annex E)." However, the Panel also notes that Annex E only shows with a red arrow one video flagged by the Complainant with such watermark.

From the Panel's inspection of the website at the disputed domain name, apparently, the main home page does not seem to display a substantive number of videos with an ONLYFANS.COM watermark, nor does the source code of the home page refer to the ONLYFANS Mark. Going through the different categories, while some of the videos have within their titles mentions of "ONLYFANS" pointing towards the content being generated or leaked from the Complainant's website, the Panel notes that it cannot assess whether such content is the dominant content of the website when compared to content originating from other sources. The Panel cannot ascertain from the website at the disputed domain name that the Respondent seeks to target the ONLYFANS trademark through the disputed domain name.

In its Response, the Respondent argued that the disputed domain name is a short version of the description of the videos contained in its website, namely "X-Rated Porn Only". Taking into consideration the fact that the term "only", is a commonly used term in the English language, that the Complainant does not own any exclusive rights to the term "only" taken independently, and that the website to which the disputed domain names resolves does not use (in a prominent manner) the Complainant's trademark ONLYFANS (despite some of the videos abovementioned), this Panel considers that there is no confusing similarity since the trademark is not recognizable in the disputed domain name. (see *Fenix International Limited v. Domain Administrator, See PrivacyGuardian.org / John Silver, Domain Administrator, See PrivacyGuardian.org / James Peterson* WIPO Case No. [D2021-2272](#): "...the Panel cannot conclude that there is confusing similarity between the ONLYFANS mark and the Domain Name. In the Panel's view, the ONLYFANS mark is not adequately recognizable within the Domain Name.").

Therefore, the first element of the Policy has not been established. In view of the Panel's finding with respect to paragraph 4(a)(i) of the Policy, the Panel will not discuss paragraph 4(a)(ii) and (iii) of the Policy.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: May 29, 2023