

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Andre Miuts

Case No. D2023-2556

1. The Parties

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

The Respondent is Andre Miuts, Germany.

2. The Domain Name and Registrar

The disputed domain name <onlyfansgirls.online> (the “Domain Name”) is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 13, 2023. On June 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 15, 2023, 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 (Protection of Private Person) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 16, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same date, the Center sent a document related to the language of the proceeding in both English and Russian to the Parties. The Complainant submitted a request to proceed in English on June 16, 2023, while the Respondent did not reply. The Complainant filed an amendment to the Complaint on June 16, 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 in English and Russian, and the proceedings commenced on June 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 28, 2023.

The Center appointed Olga Zalomiy as the sole panelist in this matter on August 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 the owner and operator of the website located at the domain name <onlyfans.com> that is used in connection with the provision of a social media platform that allows users to post and subscribe to audiovisual content on the World Wide Web. The Complainant owns several trademark registrations for the ONLYGIRLS trademarks, such as:

- The European Union trademark registration No. EU017946559 for the word mark ONLYFANS, registered on January 9, 2019.
- the United States trademark registration No. 5769267 for the word mark ONLYFANS, registered on June 04, 2019.

The Respondent registered the Domain Name on January 7, 2023. The Domain Name directs to a website offering adult entertainment services in competition with the Complainant's services.

5. Parties' Contentions

A. Complainant

The Complainant's contentions are summarized as follows:

The Domain Name is identical or confusingly similar to the Complainant's trademarks because the only difference between the Domain Name and the trademark is the insertion of the descriptive term "girls" after the Complainant's trademark, which does nothing to avoid confusing similarity. The use of the generic Top-Level Domain ("gTLD") ".online" does not change the result because the gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

The Respondent has neither rights nor legitimate interests in the Domain Name because the Respondent has no connection or affiliation with the Complainant and has not received any authorization, license, or consent, whether express or implied, to use the Complainant's trademarks in the Domain Name or in any other manner. The Respondent is not commonly known by the ONLYFANS trademarks and does not hold any trademarks for the Domain Name. The Respondent is not making noncommercial or fair use of the Domain Name because the Respondent is using the Domain Name to direct to a website offering adult entertainment services in competition with the Complainant's services. Furthermore, the Respondent's use of the Domain Name creates a risk or implied affiliation with the Complainant.

The Domain Name was registered and is being used in bad faith. The Respondent registered the Domain Name in bad faith because of the following reasons: 1) the Domain Name was registered long after the Complainant registered its trademarks and obtained common law rights in the ONLYFANS trademarks; 2) the Domain Name is confusingly similar to the Complainant's well-known trademark; and 3) the Domain Name includes the Complainant's mark and an additional word that suggests affiliation or authorization of the website under the Domain Name with or by the Complainant. The Respondent registered the 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, which is another evidence of bad faith.

B. Respondent

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

6. Language of the proceeding

Under paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the registration agreement, unless the parties agree to use a different language, or the registration agreement provides otherwise. The Panel has the right to determine language of the administrative proceeding based on the circumstances of the case.

Because the language of the Registration Agreement for the Domain Name is Russian, the default language of the administrative proceeding would be Russian. The Complainant requested that English be the language of the administrative proceeding because of the following: (i) the Complainant will incur substantial additional expense and the proceeding to be delayed, if the Complainant is required to translate the Complaint and accompanying documents into Russian; and (ii) it is likely that the Respondent is capable of reading and writing in English, because the Domain Name is composed of three English words: "only", "fans" and "girls". In addition, the website under the Domain Name is in English.

Previous UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. "Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant's mark, ... (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint".

The Panel grants the Complainant's request that English be the language of this proceeding because of the following circumstances: (i) the Center notified the Respondent of the proceedings in both English and Russian, but the Respondent failed to respond to such notice and invitation to file a response in the proceedings;

(ii) the Complainant is not conversant with the Russian language and would have to incur significant additional cost in the proceedings, if it were required to proceed in the Russian language; (iii) the Domain Name is comprised of the English words and the website under the Domain Name is also in English, which indicates that the Respondent understands English. The Respondent will not be unduly prejudiced if the proceeding is conducted in English.

7. Discussion and Findings

Pursuant to paragraph 4(a) of the UDRP, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (paragraph 4(a)(i)); 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.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the UDRP, the Complainant must prove that the Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

The submitted evidence shows that the Complainant owns multiple trademark registrations for the ONLYFANS trademark. Pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), this satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

“Where 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.”¹ It is well-established that the applicable generic Top-Level Domain (“TLD”) should be disregarded under the confusing similarity test as a standard registration requirement.”²

The Domain Name consists of the Complainant’s ONLYFANS trademark, the term “girls” and the gTLD “.online”. Because the Complainant’s ONLYFANS trademark is recognizable within the Domain Name, the addition of the term “girls” does not prevent finding of confusing similarity. The gTLD “.online” is disregarded from the assessment of confusing similarity. Therefore, the Domain Name is confusingly similar to the Complainant’s ONLYFANS trademark.

The Complainant has satisfied the first element of the UDRP.

B. Rights or Legitimate Interests

To succeed under the second UDRP element, the Complainant must make out a *prima facie* case in respect of the lack of rights or legitimate interests of the Respondent³.

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under the UDRP, paragraph 4(c) include the following:

- (i) before any notice 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) has been commonly known by the domain name, even if the respondent has acquired no trademark 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 trademark or service mark at issue.

There is no evidence that the Respondent has been commonly known by the Domain Name. The Domain Name is registered in the name of Andre Miuts. The website under the Domain Name displays a section with frequently asked questions. All references in the responses are to ONLYFANS Internet platforms or plums ONLYFANS.

The Complainant contends and the Respondent does not dispute that the Complainant has not licensed or permitted the Respondent to use the Complainant’s ONLYFANS trademark in domain names, or for any other purpose.

There is no evidence that the Respondent is using the Domain Name in connection with a *bona fide* offering of goods or services or making a legitimate noncommercial or fair use of the Domain Name. The Respondent has been using the Domain Name for a website offering adult entertainment similar to one offered by the Complainant. The website under the Domain Name contains numerous references to the

¹ Section 1.8, [WIPO Overview 3.0](#).

² Section 1.11, [WIPO Overview 3.0](#).

³ See, Section 2.1, [WIPO Overview 3.0](#).

ONLYFANS platform and the Complainant's mark. Other UDRP panels have consistently found that a respondent's use of a complainant's mark to redirect users to a competing site would not support a claim to rights or legitimate interests.⁴

The Panel finds that the Complainant has made out the *prima facie* case and the burden of producing evidence demonstrating it has rights or legitimate interests in the Domain Name has shifted to the Respondent.⁵ Since the Respondent failed to present any rebutting evidence, the Complainant is deemed to have satisfied the second element of the UDRP.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must prove that the Domain Name was registered and is being used in bad faith.

The UDRP establishes that, for purposes of paragraph 4(a)(iii), "bad faith" registration and use of a domain name can be established by a showing of circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to source, sponsorship, affiliation or endorsement of the respondent's website or location, or of a product or service on the respondent's website or location. See Policy, paragraph 4(b)(iv).

"Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith"⁶. Evidence on file shows that the Respondent, who is not affiliated with the Complainant, used the Complainant's widely known in its sector mark for its own adult entertainment website. Therefore, the Respondent is presumed to have registered and used the Domain Name in bad faith.

In addition, prior UDRP panels have found "the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark:... (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, ... (vi) absence of any conceivable good faith use."⁷

Here, given wide recognition of the Complainant's trademark in the relevant industry, the multiple references to the Complainant's mark on the website under the Domain Name, the fact that the Respondent's website was used to offer the same type of entertainment as the Complainant's website, it is likely that the Respondent registered the Domain Name to trade on the goodwill of the Complainant's trademark. The Panel concludes that the Respondent registered and is using the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation or endorsement of the Respondent's website or location, or of a product or service on the Respondent's website or location.

The Complainant has satisfied the third element of the UDRP.

⁴ See, Section 2.5.3, [WIPO Overview 3.0](#).

⁵ See, Section 2.1, [WIPO Overview 3.0](#).

⁶ Section 3.1.4, [WIPO Overview 3.0](#).

⁷ Id.

8. 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, <onlyfansgirls.online> be transferred to the Complainant.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: August 28, 2023