

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Patrick Glass, FTL Communications LLC
Case No. D2023-3603

1. The Parties

Complainant is Fenix International Limited, United States of America (“United States”), represented by Walters Law Group, United States of America.

Respondent is Patrick Glass, FTL Communications LLC, United States.

2. The Domain Names and Registrar

The disputed domain names <myfansai.net> and <onlyfansai.net> are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 26, 2023. On August 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On August 29, 2023, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 31, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint/amended Complaint on August 31, 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 September 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 3, 2023. The Response was filed with the Center on August 31, 2023.

The Center appointed Scott R. Austin as the sole panelist in this matter on October 23, 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 following facts appear from the Complaint (as amended) and its annexes, which have not been contested by Respondent.

Complainant owns and operates a private social media platform that allows users to exchange and view mostly adult content under the trademark ONLYFANS (the “ONLYFANS Mark”). Complainant asserts its official website accessed at “www.onlyfans.com” through Complainant’s official domain name <onlyfans.com> which incorporates the ONLYFANS Mark and which, according to Complainant, is among the Top 100 most popular websites in the world in global Internet traffic and engagement.

Complainant is the owner of registrations for the ONLYFANS Mark, including:

European Union Trademark No. 17912377, ONLYFANS, registered on January 9, 2019, in classes 9, 35, 38, 41, and 42; and

United States Trademark Registration No. 5769267 ONLYFANS, registered on June 4, 2019, in class 35.

Complainant also asserts that in addition to owning the above-referenced trademark registrations, it has established common-law rights to the ONLYFANS Marks through extensive use and promotion of the marks to become globally famous resulting in acquired distinctiveness.

Prior decisions under the Policy have recognized Complainant’s common law trademark rights in the ONLYFANS Mark since 2017 and its first use in commerce since 2016, as well as the fame of Complainant’s social media platform and renown of the ONLYFANS Mark. Complainant owns its official domain name <onlyfans.com>, which was registered on January 29, 2013, and it is linked to its official website.

On June 1, 2023, Complainant sent a cease-and-desist letter to Respondent, demanding Respondent stop using and cancel the <onlyfansai.net> disputed domain name. Respondent did not respond, but instead apparently retaliated by registering the <myfansai.net> disputed domain name and moved an updated homepage from <onlyfansai.net> to <myfansai.net>, while redirecting the old domain to the new.

The Whois records show that Respondent registered the disputed domain names on March 21, 2023 and July 21, 2023 respectively and each resolved to a website offering subscription services for adult entertainment content in direct competition with Complainant’s website.

5. Parties’ Contentions

A. Complainant

Complainant contends that Respondent Patrick Glass remains in control of both disputed domain names, and thus this Panel may exercise its discretion under paragraph 10(e) of the Rules to consolidate multiple domain name disputes under a single proceeding. Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Specifically, Complainant contends that the disputed domain names are confusingly similar to Complainant's trademark because each merely adds "ai", the descriptive and commonly accepted shot form for "artificial intelligence" to Complainant's ONLYFANS Mark which remains recognizable within each disputed domain name; that Respondent has no connection or affiliation with Complainant and has not received any authorization, license, or consent to use the ONLYFANS Mark in the disputed domain names or in any other manner. Complainant also argues that Respondent is not commonly known by the ONLYFANS Mark and does not hold any trademarks similar to the disputed domain names. That Respondent has no rights or legitimate interests in respect of the disputed domain name as each is used for the illegitimate purpose of impersonating Complainant to obtain commercial advantage for Respondent's competing website business; and that the disputed domain name was registered and is being used in bad faith because Respondent intentionally targeted Complainant's ONLYFANS Mark to impersonate Complainant for Respondent's commercial gain.

B. Respondent

The Respondent submitted an online form of response before the commencement of the proceeding, stating that "[b]ased on previous decisions of the WIPO concerning Felix International, we do not contest the complaint" and "[t]he Respondent consents to the remedy requested by the Complainant and agrees to transfer the disputed domain name(s) to the Complainant. the disputed domain name(s)."

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

The Panel finds that Complainant has met its burden in all three elements of the Policy and will deal with each of these elements in more detail below.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel also finds Complainant has also established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The [WIPO Overview 3.0](#), section 1.8 provides: “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.

While the addition of other terms here, “ai” may bear on assessment of the second and third elements, the Panel finds the addition of such term within each disputed domain name does not prevent a finding of confusing similarity between the disputed domain names and Complainant’s mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds Complainants ONLYFANS Mark is recognizable within the disputed domain names. Accordingly, the disputed domain names are identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Similarly, while website content is usually disregarded when assessing confusing similarity, prior UDRP panels have held that a panel may consider website content in determining confusing similarity if the website:

- 1) contains content trading off the complainant’s reputation such as where the website contains various references to the complainant’s mark;
- 2) contains an identical browser tap icon, and
- 3) contains the same combination of colors used on the complainant’s website.

See *Fenix International Limited v. Host Master, 1337 Services LLC*, WIPO Case No. [D2021-0582](#);

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control 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 on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain names. Respondent has not rebutted Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise – to the contrary, Respondent has stated that it does not contest the Complaint and agrees to give up the disputed domain names.

According to [WIPO Overview 3.0](#), section 2.5.1, 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.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, given the circumstances described in the Complaint and the documentary evidence submitted by Complainant, the Panel finds that the disputed domain names were registered in bad faith.

First, numerous prior UDRP panels have recognized Complainant's ONLYFANS Marks as "internationally well-known amongst the relevant public" such that Respondent in this proceeding as well as those in prior proceedings either knew or ought to have known of Complainant's Marks and likely registered the domains to target Complainant's ONLYFANS Marks. See *Fenix International Limited c/o Walters Law Group v. Juan Anton, Onlyfanx*, WIPO Case No. [D2021-0837](#).

Second the disputed domain names were registered in 2023, long after Complainant attained registered rights in the Marks and long after Complainant had established common law rights in the Marks through acquired distinctiveness. See *Fenix International Limited v. c/o who is privacy.com / Tulip Trading Company, TulipTrading Company Limited*, WIPO Case No. [DCO2020-0038](#).

The Panel also finds bad faith registration here, because the Respondent used Complainant's ONLYFANS mark and the additional term "ai" within the disputed domain names, which creates a likelihood of confusion by suggesting that the disputed domain names contain "artificial intelligence" or AI-generated ONLYFANS content. See *Automobili Lamborghini S.p.A. v. Luis Esteras*, WIPO Case No. [D2023-0225](#).

As prior UDRP panels have noted, "[t]he overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant is seeking to profit from and exploit the trademark of another" See *Rockstar Games v. Tex. International Property Associates*, WIPO Case No. [D2007-0501](#). Complainant's evidence shows that Respondent clearly registered the disputed domain names to divert Internet traffic from Complainant's site to a website offering subscription services for adult entertainment content in direct competition with Complainant's website. Respondent's conduct, therefore, clearly falls within the example of bad faith registration and use under Policy paragraph 4(b) (iv) because Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant's mark.

Given the circumstances described in Complaint and the documentary evidence provided by Complainant, the Panel finds that the disputed domain names were registered in bad faith.

Indeed, considering the conduct of Respondent described above, the Panel finds that Respondent registered the disputed domain names in a deliberate effort to target Complainant and redirect traffic to Respondent's competing adult content website, thus in bad faith.

In terms of use of the disputed domain names in bad faith, given the overall circumstances of the present case, the Panel finds that Respondent is seeking to attract customers by creating a likelihood of confusion with Complainant's ONLYFANS Mark.

In addition, the fact that Respondent simply ignored Complainant's cease-and-desist letter further demonstrates Respondent's bad faith.

Finally, Respondent did not file a formal Response but submitted an online form of response before the commencement of the proceeding, stating that "[b]ased on previous decisions of the WIPO concerning Felix International, we do not contest the complaint" and "[t]he Respondent consents to the remedy requested by the Complainant and agrees to transfer the disputed domain name(s) to the Complainant. the disputed domain name(s)." Respondent was notified on September 12, 2023 that the Center received no request for suspension from the Complainant accepting a consent to transfer, and, therefore, that the proceeding would continue and the Panel finds a broader interest in recording a substantive decision on the merits for purposes of determining a pattern of bad faith conduct by this Respondent in future proceedings and determining the establishment of Complainant's trademark rights.

Thus, the Panel finds that the disputed domain names are being used in bad faith. Accordingly, Complainant has met its burden of showing that the disputed domain names were registered and are being used in bad faith.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 names, <myfansai.net> and <onlyfansai.net>, be transferred to the Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: November 30, 2023