

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Dragomir Vali

Case No. D2023-3712

1. The Parties

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

The Respondent is Dragomir Vali, Romania.

2. The Domain Name and Registrar

The disputed domain name <onlyfansleaked.org> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 1, 2023. On September 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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, Privacy services provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center sent an email communication to the Complainant on September 5, 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 September 5, 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 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 2, 2023.

The Center appointed Alexandre Nappey as the sole panelist in this matter on October 4, 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

Since 2016, the Complainant, Fenix International Limited, has operated the website located at the domain name <onlyfans.com>, and has used its domain name for several years in connection with the provision of a social media platform that allows users to post and subscribe to audiovisual content on the Internet.

In 2023, <onlyfans.com> has more than 180 million registered users.

The Complainant owns several trademark registrations for ONLYFANS among which:

- European Union trademark No. 017912377, registered on January 9, 2019 in classes 9, 35, 38, 41, and 42;
- United Kingdom trademark No. UK00917912377, registered on January 9, 2019 in classes 9, 35, 38, 41, and 42;
- U.S. trademark No. 5,769,267 registered on June 4, 2019 in class 35.

The disputed domain name was registered on April 13, 2023.

According to the evidence submitted by Complainant, the disputed domain name resolved to a website that offered adult entertainment services including content advertised as pirated from the Complainant's users.

5. Parties' Contentions

A. Complainant

First, the Complainant submits that the disputed domain name is confusingly similar to its earlier trademarks ONLYFANS, to the point of creating confusion.

Indeed, the disputed domain name consists of the Complainant's exact mark with the only difference being the insertion of the descriptive term "leaked" after the Complainant's mark, which does not avoid confusing similarity as ruled in numerous previous UDRP decisions.

Second, the Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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 ONLYFANS marks in the disputed domain name or in any other manner. The Respondent is not commonly known by the ONLYFANS marks and does not hold any trademarks for the disputed domain name.

The Complainant "has achieved global fame and success in a short time" which makes it "clear [that] Respondent knew of Complainant's Marks and knew that it had no rights or legitimate interests in the Domain Name".

No evidence indicates that the Respondent is known by the disputed domain name, and the Panel should presume that the Respondent is not known by the disputed domain name.

The Respondent will be unable to provide credible evidence that it has rights or legitimate interests, and the website at the disputed domain name offers adult entertainment services in direct competition with the Complainant's services. Using a disputed domain name to host a commercial website that advertises goods and services in direct competition with the trademark owner does not give rise to rights or legitimate interests.

Third, the Complainant alleges that the disputed domain name was registered and is being used in bad faith.

The disputed domain name was registered long after the Complainant attained registered rights in the ONLYFANS marks and long after the Complainant had common law rights in the marks which had acquired distinctiveness.

This acquired distinctiveness was so strong that the Complainant's website is among the Top 100 most popular websites in the world.

Here, the Complainant's marks have been recognized in numerous previous UDRP proceedings as "internationally well-known amongst the relevant public" such that the Respondent either knew or ought to have known of the Complainant's marks and likely registered the disputed domain name to target the ONLYFANS marks: it is clear that the Respondent registered the disputed domain name to target the ONLYFANS marks.

Moreover, here, bad faith registration should be found, since the Respondent used the Complainant's ONLYFANS mark and the additional term "leaked" within the disputed domain name, which enhances the likelihood of confusion.

Given that the Complainant had well-recognized rights years before the Respondent registered the disputed domain name, bad faith use should be found.

Here, the disputed domain name directs to a commercial website that offers adult entertainment content (including content advertised as pirated from the Complainant's users) in direct competition with the Complainant's services, including "providing entertainment services in the nature of a website featuring non-downloadable video, photographs, images, audio, and ... in the field of adult entertainment". As such, the Respondent is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

Notwithstanding the default of the Respondent, the Complainant has the burden of proof to make its case in accordance with paragraph 4(a) of the Policy, and to demonstrate that:

- (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 has been registered and is being used in bad faith.

However, under paragraph 14(b) of the Rules, where a Party does not comply with any provision of the Rules, the Panel "shall draw such inferences therefrom as it considers appropriate".

Having considered the Parties' submissions, the Policy, the Rules, the Supplemental Rules and applicable law, the Panel's findings on each of the above-mentioned elements are the following.

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns several trademark registrations for ONLYFANS. This trademark is fully reproduced in the disputed domain name.

The addition of the word “leaked”, does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) and numerous decisions involving the Complainant regarding similar domain name compositions, and for instance *Ruby Life Inc. v. Domains By Proxy, LLC / Nanci Nette*, WIPO Case No. [D2020-0093](#) (<ashleymadisonleaked.com>).

Accordingly, the Panel finds that the Complainant has succeeded in showing that the disputed domain name is confusingly similar to a mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant has satisfied its burden of proof here: the Complainant has argued that it does not know the Respondent, is not connected to the Respondent, and that to its knowledge the Respondent has no rights or legitimate interests in the disputed domain name. Besides, the disputed domain name is not used in connection with a *bona fide* offering of goods or services. On the contrary, it resolves to a website which offers adult entertainment services (including content advertised as pirated from the Complainant’s users) directly in competition with the Complainant’s website. Such use demonstrates a lack of rights or legitimate interests. In addition, there is no evidence showing that the Respondent is commonly known by the disputed domain name.

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, which has not been rebutted by the Respondent. The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which, if found by this 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 reads:

“For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that you have registered, or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

Each of the four circumstances in paragraph 4(b) of the Policy, if found, would be an instance of "registration and use of a domain name in bad faith".

The disputed domain name was registered after the registration of the Complainant's ONLYFANS trademark.

The Complainant's ONLYFANS trademark enjoys a considerable degree of international renown with more than 180 million registered users and a ranking among the most popular websites in the U.S.

Considering that the Complainant has established goodwill and reputation in the ONLYFANS trademark and that the disputed domain name incorporates that trademark in its entirety, the Panel finds that the Respondent had necessarily the Complainant's trademark in mind when it registered the disputed domain name. Such finding is reinforced by the fact that the Complainant submitted printouts showing that the website operated under the disputed domain name is being used to offer competing services to the Complainant's services, and content advertised as pirated from the Complainant's users.

It appears therefore that the Respondent, by referring to the ONLYFANS trademark in the disputed domain name, is trying to create a likelihood of confusion in order to attract, for commercial gain, Internet users to its own website.

The Panel finds that the Respondent's use of the disputed domain name cannot therefore constitute use of the disputed domain name in a *bona fide* offering of goods or services.

Accordingly, the Panel finds that the Respondent registered the disputed domain name with the Complainant in mind and with the intention of capitalizing on the reputation of the Complainant within the meaning of paragraph 4(b)(iv) of the Policy.

The Panel finds that the above constitutes registration and use in bad faith pursuant to the third requirement of paragraph 4(a) 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 <onlyfansleaked.org> be transferred to the Complainant.

/Alexandre Nappey/

Alexandre Nappey

Sole Panelist

Date: October 25, 2023