

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. b & s traede BV, Benjamin Peters Stefan Veit
Case No. D2023-4797

1. The Parties

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

The Respondent is b & s traede BV, Benjamin Peters Stefan Veit, France.

2. The Domain Name and Registrar

The disputed domain name <only-fans4you.com> is registered with RegistryGate GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 17, 2023. On November 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 23, 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 November 23, 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 November 27, 2023.

On November 23, 2023, the Center also transmitted an email in English and German to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on November 27, 2023. 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 the Respondent of the Complaint, and the proceedings commenced on December 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 27, 2023.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on January 5, 2024. 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 a social media platform at the domain name <onlyfans.com> – registered on January 29, 2013 – that allows users to post and subscribe to audiovisual content worldwide.

The Complainant is the owner of several trademark registrations for ONLYFANS, including the following, as per trademark certificates submitted as annex C to the Complaint;

- European Union trademark registration No. 017912377 for ONLYFANS (word mark), filed on June 5, 2018, and registered on January 9, 2019, in classes 9, 35, 38, 41, and 42;

- European Union trademark registration No. 017946559 for ONLYFANS (figurative mark), filed on August 22, 2018, and registered on January 9, 2019, in classes 9, 35, 38, 41, and 42; and

- United States trademark registration No. 5769267 for ONLYFANS (word mark), filed on October 29, 2018, and registered on June 4, 2019, in international class 35.

The disputed domain name was registered on May 3, 2023, and resolves to a website offering content creators a platform for their services, where subscribers can access the content for a fee.

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 that the disputed domain name is confusingly similar to the trademark ONLYFANS in which the Complainant has rights, as it reproduces the trademark in its entirety with the only difference being the insertion of the descriptive phrase "4 you" (which is an alternate spelling of "for you") after the Complainant's mark.

With reference to rights or legitimate interests in respect of the disputed domain names, the Complainant states that the Respondent is in no way connected to, or affiliated with, the Complainant and has never received any authorization, license, or consent, whether express or implied, to use the disputed domain names.

The Complainant contends that the Respondent is also not commonly known by the disputed domain name and that, given the Complainant's world renown, the Respondent must have undoubtedly been aware of the Complainant when registering the disputed domain name, considering that the website at the disputed domain name arranges for subscriptions to adult content in direct competition with the Complainant's services.

Using a disputed domain name to host commercial websites that advertise services in direct competition with the trademark owner does not give rise to legitimate rights or interests.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the disputed domain name was registered long after the Complainant attained registered rights in its Marks and submits that, considering its world renown and the fact that the disputed domain name contains a word that

enhances the likelihood of confusion with the Complainant, the Respondent not only was well aware of the Complainant at the time of registering the disputed domain name, but deliberately chose to register the same to suggest that the website was authorized by the Complainant, which he is not.

Since the Complainant's trademarks are well-recognized, bad faith should be found. 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, which is the case in this matter. 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.

The Complainant informs the Panel that it also sent a cease-and-desist letter to the Respondent on July 10, 2023, demanding that the Respondent stop using and cancel the disputed domain name, but never received a reply to its communication.

The Complainant requests that the disputed domain name be transferred.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural Issue: Language of the Proceeding

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Registrar confirmed that the Registration Agreement for the disputed domain name is in German.

The Complainant requests that the language of the proceeding be English. Its main arguments are that substantial additional expense and delay would likely be incurred if the Complaint has to be submitted in German, that the disputed domain name includes the English words "only", "fans," "4", and "you", thereby creating the English sentence "Only Fans For You," and the fact that the website at the disputed domain name is offering a subscription-based website and platform for "Creators" that appears to mimic the Complainant's own business model.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); and *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#). See also WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1.

The Panel observes that the Respondent did not reply to the Center's request (which was sent, both in English, and in German) regarding the language of proceedings. Since it had been clearly announced therein that the proceeding would continue in English if the Respondent did not object, the Panel assumes that the Respondent has no objection to the proceeding being conducted in English. Therefore, the Panel considers that requiring the Complainant to translate the Complaint would create an undue burden and delay.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in German, but none was filed.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements:

- (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.

The burden of proof of each element is borne by the Complainant. The Respondent's default does not by itself mean that the Complainant is deemed to have prevailed. See [WIPO Overview 3.0](#), section 4.3.

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 the 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.

Based on the available record, the Panel finds the 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 finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition a hyphen, here between "only" and "you", and of other terms, here "4 you", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademarks. Moreover, there is no element from which the Panel could infer the Respondent's rights and legitimate interests over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel also finds that the Respondent's use of the disputed domain name to direct Internet users to a website offering services in direct competition with the Complainant's services without providing a clear and prominent disclaimer of non-affiliation with the Complainant on the home page, does not amount to *bona fide* offering of goods or services or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

Based on the available record, 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.

In the present case, the Panel notes that, in light of the prior registration and use of the trademark ONLY FANS in connection with the Complainant's adult entertainment services, provided via its website, and considering the popularity reached in the recent years by the Complainant's website, the Respondent was more likely than not aware of the Complainant's trademark at the time of the registration of the disputed domain name, which occurred on May 3, 2023.

Moreover, the Panel finds that, in view of the fact that the disputed domain name is pointed to a website offering adult entertainment services in direct competition with the Complainant, the Respondent intentionally attempted to attract Internet users to its website, for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of its website and the services provided therein, according to paragraph 4(b)(iv) of the Policy.

The Panel also notes that the Respondent's failure to respond to the Complainant's cease-and-desist letter and to file a Response are further evidence of the Respondent's bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element 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, <only-fans4you.com>, be transferred to the Complainant.

/Richard C.K. van Oerle/
Richard C.K. van Oerle
Sole Panelist
Date: January 11, 2024