

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Farzad Toutouni, uper Boost Energy
Supplements
Case No. D2023-4874

1. The Parties

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

Respondent is Farzad Toutouni, uper Boost Energy Supplements, United States.

2. The Domain Name and Registrar

The disputed domain name <tonysonlyfans.com> (the “Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 22, 2023. On November 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. Also 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 (Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on November 27, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on the same November 27, 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 Respondent of the Complaint, and the proceedings commenced on November 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 19, 2023. Respondent did not submit any response.

Accordingly, the Center notified Respondent's default on December 21, 2023. The Center received two informal communications from a third party on December 22, 2023.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on December 26, 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

Complainant owns and operates the website located at the domain <onlyfans.com>, which it has used for several years in connection with the provision of a social media platform that allows users to post and subscribe to adult audiovisual content. In providing its services, Complainant has made extensive use of the ONLYFANS trademark (hereafter "the Mark").

Complainant submits evidence that in 2023 <onlyfans.com> was one of the most visited websites in the world, with more than 180 million registered users; that <onlyfans.com> is currently the 94th most visited website worldwide; and that it is the 53th most visited website in the United States.

Complainant owns many registrations for the Mark, including:

- European Union Registration No. EU017912377 (registered January 9, 2019); and
- United States Registration No. 5,769,267 (registered June 4, 2019).

Respondent registered the Disputed Domain Name on May 1, 2023. The Disputed Domain Name resolves to a website that displays adult content to subscribers who pay a fee.

Complainant sent a cease-and-desist letter to Respondent on July 10, 2023, but Respondent did not respond.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Complainant attests that Respondent has no connection or affiliation with Complainant and has not received any authorization, license, or consent, whether express or implied, to use the Mark in the Disputed Domain Name or in any other manner. Respondent is not commonly known by the Mark and does not hold any trademarks for the Disputed Domain Name.

Complainant also contends that, because its Mark and website are well known, Respondent probably was well aware of Complainant and its rights when it registered the Disputed Domain Name.

B. Respondent

Respondent did not respond to the Complainant's contentions. However, on December 22, 2023, the Center received two informal communications from a third party in reply to the respondent default notice stating, respectively, "We have no idea what this is in regards to" and "I don't understand what you guys are trying to accomplish", while maintaining the Respondent and the Complainant in copy.

6. Discussion and Findings

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.

Based on the available record, the Panel finds that 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 of other terms, here "Tonys", may bear on assessment of the second and third elements, the Panel finds the addition of such term 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 that 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 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 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 that Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the Disputed Domain Name. 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 Name such as those enumerated in the Policy or otherwise.

The Panel finds that the Respondent has not made a legitimate noncommercial or fair use of the disputed domain name given that the Respondent offers competing services for commercial gain while prominently displaying the Complainant's trademark. [WIPO Overview 3.0](#), section 2.5.3.

Based on the available record, the Panel finds that 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.

The Panel finds that Respondent registered the Disputed Domain Name in bad faith. Given the evidence that Complainant is well known, especially in the field of providing adult content, it is probable that Respondent knew of Complainant and its rights when he registered the Disputed Domain Name. Furthermore, it is probable that, when registering the Disputed Domain Name, Respondent intended to target Complainant and attract Internet users searching for Complainant.

The Panel also finds that Respondent is intentionally using the Disputed Domain Name to attract, for commercial gain, Internet users to the website associated with the Disputed Domain Name, by creating a likelihood of confusion with Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website. This is use in bad faith. Policy paragraph 4(b)(iv).

Based on the available record, the Panel finds that 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 <tonysonlyfans.com> be transferred to Complainant.

/Lawrence K. Nodine/

Lawrence K. Nodine

Sole Panelist

Date: January 8, 2024