

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Charles Tang, avseptwolves,
Case No. D2024-0239

1. The Parties

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

The Respondent is Charles Tang, avseptwolves, United States.

2. The Domain Name and Registrar

The disputed domain name <only-fan.net> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 19, 2024. On January 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 22, 2024, 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 (Domain Administrator, PrivacyGuardian.org LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 29, 2024, 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 January 29, 2024.

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 January 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 20, 2024.

The Center appointed Joe Simone as the sole panelist in this matter on March 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 the website located at the domain <onlyfans.com> and has used its domain 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 World Wide Web.

The Complainant has an extensive global portfolio of trade marks that include the brand ONLYFANS, including the following:

- European Union Trade Mark Registration No. 017912377 for ONLYFANS in Classes 9, 35, 38, 41 and 42, registered on January 9, 2019;
- United States Trade Mark Registration No. 5769267 for ONLYFANS in Class 35, registered on June 4, 2019;
- United States Trade Mark Registration No. 6253455 for ONLYFANS in Classes 9, 35, 38, 41, 42, registered on January 26, 2021; and
- International Trade Mark Registration No. 1507723 for ONLYFANS in Classes 9, 35, 38, 41, 42, registered on November 2, 2019, designating Australia, Canada, Republic of China, Japan etc.

The disputed domain name was registered on October 11, 2023.

The Complainant provided a screenshot indicating that, at the time of filing the Complaint, the disputed domain name resolved to a page offering adult content. At the time of issuance of this Decision, the disputed domain name also resolves to a website offering adult content, or alternatively to a bot page that repeatedly requests permission to allow notifications, depending on the Internet user's device and browser.

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 asserts that it has prior rights in the ONLYFANS trade mark and that it has acquired a strong reputation in its field of business.

The Complainant further asserts that the disputed domain name registered by the Respondent is confusingly similar to the Complainant's ONLYFANS trade mark.

The Complainant also notes that it has not authorized the Respondent to use its ONLYFANS mark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services.

The Complainant also asserts that there is no evidence indicating any connection between the Respondent and the ONLYFANS mark in any way, and that there is no plausible good-faith reason for the Respondent to have registered the disputed domain name.

The Complainant therefore asserts that the registration and any use of the disputed domain name whatsoever was in bad faith.

B. Respondent

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

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 the Complainant's trade mark 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 demonstrated its rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Disregarding the generic Top-Level Domain ("gTLD") ".net", the disputed domain name incorporates the Complainant's trade mark ONLYFANS in its entirety, but with the omission of the final letter "s" and the insertion of a hyphen between the words "only" and "fan".

Where the relevant trade mark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) or element such as a hyphen would not prevent a finding of confusing similarity under the first element. [WIPO Overview 3.0](#), section 1.8.

As such, and based on the available information, 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 provided any evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Specifically, the Respondent did not submit any evidence to prove that, prior to the notice of the dispute, it used or demonstrated preparations to use the disputed domain name in connection with a bona fide offering of goods or services. Also, no evidence was adduced to show that the Respondent is commonly known by the disputed domain name, or that it is making a legitimate noncommercial or fair use of the name.

The Respondent is using the disputed domain name to divert traffic to a website featuring adult content. In the absence of any satisfactory explanation by the Respondent, the Panel finds that such use does not demonstrate a bona fide offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.

Furthermore, the Panel finds that the disputed domain name carries a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

As such, the Panel concludes that the Respondent has failed to rebut the Complainant's prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name, and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

As such, and based on the available evidence, 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 states that any of the following circumstances in particular but without limitation, shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trade mark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its 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 the respondent's website or location or of a product or service on its website or location.

For the reasons discussed under this and the preceding heading, the Panel believes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name.

The Panel notes that at the time the Respondent registered the disputed domain name, the ONLYFANS trade marks were already widely known and directly associated with the Complainant's activities. UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

The Respondent has provided no evidence to justify the adoption of the term "only-fan" in the disputed domain name.

In light of the foregoing, it would be unreasonable to conclude that, at the time of the registration of the disputed domain name, the Respondent was unaware of the Complainant's trade mark.

The Complainant's registered trade mark rights in ONLYFANS predate the registration date of the disputed domain name. A simple online search (such as via Baidu, Bing, etc.) for the term "onlyfan" would have revealed that it is a renowned brand in its industry.

The Panel is therefore of the view that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark rights.

Furthermore, the disputed domain name is being used to divert traffic to a website featuring adult content, which demonstrates the Respondent intends to enjoy commercial gain from the website and attracting Internet users by creating a likelihood of confusion with the Complainant's mark and services as to the source, sponsorship, affiliation or endorsement of the Respondent's website, pursuant to paragraph 4(b)(iv) of the Policy.

In light of the foregoing, the Panel concludes that there is no plausible good faith reason for the Respondent to have registered and used the disputed domain name.

Based on the available record, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith and 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-fan.net> be transferred to the Complainant.

/Joseph Simone/

Joseph Simone

Sole Panelist

Date: March 19, 2024