

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Thanawat boonchai
Case No. D2024-0395

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 Thanawat boonchai, Thailand.

2. The Domain Name and Registrar

The disputed domain name <onlyfanscute.com> 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 January 29, 2024. On January 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 30, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 31, 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 amended Complaint on January 31, 2024.

The Center verified that the Complaint together with the amended 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 February 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2024. The Respondent sent email communications to the Center on February 6, 2024, and February 8, 2024. The Center notified the Parties of the commencement of panel appointment process on February 27, 2024.

The Center appointed Mihaela Maravela 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

According to information in the Complaint, the Complainant owns and operates the website located at <onlyfans.com> for a social media platform that allows users to post and subscribe to audiovisual content on the web. According to the Complainant, its website is one of the most popular websites in the world, with more than 180 million registered users.

The Complainant has registered several trademarks consisting of ONLYFANS, including the European Union Trade Mark No. 017912377, registered on January 9, 2019, covering goods and services in classes 9, 35, 38, 41, and 42, or the International trademark No. 1507723, registered on November 2, 2019, covering goods and services in classes 09, 35, 38, 41, 42 (designating inter alia Thailand).

The disputed domain name was registered on August 13, 2023 and, according to evidence with the Complaint, it resolved to a website offering adult entertainment services in direct competition with those of the Complainant. At the date of the Decision it resolves to a page saying: “webserver is functioning normally”.

The Complainant sent a cease-and-desist letter to the Respondent on September 27, 2023, and the Respondent did not reply.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's marks, as the disputed domain name consists of the Complainant's ONLYFANS mark with the only difference being the insertion of the descriptive term “cute” after the Complainant's mark, which does nothing to avoid confusing similarity.

As regards the second element, the Complainant argues that 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 marks in the disputed domain name or in any other manner. The Respondent is not commonly known by the marks and does not hold any trademarks for the disputed domain name. The Complainant claims that the website at the disputed domain name offers adult entertainment services (including watermarked content pirated from the Complainant's users) in direct competition with the Complainant's services, which does not give rise to legitimate rights or interests. This conduct also proves bad faith registration and use of the disputed domain name as per the Complainant.

In addition, with respect to the third element, the Complainant argues that the disputed domain name was registered long after the Complainant attained registered rights in its marks and bad faith registration can be found where the widespread use and numerous registrations of the Complainant's marks long predate the Respondent's registration. The Respondent's failure to respond to the cease-and-desist letter from the Complainant is further evidence of bad faith.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. The informal email communications sent by the Respondent contain the following messages in Thai language “I received this message We are working quickly. Please be assured.”, “I am now processing your request. onlyfanscute.com with godaddy has been completed. I have now relinquished ownership of this domain and canceled the registration of Domain onlyfanscute.com. It is already completed.” Followed by the English text

“Thank GGez”, together with an image of what appears to be a conversation with the Registrar regarding the disputed domain name, and in another communication the Respondent stated in Thai language that “I have been contacted by Godaddy and they have revoked ownership of these domains.”, including a communication with the Registrar in Thai language that seems to be referring to the domain names <onlyfansfree.asia>, and <onlyfanstarth.com>. Thank you for letting us know and we hope this was helpful and satisfying for you”.

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 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 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 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, “cute”) 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.

It is the settled view of panels applying the Policy that the Top-Level Domain (“TLD”) (here “.com”) should be disregarded under the first element test.

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.

There is no evidence that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services. Rather, according to the un rebutted evidence put forward by the Complainant, the disputed domain name is used to offer services in direct competition with those of the Complainant, as the website to which it resolved reproduced content previously published at the Complainant’s website without authorization, which are offered free of charge by the Respondent, without remunerating the Complainant or the respective creators. In this Panel’s view, such use does not confer rights or legitimate interests to the Respondent.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name.

Furthermore, the nature of the disputed domain name carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

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 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.

The Complainant's registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. Given the distinctiveness of the Complainant's trademark and its inclusion in not only the disputed domain name but also on the websites to which the disputed domain name resolved, it is more likely than not that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks, and to target those trademarks. The disputed domain name was used by the Respondent to direct to a website offering adult entertainment services that are in direct competition with the services offered by the Complainant. The Panel therefore finds that the Respondent intentionally attempts to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (see [WIPO Overview 3.0](#), section 3.1.4).

The Respondent has not provided any evidence of actual or contemplated good faith use and has not responded to the Complainant's cease-and-desist letter or addressed the contentions in the Complaint. The use of a Whois privacy wall is further indication of bad faith in the circumstances of this case.

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 <onlyfanscute.com> be transferred to the Complainant.

/Mihaela Maravela/

Mihaela Maravela

Sole Panelist

Date: March 19, 2024