

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Suren Akopian
Case No. D2024-0462

1. The Parties

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

The Respondent is Suren Akopian, Armenia.

2. The Domain Name and Registrar

The disputed domain name <onlyfans.org> is registered with Nettuner Corp. DBA Webmasters.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2024. On January 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 6, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 7, 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 February 7, 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 February 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 5, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 6, 2024.

The Center appointed Luca Barbero as the sole panelist in this matter on March 11, 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 registration 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;
- United States trademark registration No. 5769267 for ONLYFANS (word mark), filed on October 29, 2018, and registered on June 4, 2019, claiming first use as of July 4, 2016, in international class 35.
- United States trademark registration No. 6253455 for ONLYFANS (word mark), filed on November 02, 2019, and registered on January 26, 2021, in international classes 9, 35, 38, 41, and 42.
- United States trademark registration No. 5769268 for ONLYFANS.COM (word mark), filed on October 29, 2018, and registered on June 4, 2019, in international class 35.

The Complainant also claims common law trademark rights in respect of ONLYFANS. The Complainant cites in support of its claim the prior UDRP decision *Fenix International Limited v. c/o whoisprivacy.com / Tulip Trading Company, Tulip Trading Company Limited* WIPO Case No. [DCO2020-0038](#) issued in respect of the domain name <onlyfans.co>, which was registered on May 30, 2017, prior to the filing of the Complainant's trademark applications. The panel in that case held:

“Although the Complainant has not provided the usual indicia of acquired secondary meaning including revenues and advertising expenditures, the Panel is satisfied on the basis of the evidence of the number of registered users and ‘hits’ per month that the Complainant had in fact established rights in ONLYFANS and ONLYFANS.COM as unregistered trademarks before the disputed domain name was first registered.”

The above finding was reaffirmed in *Fenix International Limited v. WhoisGuard Protected, WhoisGuard, Inc. / Samuel Walton*, WIPO Case No. [D2020-3131](#), where the panel stated the following in respect of the domain name <onlyfansplus.com>, registered on April 30, 2020:

“On the basis of similar evidence filed by the Complainant in this case, the Panel is satisfied that the Complainant had acquired common law trade mark rights in respect of its ONLYFANS and ONLYFANS.COM trade marks prior to the registration of the Domain Name”.

The disputed domain name <onlyfans.org> was registered on November 21, 2018, and is redirected to a website offering adult entertainment services, available at “www.findom.com”.

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.

The Complainant states that the Complainant's rights pre-date the Respondent's registration of the disputed domain name since the disputed domain name was initially registered on November 21, 2018, but claims the Respondent did not obtain control of the disputed domain name until 2023. The Complainant further submits that, even if the Respondent's registration of the disputed domain name was in 2018, any claim to rights therein would not be legitimate, since the disputed domain was registered in anticipation of Complainant's trademark rights following the Complainant's filing of a trademark application (and registration of its own domain name) but before that registration issued. Further, the Complainant states that its common law rights in respect of the name ONLYFANS have been recognized by an earlier UDRP panel as having acquired distinctiveness by at least 2017.

The Complainant contends that the disputed domain name is identical to the trademark ONLYFANS in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the generic Top-Level Domain (gTLD) ".org", which does not sufficiently distinguish the disputed domain name from the Complainant's trademark.

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant contends that the Respondent is in no way connected or affiliated with the Complainant nor has it ever received any authorization, license, or consent, whether express or implied, to use the Complainant's trademark in the disputed domain name or in any other manner.

The Complainant states that the Respondent is also not commonly known by the disputed domain name and does not hold any trademarks for the terms encompassed in the disputed domain name.

The Complainant further states that the Respondent does not have any legitimate interests in the disputed domain name as the Respondent has been pointing the disputed domain name to a website arranging for subscriptions to adult content in direct competition with the Complainant's services.

With reference to the circumstances evidencing bad faith, the Complainant indicates that, considering i) the disputed domain name was registered after the Complainant attained registered rights in its ONLYFANS trademark and long after the Complainant accrued common law rights in the trademark which had acquired distinctiveness; ii) the confusing similarity of the disputed domain name with the Complainant's widely known trademark and iii) the Respondent's use of the disputed domain name to redirect users to a website providing services in direct competition with the Complainant, the Respondent was aware of the Complainant's trademark and registered the disputed domain name to target the Complainant's trademark.

The Complainant also states that it sent cease-and-desist letter to the Respondent on September 28, 2023, to which the Respondent did not reply, and concludes that the Respondent's lack of reply is further evidence of its bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law

that it deems applicable.” Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

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 for the purposes of the Policy. Indeed, the Complainant has provided evidence of ownership of national and regional trademark registrations for ONLYFANS. [WIPO Overview 3.0](#), section 1.2.1.

The Panel also finds that the Complainant has established unregistered trademark rights for purposes of the Policy since, in view of the popularity quickly gained and maintained by the Complainant’s website and services over the years, the ONLYFANS trademark has become a distinctive identifier which consumers associate with the Complainant’s services. [WIPO Overview 3.0](#), section 1.3.

Considering also the prior findings cited above and based on the evidence on record, including traffic analytics and rankings of the Complainant’s website “www.onlyfans.org” provided as an Annex to the Complaint, the Panel finds that the Complainant acquired unregistered trademark rights in respect of its ONLYFANS trademark before the registration of the disputed domain name.

The entirety of the ONLYFANS mark is reproduced within the disputed domain name with the mere addition of the gTLD “.org”, which is commonly disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#), section 1.11.1). Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy [WIPO Overview 3.0](#), section 1.7.

Therefore, 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 finds that the Respondent's use of the disputed domain name to resolve Internet users to the website at "www.findom.com", promoting subscriptions to adult content entertainment services in direct competition with Complainant's services, 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.

Moreover, the disputed domain name, being identical to the Complainant's trademark, is inherently misleading. UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

Therefore, 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 disputed domain name was registered on November 21, 2018, after the filing of the Complainant's earlier registered trademark, filed on June 5, 2018, and the Complainant's first use of the ONLYFANS trademark in July 2016. Moreover, as noted above at least one prior UDRP decision recognized that the Complainant had established rights in ONLYFANS as unregistered trademark before the disputed domain name was registered.

In view of the above and considering the quick popularity gained by the Complainant's website at "www.onlyfans.com" prior to the registration of the disputed domain name, the Panel finds that the Respondent knew or should have known the Complainant's trademark at the time of registration of the disputed domain name. As indicated in section 3.2.2 of the [WIPO Overview 3.0](#), "Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark".

Moreover, since the disputed domain name is identical to the Complainant's prior trademark and has been redirected by the Respondent to a website offering adult entertainment services in direct competition with the Complainant, the Panel finds that the Respondent was indeed actually aware of the Complainant and registered the disputed domain name to target the Complainant and its trademark.

In view of the above-described use of the disputed domain name, the Panel finds that the Respondent intentionally attempted to attract Internet users to the corresponding website, for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the website and the services provided therein, according to paragraph 4(b)(iv) of the Policy.

The Panel also finds that the Respondent's failure to reply to the Complainant's cease-and-desist letter and to the Complaint further supports the conclusion that the Respondent acted in bad faith.

Therefore, the Panel finds that the Complainant has also 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 <onlyfans.org> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: March 25, 2024