

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Hung Le Van
Case No. D2024-0469

1. The Parties

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

The Respondent is Hung Le Van, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <onlyufan.top> is registered with eNom, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2024. On February 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 1, 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 2, 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 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2024. The Respondent did not submit any formal response. However, on February 2, 2024, the Respondent sent an informal communication, indicating that he accidentally bought this domain name, and he will stop using it. Accordingly, the Center notified the Respondent on Commencement of Panel Appointment Process on March 6, 2024.

The Center appointed Johan Sjöbeck 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 has provided evidence that it is the owner of a number of trademark registrations including the following:

European Union Trade mark registration for ONLYFANS (fig), registration number EU017946559, registered on January 9, 2019;

United Kingdom Trade mark registration for ONLYFANS (fig), registration number UK00917946559, registered on January 9, 2019;

European Union Trade mark registration for ONLYFANS (word), registration number EU017912377, registered on January 9, 2019;

United Kingdom Trade mark registration for ONLYFANS (word), registration number UK00917912377, registered on January 9, 2019;

United States Trademark registration for ONLYFANS (word), registration number 5,769,267, registered on June 4, 2019;

United States Trademark registration for ONLYFANS.COM (word), registration number 5,769,268, registered on June 4, 2019;

United States Trademark registration for ONLYFANS (word), registration number 6,253,455, registered on January 26, 2021;

United States Trademark registration for ONLYFANS (fig), registration number 6,253,475, registered on January 26, 2021.

The disputed domain name <onlyufan.top> was registered by the Respondent on July 9, 2023. The Complainant has provided evidence that the disputed domain name resolves to a commercial website that appears to offer adult entertainment in direct competition with the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant owns and operates the website "www.onlyfans.com" and has used its domain name for many years in connection with the provision of a social media platform that allows users to post and subscribe to audiovisual content on the Internet. In providing its services, the Complainant has made extensive use of the ONLYFANS trademark, which is registered in the European Union, United Kingdom, the United States and a number of countries across the world. The Complainant's earliest registered trademark rights date back to June 5, 2018. Even if disregarding the Complainant's registered trademark rights, the Complainant registered the domain name <onlyfans.com> on January 29, 2013 and has extensive common law rights in the trademark that commenced by, at latest, July 4, 2016, well before the Respondent registered the disputed domain name on July 9, 2023. The Complainant's unregistered common law rights have been recognized in previous WIPO decisions as having accrued and acquired distinctiveness by no later than May 30, 2017. See for example *Fenix International Limited v. c/o who is privacy.com / Tulip Trading Company*,

Tulip Trading Company Limited, WIPO Case No. DCO2020-0038 and *Fenix International Limited v. WhoisGuard Protected, WhoisGuard, Inc. / Samuel Walton*, WIPO Case No. D2020-3131.

In 2023, the Complainant's website was one of the most popular websites in the world, with over 180 million registered users. According to similar web, it is the 94th most popular website on the Internet and the 53rd most popular website in the United States. Because of this, the ONLYFANS trademark has become a prime target for cybersquatters wishing to profit from the Complainant's goodwill. The Complainant's trademark rights have been recognized in over forty UDRP WIPO decisions, resulting in the cancellation or transfer of many domain names to the Complainant.

The Complainant's trademark rights pre-date the Respondent's registration of the disputed domain name. The disputed domain name consists of the singular form of the Complainant's trademark ONLYFANS with the insertion of the descriptive term "u", i.e. slang for "you", within the Complainant's trademark and without the letter "s", which does nothing to avoid confusing similarity. The use of the generic Top-Level domain ("gTLD") ".top" is normally disregarded under the first element confusing similarity test. Given that the disputed domain name is identical or, at the very least, confusingly similar, to the Complainant's trademark, the Complainant maintains that it has satisfied paragraph 4(a)(i) of the Policy.

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 trademark ONLYFANS in the disputed domain name or in any other manner. The Respondent is not commonly known by the trademark and does not own any trademarks similar to the disputed domain name. The fact that the Complainant achieved global fame and success in a very short time makes it likely that the Respondent had knowledge of the Complainant's trademark and that the Respondent had no rights or legitimate interests in the disputed domain name.

The website, to which the disputed domain name resolves, offers adult entertainment services in direct competition with the Complainant's services. Using the disputed domain name to host commercial websites that advertise goods and services in direct competition with the trademark owner does not give rise to legitimate rights or interests. The Respondent registered and used the disputed domain name, not because it refers to or is associated with the Respondent, but because the disputed domain name is identical or confusingly similar to the Complainant's ONLYFANS trademark. Hence, the Respondent's conduct amounts to bad faith. The disputed domain name was registered long after the Complainant attained registered trademark rights and long after the Complainant established common law rights which had acquired distinctiveness. Registering a domain name that is confusingly similar to a widely-known trademark and using it for a website to provide products and services in direct competition with the complainant is a presumption of bad faith.

The Respondent clearly registered the disputed domain name to divert Internet traffic from the Complainant's site to a website offering adult entertainment content in direct competition with the Complainant's website. Such use is an intentional attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, affiliation, or endorsement of the disputed domain name. Given that the Complainant had well-recognized rights years before the Respondent registered the disputed domain name, bad faith use should be found.

The Complainant sent a cease-and-desist letter to the Respondent on September 19, 2023, demanding the Respondent to stop using and to cancel the disputed domain name. The Respondent did not respond, thus necessitating the filing of this Complaint. The Respondent's failure to respond to this correspondence is further evidence of bad faith. The Respondent also hid from the public behind a WhoIs privacy wall, which is additional evidence of bad faith.

The bad faith allegations, combined with the Respondent's lack of interest or rights in the disputed domain name, should lead the Administrative Panel to the inevitable conclusion that there is no plausible circumstance under which the Respondent could legitimately register or use the disputed domain name and that, thus, the disputed domain name was registered and is being used by the Respondent in bad faith.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. However, on February 2, 2024, the Respondent sent an informal communication, indicating that he accidentally bought this domain name, and he will stop using it.

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove each of the following:

- (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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant is the owner of the registered trademark ONLYFANS which is readily recognizable in the disputed domain name <onlyufan.top>. The addition of the letter "u", which is an informal abbreviation for "you" and the omission of the letter "s", commonly used to make words plural in English, do not prevent a finding of confusing similarity.

Having the above in mind, the Panel concludes that the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

Furthermore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and that the Complainant has proven the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests with respect to the disputed domain name. The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) the Respondent uses or has made preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services prior to the dispute; or
- (ii) the Respondent is commonly known by the disputed domain name, even if the Respondent has not acquired any trademark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

The Complainant's trademark registrations for ONLYFANS predate the Respondent's registration of the disputed domain name <onlyufan.top>. The Complainant has not licensed, approved or in any way consented to the Respondent's registration and use of the trademark in the disputed domain name. There is no evidence in the case file indicating that the Respondent has used or made any preparations to use the

disputed domain name in connection with a bona fide offering of goods or services prior to the dispute. On the contrary, the Complainant has submitted evidence demonstrating that the Respondent is using the disputed domain name for a website that is offering services in direct competition with the Complainant. Such use does not constitute a legitimate fair use and does not establish rights or legitimate interests in the 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. See [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.

In light of the above, there is no evidence in the case that refutes the Complainant’s submissions, and the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use include without limitation:

- (i) circumstances indicating the disputed domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) circumstances indicating that the disputed domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding disputed domain name, provided there is a pattern of such conduct; or
- (iii) circumstances indicating that the disputed domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the disputed domain name has intentionally been used in an attempted to attract, for commercial gain, Internet users to the Respondent’s website or other online location, by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on that website or location.

UDRP panels have held that the use of a domain name for an illegal activity, such as impersonation or passing off, constitutes bad faith. See [WIPO Overview 3.0](#), section 3.4. In the present case, the Panel notes that the Respondent is using the Complainant’s trademark ONLYFANS in order to create a false impression that the disputed domain name and the website, to which the disputed domain name resolves, are endorsed by or associated with the Complainant.

The evidence in the case before the Panel indicates that the disputed domain name has intentionally been registered and used in an attempt 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, sponsorship, affiliation, or endorsement of the websites or of a product or service on the website. The Complainant sent a cease-and-desist letter to the Respondent on September 19, 2023, but the Respondent did not reply. There is no evidence in the case that refutes the Complainant's submissions.

In light of the above, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy and 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 <onlyufan.top> shall be transferred to the Complainant.

/Johan Sjöbeck/

Johan Sjöbeck

Sole Panelist

Date: March 25, 2024