

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Mark Berg

Case No. D2024-1357

1. The Parties

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

The Respondent is Mark Berg, Switzerland.

2. The Domain Name and Registrar

The disputed domain name <leaked-onlyfans.com> (the “Domain Name”) is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 29, 2024. On April 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 4, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domain Admin, Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 4, 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 April 4, 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 April 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2024. The Respondent sent an informal communication on April 4, 2024.

The Center appointed Jonas Gulliksson as the sole panelist in this matter on May 8, 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 under the domain name <onlyfans.com>. Through this website the Complainant provides a social media platform that allow users to post and subscribe to audiovisual content on the Internet. The Complainant registered the domain name <onlyfans.com> on January 29, 2013. Further, the Complainant is the proprietor of, inter alia, the following trademark rights:

- European Union Trademark No. 017946559 for the figurative mark ONLYFANS (registered on January 9, 2019);
- European Union Trademark No. 017912377 for the word mark ONLYFANS (registered on January 9, 2019);
- United Kingdom trademark registration No. 00917912377 for the word mark ONLYFANS (registered on January 9, 2019);
- United Kingdom trademark registration No. 00917946559 for the figurative mark ONLYFANS (registered on January 9, 2019);
- United States of America trademark registration No. 5769267 for the word mark ONLYFANS (registered on June 4, 2019); and
- United States of America trademark registration No. 5769268 for the word mark ONLYFANS.COM (registered on June 4, 2019).

The Domain Name was registered on the date indicated below:

- <leaked-onlyfans.com> - December 5, 2023

At the time of filing of the Complaint, the Domain Name resolved to a website that purported to offer similar services to those of the Complainant. Currently, the Domain Name resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant substantially alleges the following:

The Domain Name is identical or similar to the Complainant's ONLYFANS and ONLYFANS.COM trademarks. The Complainant holds registered and unregistered rights to such trademarks.

The Respondent has no rights or legitimate interests in the Domain Name. The Respondent has no connection or affiliation with the Complainant and has not received any authorization, license, or consent, to use in the Domain Name or in any other manner. The Respondent is not commonly known by and does not hold any trademarks for the Domain Name. The Respondent cannot claim the right to use the Domain Name under fair use, since it includes the Complainant's ONLYFANS.COM mark and the additional term "leaked" which creates a risk of implied affiliation by directly targeting the Complainant's users' content. Specifically, the Domain Name website offers adult entertainment in direct competition with the Complainant's services. Further, the Respondent is using an identical or confusingly similar domain name to direct Internet users to a website offering illegal services.

The Respondent has registered and is using the Domain Name in bad faith. The Complainant's rights to ONLYFANS and ONLYFANS.COM predates the registration of the Domain Name. The Complainant trademarks has acquired distinctiveness. This acquired distinctiveness is so strong that the Complainant's website is among the top 100 most popular websites in the world. Because there is no benign reason for the Respondent to have registered the Domain Name, it is clear that the Respondent registered the Domain Name to target the Complainant's marks. Bad faith registration should be found since the Respondent used the Complainant's ONLYFANS mark and the additional term "leaked-" within the Domain Name, which enhances the likelihood of confusion. The Respondent registered the confusingly similar Domain Name to

offer services in direct competition with the Complainant. The Complainant sent a cease-and-desist letter to the Respondent on February 1, 2024, demanding the Respondent to stop using and cancel the 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. Further, the Respondent hid from the public behind a Whois privacy wall. The Respondent clearly registered the Domain Name to divert Internet traffic from the Complainant's site to a website offering adult entertainment content (including watermarked content pirated from the Complainant's users) in direct competition with the Complainant's website.

B. Respondent

The Respondent did not reply to the Complainant's contentions, but in its April 4, 2024 communication, requested that the Domain Name be "unsuspend[ed]" for purposes of allowing the Respondent "to delete all hosted data".

6. Discussion and Findings

6.1 Substantive Analysis

The burden for the Complainant under paragraph 4(a) of the Policy is to prove:

- (i) that the 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 Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has clearly demonstrated that it holds trademark rights in different jurisdictions for ONLYFANS and ONLYFANS.COM.

The Domain Name clearly includes the ONLYFANS.COM mark in its entirety, with the addition of the term "leaked". According to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.8, the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a finding of confusing similarity under the first element.

As regards the ONLYFANS mark, the same analysis applies as regards the addition of "leaked" and the use of the Top-Level Domain <.com> may similarly be disregarded, see [WIPO Overview 3.0](#), section 1.11.1.

Therefore, the Panel finds that the Domain Name is similar to the complainant's trademarks ONLYFANS and ONLYFANS.COM.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant must first establish a prima facie case that the Respondent lacks rights or legitimate interests in a disputed domain name, and then the burden of proof effectively shifts to the Respondent to provide evidence of its rights or legitimate interests, see [WIPO Overview 3.0](#), section 2.1.

In the present case, the Respondent has failed to file a response to the Complaint other than to request the ability to takedown the website hosted at the Domain Name. Taking into account all of the evidence

presented in the case and the Complainant's allegations that the Respondent has no rights or legitimate interests in the Domain Name and that the Respondent is not authorized to use the ONLYFANS or ONLYFANS.COM trademarks, the Panel concludes that the Complainant has established an undisputed prima facie case, so that the conditions set forth in paragraph 4(a)(ii) of the Policy have been met by the Complainant. The use of the Domain Name, which consists of the Complainant's trademarks in their entirety along with the descriptive term "leaked" that thus constitutes a risk of implied affiliation to the Complainant, to host competing services cannot constitute fair use nor confers upon the Respondent rights or legitimate interests.

C. Registered and Used in Bad Faith

It is established that the Complainant holds trademark rights in relation to ONLYFANS. Furthermore, previous UDRP panels have found that the Complainant's ONLYFANS mark enjoys reputation (see, e.g., *Fenix International Limited c/o Walters Law Group v. WhoisGuard, Inc., WhoisGuard Protected / Marry Mae Cerna*, WIPO Case No. [D2021-0327](#); *Fenix International Limited v. Steven Williams, onlyfansdates*, WIPO Case No. [D2023-2518](#)). In light of the evidence presented in this case, the Panel sees no reason to reach a different conclusion from previous UDRP panels in this regard. Considering this, and the fact that the Domain Name is similar to the Complainant's ONLYFANS and ONLYFANS.COM mark, the Panel finds that the Respondent must have been aware of these marks at the time it registered the Domain Name.

Furthermore, although the website to which the Domain Name currently resolves is not in use, the Complainant has provided the Panel with excerpts from previous use of the website that clearly depict services of the same nature as several of the services for which the ONLYFANS and ONLYFANS.COM marks are used and registered by the Complainant. This is a clear indication that the Respondent has registered the Domain Name for the sole purpose of attracting Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademarks. Therefore, the current non-use of the Domain Name does not preclude a finding of bad faith under the passive holding doctrine in the present circumstances. The Panel also notes that the Domain Name, being similar to the Complainant's trademarks and because of the inclusion of the word "leaked-", carries a risk of implicit affiliation. Further, the Panel finds that the absence of any substantive rebuttal from the Respondent or plausible good faith use of the Domain Name supports a finding of bad faith. The fact that the Respondent sought to remove "all hosted data" from the Domain Name reinforces the impression that there was no good faith explanation for its registration and use of the Domain Name other than to capitalize on the reputation of the Complainant in the field of services being offered on the Domain Name.

Considering what has been stated above, the Panel finds that the Respondent has registered and used the Domain Name in bad faith.

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 Domain Name <leaked-onlyfans.com> be transferred to the Complainant.

/Jonas Gulliksson/
Jonas Gulliksson
Sole Panelist
Date: May 22, 2024