

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Yusuf Bayram
Case No. D2024-1727

1. The Parties

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

The Respondent is Yusuf Bayram, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <onlyfanshaber.com> (the “Disputed Domain Name”) is registered with Squarespace Domains II LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 24, 2024. On April 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 25, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 26, 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 26, 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 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 20, 2024. Shortly afterwards, the Center received an informal email communication from the Respondent. On May 21, 2024, the Center received another informal email communication from the Respondent.

The Center appointed Mariia Koval as the sole panelist in this matter on June 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 is a multifaceted technology company which offers administration, software development, mobile app creation, data protection, hardware, and cloud services. The Complainant operates a social media platform, which located at the Complainant's domain name <onlyfans.com>, that allows users to post and subscribe to audiovisual content. As of 2022, the Complainant's social platform has more than 180 million registered users. The Complainant's website "www.onlyfans.com" is among the Top 100 most popular websites in the world. The Complainant is also active on social-media platforms such as Facebook, Instagram, and YouTube.

The Complainant holds a lot of registrations for the trademark ONLYFANS (the "ONLYFANS Trademark") in different jurisdictions, including the following:

- European Union Trademark Registration No. 017912377, registered on January 9, 2019, in respect of good and services in classes 9, 35, 38, 41, and 42;
- United States Trademark Registration No. 5769267, registered on June 4, 2019, in respect of services in class 35; and
- United States Trademark Registration No. 6253455, registered on January 26, 2021, in respect of goods and services in classes 9, 35, 38, 41, and 42.

The Disputed Domain Name was registered on September 5, 2023. As at the date of this Decision, the website under the Disputed Domain Name is inactive. However, in accordance with evidence presented by the Complainant (Annex E to the Complaint), the Disputed Domain Name previously resolved to a commercial website in Turkish where the adult entertainment services were purportedly offered.

On March 22, 2024, the Complainant sent a cease-and-desist letter (Annex F to the Complaint) to the Respondent, but no response was received.

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 contends that the Disputed Domain Name is identical or confusingly similar to the Complainant's registered ONLYFANS Trademark. The Disputed Domain Name comprises the Complainant's ONLYFANS Trademark in its entirety with addition of the generic term "haber" which means "news" in Turkish.

The Complainant further asserts that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. 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 ONLYFANS Trademark in the Disputed Domain Name or in any other manner. The Respondent is not commonly known by the Disputed Domain Name.

The Respondent's use of the Disputed Domain Name creates a risk of implied affiliation by suggesting to users that the website under the Disputed Domain Name contains the Complainant's authorized content.

The website under 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. The Respondent clearly registered the Disputed Domain Name to divert Internet traffic from the Complainant's website.

The Complainant also claims that the Respondent registered and is using the Disputed Domain Name in bad faith since the Disputed Domain Name was registered long after the Complainant attained registered rights in the ONLYFANS Trademark and long after the Complainant had common law rights in the ONLYFANS Trademark which had acquired distinctiveness.

The Respondent uses the Complainant's ONLYFANS Trademark in its entirety and additional term "haber" ("news" in Turkish) within the Disputed Domain Name, which enhances the likelihood of confusion.

Moreover, the Complainant sent a cease-and-desist letter to the Respondent on March 22, 2024, demanding the Respondent stop using and cancel the Disputed Domain Name to which the Respondent did not respond.

B. Respondent

The Respondent did not submit a formal Response to the Complainant's contentions but did provide informal email communications stating that he has no connection with the Disputed Domain Name and his email has been stolen. These emails did not address the elements of the Policy.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant to succeed must satisfy the panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was 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 or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant's ONLYFANS Trademarks is reproduced within the Disputed Domain Name with addition of the word "haber" and the generic Top-Level domain ("gTLD") ".com". According to the [WIPO Overview 3.0](#), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The Panel finds that addition of the word "haber" ("news" in the Turkish language) to the Disputed Domain Name in this case does not prevent the Disputed Domain Name from being confusingly similar to the Complainant's ONLYFANS Trademark.

According to the [WIPO Overview 3.0](#), section 1.11.1, the applicable gTLD in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Pursuant to the [WIPO Overview 3.0](#), section 1.7, in cases where a domain name incorporates the entirety of a trademark, the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing.

Accordingly, the Disputed Domain Name is confusingly similar to the Complainant's ONLYFANS Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

In view of the foregoing 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 Complainant has not authorized, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the ONLYFANS Trademark nor is there any other evidence in the file suggesting that the Respondent has or could have rights or legitimate interests in the Disputed Domain Name.

The Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name. On the contrary, as at the date of filing of the Complaint, the Disputed Domain Name resolved to a website with use of the Complainant's content and containing an offering of adult entertainment services. Such use of the confusingly similar Disputed Domain Name would not support a claim to rights or legitimate interests. [WIPO Overview 3.0](#), section 2.5.3. Therefore, the Panel cannot consider such use of the Disputed Domain Name as bona fide offering of goods or services, or a legitimate noncommercial or fair use.

Also, in accordance with the [WIPO Overview 3.0](#), section 2.5.1, even where a domain name consists of a trademark plus an additional term (at the second or Top-Level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. Therefore, the addition of the word "haber" in the Disputed Domain Name may create an impression that the Disputed Domain Name is connected with the Complainant's ONLYFANS Trademark.

The Panel also finds that the Respondent has not been commonly known by the Disputed Domain Name or a name correspondent to the Disputed Domain Name. [WIPO Overview 3.0](#), section 2.3. The fact that the Disputed Domain Name currently resolves to inactive website is further evidence that the Respondent lacks rights or legitimate interests.

Based on the available record, 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.

In the present case, the Panel notes that the Disputed Domain Name was registered long after the Complainant registered its ONLYFANS Trademark. The Disputed Domain Name incorporates the Complainant's ONLYFANS Trademark in whole and previously resolved to the website with use of the Complainant's users content and offering of the services competing with the Complainant's ones that may create a likelihood of confusion with the Complainant's ONLYFANS Trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. Having reviewed the record, the Panel finds the Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy. Internet users might have been under the impression that it is a website created and operated by the Complainant or a certified service provider of the Complainant, which is not true. Moreover, such use of the Disputed Domain Name indicates that the Respondent was aware of the Complainant's activity and ONLYFANS Trademark when he registered the Disputed Domain Name. Generally speaking, the evidence in the case file as presented indicates that the Respondent's aim in registering the Disputed Domain Name was obviously to profit from or exploit the Complainant's ONLYFANS Trademark.

The Panel is also of the opinion that it is clear that the Respondent, having registered and used the Disputed Domain Name, which is confusingly similar to the Complainant's ONLYFANS Trademark, intended to disrupt the Complainant's business and confuse Internet users seeking for or expecting the Complainant. In view of the absence of any evidence to the contrary and that the Respondent did not file any response to claim otherwise, the Panel concludes that the Respondent has registered and is using the Disputed Domain Name in bad faith.

As at the date of this Decision the Disputed Domain Name currently resolves to an inactive website. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's ONLYFANS Trademark, and the composition of the Disputed Domain Name, the failure of the Respondent to provide any evidence of actual or contemplated good-faith use and the implausibility of any good faith use to which the Disputed Domain Name may be put and finds that in the circumstances of this case the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

The Panel finds the third element of the Policy has been established.

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 <onlyfanshaber.com> be transferred to the Complainant.

/Mariia Koval/

Mariia Koval

Sole Panelist

Date: June 19, 2024