

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. AGENCIA CRIE ART JOSE FERNANDO DOS SANTOS FLORENCIO

Case No. D2024-1749

1. The Parties

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

The Respondent is AGENCIA CRIE ART JOSE FERNANDO DOS SANTOS FLORENCIO, Brazil.

2. The Domain Name and Registrar

The disputed domain name <onlyfansbrasil.site> 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 April 25, 2024. On April 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 29, 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 (Domain Admin) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 1, 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 May 1, 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 May 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 29, 2024.

The Center appointed Gonalo M. C. Da Cunha Ferreira as the sole panelist in this matter on June 7, 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 Fenix International Limited, and operates a social media platform that allows users to post and subscribe to audiovisual content on the World Wide Web. This social media platform is known as “OnlyFans” and is located at the Complainant’s “www.onlyfans.com” website.

The Complainant owns a large number of trademark registrations which consist of the word ONLYFANS and primarily covers entertainment services and online subscription services for the purposes of allowing individuals to subscribe and access content uploaded by members of the service for sporting, fitness and entertainment purposes (classes 9, 35, 38, 41 and 42). These trademark registrations include:

- International trademark registration No. 1507723, registered on November 2, 2019
- European Union trademark registration No. 017946559, registered on January 9, 2019; and
- United States of America trademark registration No. 5769267, registered on June 4, 2019

The Complainant also owns the domain name <onlyfans.com> which it registered on January 29, 2013. It appears that from 2016 on the Complainant has made extensive use of its ONLYFANS trademarks associated with its website and platform services and has seen the popularity and international recognition of its website and services grow exponentially. In 2023, the Complainant’s website counted more than 180 million registered users and its “www.onlyfans.com” website ranked among the top 100 most popular websites on the Internet and ranked as the 55th most popular website in the United States of America.

The Complainant’s trademark rights have been recognized in several UDRP decisions, resulting in the cancellation or transfer of the disputed domain names to the Complainant.

The disputed domain name was registered on February 1, 2024, and the Complainant has provided evidence showing that the disputed domain name resolves to a website purportedly offering a platform to “Start your own premium creators platform with our ready to go solution” in direct competition with Complainant’s services. The disputed domain name also contains a “JustFans” logo with padlock device that is clearly meant to recall the Complainant’s registered, stylized OnlyFans Logo.

On March 20, 2024, the Complainant sent a cease-and-desist letter to the Respondent but no reply to this letter was received by the Complainant.

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:

1. the disputed domain name is identical or confusingly similar to Complainant’s Marks.
2. the disputed domain name consists of Complainant’s exact mark with the only difference being the insertion of the geographic term “BRASIL” after the ONLYFANS mark, which does nothing to avoid confusing similarity.
3. the use of the generic Top-Level-Domain does not change the result.

4. the disputed domain name is legally identical or confusingly similar to Complainant's marks
5. the Respondent has no connection or affiliation with Complainant and has not received any authorization, license, or consent, whether express or implied, to use the Complainant's marks in the disputed domain name or in any other manner.
6. the Respondent is not commonly known by the Complainant's marks and does not hold any trademarks for the disputed domain name.
7. the Complainant "has achieved global fame and success in a short time" which makes it "clear that the Respondent knew of Complainant's Marks".
8. the Respondent has no rights or legitimate interests.
9. the Respondent cannot claim the right to use the disputed domain name under fair use since it includes the Complainant's mark and the additional term "BRASIL" which creates a risk of implied affiliation by suggesting to users that the competing subscription services at the disputed domain name are offered by or otherwise affiliated with Complainant.
10. the Respondent registered and used the disputed domain name not because it refers to or is associated with Respondent, but because the disputed domain name is identical or confusingly similar to the disputed domain name and marks used by Complainant in association with Complainant's services.
11. the bad faith registration should be found, since the Respondent used the Complainant's ONLYFANS mark and the additional term "BRASIL" within the disputed domain name, which enhances the likelihood of confusion.
12. the Respondent registered the confusingly similar disputed domain name to offer services in direct competition with the Complainant, including "arranging subscriptions of the online publications of others.
13. the disputed domain name was registered and is being used by Respondent in bad faith.

B. Respondent

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

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, "brasil" 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.

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 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 Respondent registered the disputed domain name on February 1, 2024, long after the Complainant attained registered rights in the marks and long after the Complainant’s marks had acquired distinctiveness.

Moreover, the Panel notes that the Respondent was likely aware of the Complainant’s trademark rights when it registered a confusingly similar domain name and began operating a website that provides products and services in direct competition with the Complainant.

The Panel also notes that the Respondent’s use of a logo that is similar to Complainant’s ONLYFANS logo on the website for the disputed domain name, is further evidence of an intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark. This constitutes bad faith use. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <onlyfansbrasil.site> be transferred to the Complainant.

/Gonçalo M. C. Da Cunha Ferreira/

Gonçalo M. C. Da Cunha Ferreira

Sole Panelist

Date: June 21, 2024