

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. admin jj
Case No. D2024-2685

1. The Parties

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

The Respondent is admin jj, Thailand.

2. The Domain Name and Registrar

The disputed domain name <newonlyfans.com> is registered with Internet Domain Service BS Corp (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 1, 2024. On July 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 3, 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, Whois Privacy Corp.) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 3, 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 July 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 July 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 26, 2024.

The Center appointed Stefan Bojovic as the sole panelist in this matter on August 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 owns and operates the website under the domain name <onlyfans.com>, which is a social media platform that allows users to post and subscribe to audiovisual content on the Internet. According to the Complainant, this platform currently has more than 180 million registered users. The Complainant has registered its ONLY FANS trademark in various jurisdictions around the world. These trademark registrations include the following:

- International Trademark Registration No. 1507723 for ONLY FANS word mark, registered on November 2, 2019, and covering goods and services in classes 9, 35, 38, 41 and 42;
- European Union Trademark No. 017912377 ONLY FANS word mark, registered on January 9, 2019, and covering goods and services in classes 9, 35, 38, 41 and 42;
- United States Trademark No. 5769267 for ONLY FANS word mark, registered on June 4, 2019, and covering services in class 35;
- United Kingdom Trademark No. UK00917912377 for ONLY FANS word mark, registered on January 9, 2019, and covering goods and services in classes 9, 35, 38, 41 and 42.

In addition to above trademarks, the Complainant is also the registrant of the domain name <onlyfans.com> which is registered on January 29, 2013, and used since 2016 as the Complainant's principal website through which it provides services of a social media platform.

The disputed domain name was registered on January 23, 2024, and resolves to a commercial website that offers adult entertainment content in Thai language.

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 confusingly similar to its ONLY FANS trademark as this trademark is clearly recognizable within the disputed domain name which only adds term "new" to this trademark. Furthermore, the gTLD ".com" should not be taken into account when assessing confusing similarity as this is standard registration requirement and as such is disregarded under the first element confusing similarity test.

The Complainant further contends that 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 trademark in the disputed domain name or in any other manner. The Respondent is not commonly known by the disputed domain name and does not hold any trademarks for the disputed domain name. Further, the Respondent cannot claim the right to use the disputed domain name under fair use, since it includes the Complainant's trademark and the additional term "new" which creates a risk of implied affiliation by suggesting to users that the website at the disputed domain name is the new version of Complainant's OnlyFans website. The website at the Disputed Domain Name offers adult entertainment services (including content pirated from Complainant's users) in direct competition with Complainant's services and the website contains an "OnelyFans" logo that is similar to the Complainant's logos, and which is obviously intended to evoke the OnlyFans blue/white branding.

With reference to the circumstances evidencing bad faith, the Complainant states that the disputed domain name is registered in bad faith, as it was registered long after the Complainant has attained rights in ONLY FANS trademark (including common law rights that predate formal trademark registration). Having in mind that the Complainant's OnlyFans website is among top 100 most popular websites in the world (ranked 97th), it is clear that this trademark is widely known and mere registration of confusingly similar domain name

creates a presumption of bad faith. In that sense, the Complainant holds that the Respondent must have known of the Complainant and its ONLY FANS trademark and has registered the disputed domain name with the clear intention of targeting the Complainant. The Complainant has sent a cease-and-desist letter to the Respondent, but have received no response, which according to the Complainant indicates bad faith on Respondent's side. As for the use of the disputed domain name in bad faith, the Complainant holds that the use for a commercial website that offers adult entertainment content (i.e., for services which are in direct competition with the Complainant's services) clearly indicates bad faith. Finally, the use of the logo that is similar to the one used by the Complainant on its OnlyFans website is further evidence of bad faith use.

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 stipulates 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 or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant's trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Complainant's trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "new") 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 Complainant's trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

In addition, it is well established that ".com", as a generic Top-Level Domain, can be disregarded in the assessment of the confusing similarity between the disputed domain name and the Complainant's trademark. [WIPO Overview 3.0](#), section 1.11.1.

The Panel, therefore, finds that 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 seems to be no relationship between the Respondent and the Complainant and that the Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s ONLY FANS trademark. There appears to be no element from which the Panel could infer the Respondent’s rights and legitimate interests in the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

As indicated above, the disputed domain name resolves to a commercial website that offers adult entertainment content in Thai language (and also uses logo that somewhat resembles the logo used by the Complainant). Such services are undoubtedly in competition with services offered by the Complainant on its OnlyFans social media platform, and according to the Complainant, even some portion of the content on the website to which disputed domain name resolves is taken directly from the Complainant’s website i.e., represents pirated content. The Panel holds that such use of the confusingly similar domain name cannot be considered as bona fide offering of goods or services, or a legitimate noncommercial or fair use. [WIPO Overview 3.0](#), section 2.5.3. Furthermore, the previous panels have held that the use of a domain name for illegal activity (in this case claimed dissemination of pirated content and impersonation of the Complainant) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Having in mind the above, 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Complainant operates OnlyFans social media platform that has more than 180 million registered users throughout the world, which means that it is highly unlikely that the Respondent was not aware of the Complainant and its ONLY FANS trademark at the time of registration of the disputed domain name, especially since the Respondent appears to be active in the same field as the Complainant. Having in mind that at least part of the content on the website to which the disputed domain name resolves originates from the Complainant’s platform, it seems rather obvious that the Respondent had the Complainant and its trademark in mind when registering the disputed domain name.

Due to the above, the Panel finds that the disputed domain name has been registered in bad faith.

As previously indicated, the disputed domain name is used to direct users to a commercial website that offers services in direct competition with those offered by the Complainant. 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. [WIPO Overview 3.0](#), section 3.1.4.

Furthermore, according to the Complainant, the part of content on the website to which the disputed domain name resolves to originates from the users of the Complainant's OnlyFans platform, meaning that such content is disseminated without proper authorization from copyright holder(s). The website to which the disputed domain name resolves uses logo that somewhat resembles the logo used by the Complainant on its OnlyFans platform, which also indicates that the Respondent is trying to impersonate the Complainant. Panels have held that the use of a domain name for illegal activity (here, claimed dissemination of pirated content and impersonation) constitutes bad faith. [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.

Therefore, The Panel finds that the disputed domain name has been both registered and is being used in bad faith, and consequently 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 <newonlyfans.com> be transferred to the Complainant.

/Stefan Bojovic/

Stefan Bojovic

Sole Panelist

Date: August 18, 2024