

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Ismail von
Case No. D2024-3246

1. The Parties

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

The Respondent is Ismail von, Switzerland.

2. The Domain Name and Registrar

The disputed domain name <ivs-only-fan.com> 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 August 6, 2024. On August 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 9, 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 August 9, 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 August 9, 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 August 15, 2024. In accordance with the Rules, paragraph 5, the due date for the Response was September 4, 2024. The Respondent sent email communications to the Center on September 4, 2024. On September 9, 2024, the Complainant requested suspension of the proceedings. On September 12, 2024, the Center notified the Parties of the suspension through October 12, 2024. On October 10, 2024, the Center sent a reminder of the end of the suspension period. On October 11, 2024, the Complainant sent an email requesting Reinstitution of the Proceedings. On October 15, 2024,

the Center notified the Parties of the Reinstitution of the Proceedings. The Respondent sent three email communications on October 15, 2024, October 18, 2024 and October 19, 2024, three email communications on October 21, 2024 and two additional email communication on October 22, 2024. The Respondent did not submit a formal response. Accordingly, the Center notified the Parties of the Commencement of the Panel Appointment Process on October 16, 2024.

The Center appointed Mihaela Maravela as the sole panelist in this matter on October 21, 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

According to information in the Complaint, the Complainant owns and operates the website located at <onlyfans.com> for a social media platform that allows users to post and subscribe to audiovisual content on the web. According to the Complainant, its website is one of the most popular websites in the world, with more than 180 million registered users.

The Complainant has registered several trademarks consisting of ONLYFANS, such as the European Union Trade Mark No. 017912377, registered on January 9, 2019, covering goods and services in classes 9, 35, 38, 41, and 42.

The disputed domain name was registered on February 8, 2024 and, according to evidence with the Complaint, it resolved to a website offering content entertainment services in direct competition with those of the Complainant. At the date of the Decision the disputed domain name no longer resolves to an active website.

The Complainant sent a cease-and-desist letter to the Respondent on March 20, 2024, and the Respondent did not reply.

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 marks, as the disputed domain name consists of the Complainant's ONLYFANS mark with the only difference being the insertion of the descriptive or otherwise meaningless term "IVS" before the singular form the Complainant's ONLYFANS trademark, which does nothing to avoid confusing similarity.

As regards the second element, the Complainant argues that 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 marks in the disputed domain name or in any other manner. The Respondent is not commonly known by the marks and does not hold any trademarks for the disputed domain name. The Complainant claims that the website at the disputed domain name arranges for subscriptions to creator content in direct competition with the Complainant's registered services. This conduct also proves bad faith registration and use of the disputed domain name as per the Complainant.

In addition, with respect to the third element, the Complainant argues that the disputed domain name was registered long after the Complainant attained registered rights in its marks and bad faith registration can be found where the widespread use and numerous registrations of the Complainant's marks long predate the

Respondent's registration. The Respondent's failure to respond to the cease-and-desist letter from the Complainant and hiding behind a Whois privacy wall is further evidence of bad faith.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. On September 4, 2024, on the due date for the Response, the Respondent inquired about settling the matter. According to the Complainant, no answer was received by the Complainant from the Respondent by the end of the suspension period for settlement, namely by October 12, 2024.

On October 15, 2024, the date when the proceedings were reinstated, the Respondent has sent an email communication stating that "dear ladies and gentlemen i don't understand what you are asking me to do my app developer told me he contacted me this site is not working and what you are asking me to do".

By the subsequent email communications indicated in Section 3 above, the Respondent expressed intention to settle the proceedings (email communications of October 18 and 19, 2024), then expressed intention to submit a response (email communication of October 21, 2024), and thereafter has sent signed settlement forms (email communication of October 21, 2024).

In the last email communication, of October 22, 2024, the Respondent stated:

"I hope this message finds you well.

I would like to respectfully request that the case be closed as I am currently unavailable to proceed with the matter. Additionally, I am willing to delete the domain in question, which I hope will resolve the issue to the satisfaction of all parties.

Please let me know if further action is required from my side to expedite the closure of this case.

Thank you for your understanding."

6. Discussion and Findings

6.1. Preliminary issues – consent for transfer

According to the email communications described above, the Respondent appears to be willing to reach an agreement for the transfer of the disputed domain name.

Section 4.10 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") considers the following possibilities for the Panel to issue a decision on cases involving a respondent's informal or unilateral consent for the transfer of the disputed domain name:

"Where parties to a UDRP proceeding have not been able to settle their dispute prior to the issuance of a panel decision using the 'standard settlement process' described above, but where the respondent has nevertheless given its consent on the record to the transfer (or cancellation) remedy sought by the complainant, many panels will order the requested remedy solely on the basis of such consent. In such cases, the panel gives effect to an understood party agreement as to the disposition of their case (whether by virtue of deemed admission, or on a no-fault basis).

In some cases, despite such respondent consent, a panel may in its discretion still find it appropriate to proceed to a substantive decision on the merits. Scenarios in which a panel may find it appropriate to do so include (i) where the panel finds a broader interest in recording a substantive decision on the merits – notably recalling UDRP paragraph 4(b)(ii) discussing a pattern of bad faith conduct, (ii) where while consenting to the requested remedy the respondent has expressly disclaimed any bad faith, (iii) where the complainant has not agreed to accept such consent and has expressed a preference for a recorded decision, (iv) where there is ambiguity as to the scope of the respondent's consent, or (v) where the panel wishes to be certain that the complainant has shown that it possesses relevant trademark rights."

In the present case, the Panel finds it appropriate to issue a decision on the merits, noting that the Complainant agreed to ask for the suspension of this proceeding, but the Respondent failed to sign the standard settlement form before the proceedings were reinstated, and thereafter it appears that the Respondent did not unequivocally agreed with the transfer of the disputed domain name (as it vacillated between submitting a response, filing a standard settlement form and apparently disclaiming liability, see email communication of October 15, 2024). The Panel also considered the way the disputed domain name had been used, consisting in a clear case of cybersquatting.

6.2. Substantive matters

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 3.0](#), section 1.7.

The Complainant has shown rights in respect of the trademark ONLYFANS for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name, because the entirety of the Complainant's trademark is reproduced within the disputed domain name omitting the letter "s" at the end of the word and inserting a hyphen in the middle of the word. Accordingly, the disputed domain name is confusingly similar to the Complainant's mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here "ivs") and a hyphen, 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.

It is the settled view of panels applying the Policy that the Top-Level Domain ("TLD") (here ".com") should be disregarded under the first element test.

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.

There is no evidence that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services. Rather, according to the unrebutted evidence put forward by the Complainant, the disputed domain name was used to offer services in competition with those of the Complainant. In this Panel's view, such use does not confer rights or legitimate interests to the Respondent.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name.

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.

The Complainant's registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain name. Given the distinctiveness and well-known status of the Complainant's trademark, and the fact that the disputed domain name was used to offer services in competition with those of the Complainant, it is more likely than not that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks, and to target those trademarks. Also, given how the disputed domain name was used by the Respondent, as described above, the Panel finds that the Respondent intentionally attempts to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (see [WIPO Overview 3.0](#), section 3.1.4).

The Respondent has not provided any evidence of actual or contemplated good faith use and has not responded to the Complainant's cease-and-desist letter or formally addressed the contentions in the Complaint. The use of a Whois privacy wall is further indication of bad faith in the circumstances of this case.

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 <ivs-only-fan.com> be transferred to the Complainant.

/Mihaela Maravela

Mihaela Maravela

Sole Panelist

Date: October 31, 2024