

## **ADMINISTRATIVE PANEL DECISION**

Fenix International Limited v. dilshan omantha

Case No. DTV2022-0006

### **1. The Parties**

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

The Respondent is dilshan omantha, Sri Lanka.

### **2. The Domain Name and Registrar**

The disputed domain name <onlyfansleaks.tv> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 11, 2022. On November 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 11, 2022, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 15, 2022 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 amended Complaint on November 21, 2022.

The Center verified that the Complaint together with the amended 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 November 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 14, 2022.

The Center appointed Kaya Köklü as the sole panelist in this matter on December 16, 2022. 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 an online media platform, which enables its users to post and subscribe to online audiovisual content. Since at least 2016 the Complainant's online platform is accessible through the Complainant's website resolving from its domain name <onlyfans.com> and enjoys increasing popularity.

The Complainant owns various word and figurative ONLYFANS trademark registrations. According to the provided documents in the case, the Complainant is, *inter alia*, the registered owner of the European Union Trade mark Registration No. 017912377 for ONLYFANS (filed on June 5, 2018 and registered on January 9, 2019) covering trademark protection for products and services covered in classes 9, 35, 38, 41, and 42 (Annex C to the Complaint).

The Respondent is reportedly an individual from Sri Lanka.

The disputed domain name was registered on October 20, 2021.

The disputed domain name resolves to a website, which offers adult content, partly taken from the Complainant's website and/or its users (Annex E to the Complaint).

On July 15, 2022, the Complainant sent a cease-and-desist letter to the Respondent and tried in vain to solve the dispute amicably by asking for a transfer of the disputed domain name (Annex F to the Complaint).

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its registered ONLYFANS trademark.

Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the Respondent has registered and is using the disputed domain name in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

(i) the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not formally replied to the Complaint. See *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#).

For the evaluation of this case, the Panel has further taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views stated therein.

#### **A. Identical or Confusingly Similar**

The Panel notes that the Complainant has satisfied the threshold requirement of having trademark rights in ONLYFANS. As evidenced in the Complaint, the Complainant is the owner of various ONLYFANS trademarks, which, according to the case file (Annex C to the Complaint) are registered in various jurisdictions.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's registered ONLYFANS trademark, as it fully incorporates the Complainant's trademark. As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity. The mere addition of the term "leaks" does, in view of the Panel, not serve to avoid a finding of confusing similarity between the disputed domain name and the Complainant's ONLYFANS trademark.

In the Panel's view, the Top-Level Domain ("TLD") ".tv" may, as a general principle, be disregarded when assessing identity or confusing similarity between a domain name and a trademark (in line with prior UDRP decisions concerning the use of a TLD within a domain name. See *V&S Vin & Sprit AB v. Ooar Supplies*, WIPO Case No. [D2004-0962](#); *Google Inc. v. Nijat Hassanov*, WIPO Case No. [D2011-1054](#)).

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

#### **B. Rights or Legitimate Interests**

The Panel further finds that the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

While the burden of proof on this element remains with the complainant, previous UDRP panels have recognized that this would result in the often impossible task of proving a negative, in particular as the evidence in this regard is often primarily within the knowledge of the respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name in order to meet the requirements of paragraph 4(a)(ii) of the Policy. See, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

The Panel finds that the Complainant has satisfied this requirement, while the Respondent has failed to file any evidence or make any convincing argument to demonstrate rights or legitimate interests in the disputed domain name according to the Policy, paragraphs 4(a)(ii) and 4(c).

In its Complaint, the Complainant has provided uncontested *prima facie* evidence that the Respondent has no rights or legitimate interests to use the Complainant's trademark ONLYFANS in a confusingly similar way

within the disputed domain name.

There is also no indication in the current record that the Respondent is commonly known by the disputed domain name. In the absence of a response, the Respondent has also failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain name.

Furthermore, the nature of the disputed domain name, comprising the Complainant's trademark and the term "leaks", cannot constitute fair use in these circumstances as it effectively targets the Complainant's online platform services, or may be seen to be suggesting sponsorship, endorsement or any other authorization by the Complainant.

As a conclusion, the Panel finds that the Complainant has also satisfied the requirements of paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

The Panel is convinced that the Respondent was aware of the Complainant's trademark when it registered the disputed domain name in October 2021. At the date of registration of the disputed domain name, the Complainant's ONLYFANS trademark was already registered and enjoyed increasing recognition and popularity worldwide.

Furthermore, the way of using the Complainant's trademarks in a confusingly similar way on the associated websites (Annex F to the Complaint), indicates that the Respondent has deliberately chosen the Complainant's ONLYFANS trademark as the distinctive part of the disputed domain name to target and mislead Internet users who are searching for the Complainant's online services.

In addition, the Panel accepts the failure of the Respondent to respond to the Complainant's cease-and-desist letter of July 15, 2022 and to the Complainant's contentions as another indication for bad faith use. The Panel is convinced that, if the Respondent had legitimate purposes in registering and using the disputed domain names, it would have substantially responded.

Taking all facts of the case into consideration, the Panel believes that this is a typical cybersquatting case, which the UDRP was designed to stop.

The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) 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 <onlyfansleaks.tv> be transferred to the Complainant.

*/Kaya Köklü/*

**Kaya Köklü**

Sole Panelist

Date: December 30, 2022