

## **ADMINISTRATIVE PANEL DECISION**

Fenix International Limited v. Rosario Candiotti

Case No. D2022-0315

### **1. The Parties**

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

The Respondent is Rosario Candiotti, Bulgaria.

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

The disputed domain names <bulgarian-onlyfans.com> and <onlyfans-bulgaria.com> are registered with eNom, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 29, 2022. On January 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 31, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on February 4, 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 amendment to the Complaint on February 4, 2022.

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 February 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2022. Due to issues concerning the delivery of the Written Notice, the Center granted the Respondent a 10 day period to indicate whether he wishes to participate in the proceeding. The Respondent did not submit any formal response. The Respondent though, sent two

informal communications on February 7, 2022. Accordingly, the Center notified the Commencement of Panel Appointment Process on March 11, 2022.

The Center appointed Mihaela Maravela as the sole panelist in this matter on March 14, 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.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

#### **4. Factual Background**

The Complainant is Fenix International Limited, who 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, including 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 names were registered on July 16, 2021. As evidenced in the Complaint, the disputed domain name <onlyfans-bulgaria.com> resolves to a commercial website that offers goods and services in direct competition with those of the Complainant, and the disputed domain name <bulgarian-onlyfans.com> redirects Internet users to the disputed domain name <onlyfans-bulgaria.com>.

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

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

The Complainant argues that the disputed domain names are confusingly similar to the Complainant's trademarks, because the additional of a geographic term 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 its trademarks in the disputed domain names or in any other manner. The Respondent is not commonly known by the Complainant's trademarks and does not hold any trademarks for the disputed domain names. Moreover, the Complainant argues that the disputed domain names include the trademark and the geographical term "bulgaria(n)" which falsely suggests sponsorship by the Complainant. The Complainant also shows that the websites at the disputed domain names arrange for subscriptions to adult content in direct competition with the Complainant's registered services which does not give rise to legitimate rights or interests for the Respondent. The websites associated with the disputed domain names contain a logo that is similar to the Complainant's registered logo.

In what concerns the third element, the Complainant argues that the disputed domain names were registered long after the Complainant attained registered rights in its trademarks, that the websites at the disputed domain names contain a logo similar to the Complainant's registered logo, and provide products and services in direct competition with the Complainant. The Complainant concludes that it is more probable than not that the Respondent was fully aware of the trademarks of the Complainant at the time of registration. The disputed domain names are being used in bad faith as they direct Internet users to a commercial website that offers goods and services in direct competition with the trademark owner. Such use is an intentional attempt to attract, for commercial gain, Internet users to the Respondent's websites by

creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the disputed domain names. Also, the Respondent did not reply to the Complainant's cease-and-desist letter. These activities are further evidence of bad faith as per the Complainant.

Accordingly, the Complainant requests that the disputed domain names be cancelled.

## **B. Respondent**

Apart from two brief email communications inquiring about the proceedings, the Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

### **6.1 Preliminary Matters**

No substantive response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules and to draw inferences from the Respondent's failure to file any Response. While the Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant, the Panel may draw appropriate inferences from the Respondent's default.

### **6.2 Substantive Matters**

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following elements:

- (i) that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) that the disputed domain names were registered and are being used in bad faith.

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

The Complainant has provided evidence of its rights in the ONLYFANS trademarks. The trademark ONLYFANS is reproduced in its entirety in the disputed domain names. The addition of the words "bulgaria" and respectively "bulgarian", and of a hyphen, does not prevent a finding of confusing similarity with the Complainant's trademark ONLYFANS, which is recognizable in the disputed domain names. The fact that a domain name wholly incorporates a complainant's trademark is sufficient to establish identity or confusing similarity for the purpose of the Policy, despite the addition of other words to such trademarks. The addition of an additional term (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is well accepted by UDRP panels that a generic Top-Level Domain ("gTLD"), such as ".com", is typically ignored when assessing whether a domain name is identical or confusing similar to a trademark. See section 1.11 of the [WIPO Overview 3.0](#).

This Panel concludes that the disputed domain names are confusingly similar to the Complainant's trademarks and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

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

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

As established by previous UDRP panels, it is sufficient for the Complainant to make a *prima facie* case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain names in order to place the burden of production on the Respondent (see section 2.1 of the [WIPO Overview 3.0](#)).

In the present case the Complainant has established a *prima facie* case that it holds rights over the trademark ONLYFANS and claims that the Respondent has no legitimate reason to acquire and use the disputed domain names.

There is no evidence that the Respondent is using the disputed domain names in connection with a *bona fide* offering of goods or services. Rather, according to the un rebutted evidence put forward by the Complainant, the disputed domain names are used to offer services in direct 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 names.

Furthermore, the nature of the disputed domain names carries a risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complainant's contentions.

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

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

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain names have been registered and are being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

The Complainant's registration and use of the relevant trademarks predate the date at which the Respondent registered the disputed domain names. Given the distinctiveness of the Complainant's trademark and its inclusion in not only the disputed domain names but also on the websites to which the disputed domain names resolve, it is reasonable to infer that the Respondent has registered the disputed domain names with full knowledge of the Complainant's trademarks, and to target those trademarks.

The disputed domain names are used by the Respondent to direct to a website offering adult entertainment services that are in direct competition with the services offered by the Complainant. The Panel therefore 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 the contentions in the Complaint.

In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain names. The Respondent failed to bring evidence as to the contrary. Consequently, the Panel concludes that the condition of paragraph 4(a)(iii) of the Policy is fulfilled.

## **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, <bulgarian-onlyfans.com> and <onlyfans-bulgaria.com>, be cancelled.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: March 28, 2022