

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Okoth Nigel

Case No. D2023-0336

1. The Parties

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

The Respondent is Okoth Nigel, Kenya.

2. The Domain Name and Registrar

The disputed domain name <celebrityonlyfans.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 25, 2023. On January 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Withheld for Privacy ehf, Iceland) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 26, 2023, 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 January 26, 2023.

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 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 22, 2023.

The Center appointed Jeremy Speres as the sole panelist in this matter on February 28, 2023. 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 has, since 2016, operated a subscription based social media platform under its ONLYFANS mark at the domain name <onlyfans.com> that allows users to post and subscribe to audio-visual content. As at the filing of the Complaint, the Complainant's website ranked as the 94th most popular website globally, according to Similarweb.

The Complainant has registered rights in the ONLYFANS mark in many jurisdictions, including United Kingdom trade mark registration no. UK00917912377 ONLYFANS (word) in classes 9, 35, 38, 41 and 42 with registration date January 9, 2019. The Complainant's mark has been recognised as well-known in numerous prior UDRP cases (e.g. *Fenix International Limited v. Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-3447](#)).

The Domain Name was registered on May 19, 2021, and, as at the filing of the Complaint and the drafting of this Decision, resolved to a website featuring adult content entitled "celebrityonlyfans – Free Onlyfans and Tiktok Leaks".

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its ONLYFANS mark, that the Respondent has no rights or legitimate interests in it, and the Domain Name was registered and has been used in bad faith given that the Domain Name has been used for competing services taking unfair advantage of the Complainant's well-known mark for commercial gain, including content pirated from the Complainant's website.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

Where the trade mark is recognisable in the domain name, the addition of other terms does not prevent a finding of confusing similarity (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.8). The Complainant's mark is the most distinctive element of the Domain Name, and the remainder, apart from the generic Top-Level Domain ("gTLD"), consists of the term "celebrity", which does not prevent a finding of confusing similarity under the first element. The Complainant has satisfied the standing requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant's mark was registered and well-known in many jurisdictions prior to registration of the Domain Name. The Domain Name is confusingly similar to the Complainant's mark, the Complainant has claimed that the Domain Name is unauthorised by it, the Respondent did not file a Response, and there is no evidence that any of the circumstances set out in paragraphs 4(c)(ii) and (iii) of the Policy pertain.

Regarding paragraph 4(c)(i) of the Policy, in the circumstances of this case it is highly unlikely that the Respondent sought, in good faith, to rely on the semantic value of the Domain Name rather than the brand value of the Complainant's trade mark. Given what is said in relation to bad faith below, it is clear that the Respondent sought to take advantage of the Complainant's reputation for its own commercial gain, which cannot confer rights or legitimate interests.

The Complainant has thus made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name, the burden of production shifts to the Respondent ([WIPO Overview 3.0](#) at section 2.1), and given that no Response was filed, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term as in this case) to a famous or well-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#) at section 3.1.4). That presumption is not rebutted here.

The Domain Name has been used for content that competes directly with the Complainant, including content unlawfully pirated from the Complainant's website. In light of this and the repute of the Complainant's mark, the Domain Name's website undoubtedly, and expressly, targets the Complainant where it states "Free Onlyfans and Tiktok Leaks". The composition of the Domain Name, featuring the word "celebrity", is also descriptive of the Complainant's business – the Complainant's platform features many celebrities. It is thus quite clear that the Domain Name has been used for the Respondent's own commercial gain by taking unfair advantage of the repute of the Complainant's mark and by attracting users by unlawfully offering the Complainant's content free of charge, thereby avoiding the Complainant's subscription charges. Paragraph 4(b)(iv) of the Policy is eminently applicable.

The Panel draws an adverse inference from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3). The Respondent apparently supplied incomplete or false address details in the Whois record for the Domain Name; the Center's courier could not deliver the Center's package containing the Written Notice to the Respondent at the address supplied in the Whois record, which is plainly not a fully-formed address. In the circumstances of this case, this suggests an attempt by the Respondent to evade pursuit (*Kabushiki Kaisha Raibudoa v. Kubota, A*, WIPO Case No. [D2001-0817](#)). Finally, the Respondent used a privacy service and it would be appropriate to draw adverse inferences in this case ([WIPO Overview 3.0](#) at section 3.6).

The Complainant has satisfied 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 Domain Name, <celebrityonlyfans.com>, be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: March 9, 2023