

ADMINISTRATIVE PANEL DECISION

Fenix International Limited v. Host Master, 1337 Services LLC
Case No. D2023-0548

1. The Parties

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

The Respondent is Host Master, 1337 Services LLC, Saint Kitts and Nevis.

2. The Domain Name and Registrar

The disputed domain name <onlyfansleaks.link> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 7, 2023. On February 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 7, 2023, 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 (REDACTED FOR PRIVACY c/o Tucows, Inc) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 9, 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 February 9, 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 March 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 4, 2023.

The Center appointed Gareth Dickson as the sole panelist in this matter on April 18, 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 is the owner and operator of a website located at “www.onlyfans.com”, which provides over 180 million registered users with access to a platform of user-generated audio-visual content under the ONLYFANS trade mark (the “Mark”). It is the owner of a number of trade mark registrations for the Mark, including:

- United Kingdom trade mark registration number UK00917912377, registered on January 9, 2019;
- United States trade mark registration number 5769267, registered on June 4, 2019; and
- United States trade mark registration number 6253455, registered on January 26, 2021.

The disputed domain name was registered on October 7, 2022. It currently directs Internet users to a webpage featuring hundreds of links to audio-visual content. Each link is in the form of a screenshot or still from said audio-visual content above text including the words: “Free full onlyfans leaked content”. Some of the stills bear a watermark referring to the Mark and the Complainant’s website address.

5. Parties’ Contentions

A. Complainant

The Complainant argues that it has rights in the Mark by virtue of its ownership of various trade mark registrations for the Mark around the world. It contends that the disputed domain name is confusingly similar to the Mark since the Mark is recognisable within the disputed domain name with the addition of the descriptive term “leaks”, under the generic Top-Level Domain (“gTLD”) “.link”.

The Complainant confirms that the disputed domain name was registered by the Respondent without its permission and that the Respondent is not a licensee of the Complainant. It alleges that there is no evidence to suggest that the Respondent has been commonly known by the Mark or by the disputed domain name, and argues that the Respondent is offering content pirated from the Complainant’s website in order to directly compete with it. It submits that the Respondent only registered the disputed domain name because of its confusing similarity to the Mark.

The Complainant submits that the Respondent must, or ought to, have known of the Complainant and the Mark when it registered the disputed domain name. The Mark, according to the Complainant, has acquired distinctiveness and is well-known throughout the world, and that confusion is only heightened by use of the word “leaks” in the disputed domain name, which implies affiliation with the Complainant’s services.

Finally, the Complainant notes that the Respondent has used a privacy service to conceal its identity for as long as possible.

Together, the Complainant submits that the Respondent has no rights or legitimate interest in the disputed domain name and that the Respondent 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

Under paragraph 4(a) of the Policy, the Complainant bears the burden of proving that:

- a) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;

- b) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- c) the disputed domain name has been registered and is being used in bad faith.

These criteria are cumulative. The failure of the Complainant to prove any one of these elements means the Complaint must be denied.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant is the owner of, and therefore has rights in, the Mark.

Section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)) provides that: “[I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”.

Section 1.8 of the [WIPO Overview 3.0](#) further provides that: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element”.

The Panel therefore finds that the disputed domain name is confusingly similar to the Mark, since the disputed domain name incorporates the Mark in its entirety. The use of the gTLD “.link” does not prevent a finding of confusing similarity nor does the addition of the term “leaks”.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Although a complainant is required to demonstrate that a respondent has no rights or legitimate interests in respect of the domain name, as explained in section 2.1 of the [WIPO Overview 3.0](#), the consensus view of previous UDRP panels is that where a complainant establishes 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

In the current proceeding, the Complainant has established its *prima facie* case. The Complainant states that it has not given the Respondent permission to use the Mark, in a domain name or otherwise, and submits that the Respondent has not been commonly known by the disputed domain name.

There is no evidence that the Respondent has acquired any common law rights to use the Mark, is commonly known by the Mark or has chosen to use the Mark in the disputed domain name in any descriptive manner or is making any use of the disputed domain name that would establish rights or legitimate interests as a result of a noncommercial or fair use of it.

Furthermore, the use of the disputed domain name to provide access to content seemingly taken from the Complainant’s platform without its consent does not constitute a *bona fide* offering of services or a legitimate noncommercial or fair use within the meaning of the Policy. Section 2.13.1 of the [WIPO Overview 3.0](#) states that: “Panels have categorically held that the use of a domain name for illegal activity (*e.g.*, the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent”. Such consideration applies here.

By not participating in these proceedings, the Respondent has failed to refute the Complainant's *prima facie* case that it has met its burden under the second UDRP element.

As clearly stated in section 2.1 of the [WIPO Overview 3.0](#), “a panel’s assessment will normally be made on the basis of the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed”. Having reviewed and weighed the available evidence, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel notes that the Mark has already been found by previous UDRP panels to be distinctive and to have a reputation, rather than being a descriptive or generic term.

The Panel also notes that the disputed domain name was registered after the Mark was registered and accepts that the disputed domain name was chosen by reference to the Mark. The repeated references to the Mark in the text of the Respondent’s website confirm its knowledge of the Complainant and the Mark.

The Panel therefore finds that the Respondent’s registration of the disputed domain name was in bad faith since it attempted to appropriate for the Respondent, without the consent or authorisation of the Complainant, rights in the Complainant’s Mark.

The disputed domain name is also being used in bad faith since it is being used to redirect Internet users seeking the Complainant to a website that appears on the evidence before the Panel to make illegitimate use of material taken from the Complainant’s platform, without consent, in order to compete with the Complainant.

Section 3.1.4 of the [WIPO Overview 3.0](#) states: “[...] given that the use of a domain name for *per se* illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith”.

The Respondent has not sought to explain its registration and use of the disputed domain name, has attempted to conceal its identity, and has not participated in these proceedings. There is also no conceivable use of the disputed domain name by the Respondent that would not be illegitimate and therefore there is no basis for the Panel to conclude that the Respondent’s use of the disputed domain name is justified.

Therefore, and on the basis of the information available to it, the Panel finds that the Respondent’s use of the disputed domain name is without justification and is inconsistent with the Complainant’s exclusive rights in the Mark. Consideration of these and other factors militates in favour of a finding of bad faith.

The Panel finds that the Respondent has registered and is using the disputed domain name in bad faith.

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.link> be transferred to the Complainant.

/Gareth Dickson/

Gareth Dickson

Sole Panelist

Date: May 2, 2023