

## **ADMINISTRATIVE PANEL DECISION**

### **Fenix International Limited v. Host Master Case No. D2023-4580**

#### **1. The Parties**

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

The Respondent is Host Master, Saint Kitts and Nevis.

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

The disputed domain name <onlyfans-24.com> (the “Disputed Domain Name”) is registered with Tucows Inc. (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 3, 2023. On November 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 6, 2023, the Registrar transmitted by email to the Center its verification disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 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 November 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 November 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 7, 2023.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on December 13, 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 owns and operates the website located at the domain name <onlyfans.com> to provide a social media platform that allows users to post and subscribe to audiovisual content.

The Complainant has registered several trademarks, including the following trademarks (“ONLYFANS Trademarks”):

- the European Union trademark, ONLYFANS No. EU017946559, filed on August 22, 2018, registered on January 9, 2019, for products and services in classes 9, 35, 38, 41, and 42;
- the European Union trademark, ONLYFANS No. EU017912377, filed on June 5, 2018, registered on January 9, 2019, for products and services in classes 9, 35, 38, 41, and 42;
- the United States Trademark, ONLYFANS No. 5,769,267, registered on June 4, 2019, for products and services in class 35, first use in commerce on July 4, 2019;
- the United States Trademark, ONLYFANS.COM No. 5,769,268, registered on June 4, 2019, for products and services in class 35, first use in commerce on July 4, 2019.

The Complainant also registered the domain name <onlyfans.com> on January 29, 2013.

The Disputed Domain Name was registered by the Respondent on June 11, 2023.

The Disputed Domain Name resolves to an active website which offers adult entertainment services.

The Complainant sent a cease-and-desist letter to the Respondent on September 12, 2023, demanding the Respondent stop using and cancel the Disputed Domain Name to which the Respondent did not respond.

#### **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 ONLYFANS Trademarks. The Complainant considers that the Disputed Domain Name consists of the ONLYFANS Trademarks with the only difference being the insertion of the generic numeral “24” after Complainant’s trademark, which does nothing to avoid confusing similarity. The Respondent argues that the addition of this generic numeral creates a risk of implied affiliation by suggesting that the website at the Disputed Domain Name offers OnlyFans access 24-hours per day.

Then, the Complainant stands that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant explains 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 ONLYFANS Trademarks in the Disputed Domain Name or in any other manner. The Complainant adds that the Respondent is not commonly known by Disputed Domain Name and does not hold any trademarks for the Disputed Domain Name. The Complainant submits that the Disputed Domain Name offers adult entertainment services (including watermarked content pirated from the Complainant’s users) in direct competition with the Complainant’s services, and therefore that this use does not give rise to legitimate rights or interests. The Complainant considers that it is especially true where, “content previously published at the Complainant’s website” is “offered free of charge by the Respondent, without remunerating the Complainant or the respective creators.”

Finally, the Complainant, asserts that the Disputed Domain Name was registered and is used in bad faith by the Respondent. The Complainant considers that the Disputed Domain Name was registered long after the ONLYFANS Trademarks. Given the distinctiveness of its widely known trademarks, the Complainant finds

that there is no reason for the Respondent to have registered the Disputed Domain Name, other than to target the Complainant's Trademarks. The Complainant adds that the Respondent uses the Disputed Domain Name in an intentional attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's ONLYFANS Trademarks as to the source, affiliation, or endorsement of the Disputed Domain Name, because the Disputed Domain Name directs to a commercial website that offers adult entertainment content (including content pirated from the Complainant's users) in direct competition with the Complainant's services.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that the Complainant shall prove the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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.

### **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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, the generic numeral "24" may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

Based on the available record, 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.

Indeed, it appears 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 ONLYFANS Trademarks in the Disputed Domain Name or in any other manner.

Moreover, the Respondent is using the Disputed Domain Name to offer adult entertainment services (including watermarked content pirated from the Complainant's users) in direct competition with the Complainant's services.

Based on the available record, 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.

In the present case, the Panel notes that the Respondent has registered the Disputed Domain Name well after the registration of the ONLYFANS Trademarks.

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.

Indeed, the Panel also notes that the Disputed Name is used to offer adult entertainment services (including watermarked content pirated from the Complainant's users) in direct competition with the Complainant's services. This use of the Disputed Domain Name is evidence that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's ONLYFANS Trademarks as to the source, sponsorship affiliation or endorsement. It appears to be especially true as content previously published on the Complainant's website is offered free of charge by the Respondent, without remunerating the Complainant or the respective creators.

Based on the available record, 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 <onlyfans-24.com> be transferred to the Complainant.

*/Christiane Féral-Schuhl/*

**Christiane Féral-Schuhl**

Sole Panelist

Date: December 22, 2023