

## **ADMINISTRATIVE PANEL DECISION**

Fenix International Limited v. Host Master, 1337 Services LLC  
Case No. D2023-3429

### **1. The Parties**

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

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

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 11, 2023. On August 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 11, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 18, 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 August 18, 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 August 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 12, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on September 15, 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 a social media platform at the domain name <onlyfans.com>, registered on January 29, 2013, that allows users to post and subscribe to audiovisual content worldwide.

The Complainant is the owner of several trademark registrations for ONLYFANS, including the following, as per trademark certificates submitted in Annex C to the Complaint:

- European Union trade mark No. 017912377 for ONLYFANS (word mark), filed on June 5, 2018, and registered on January 9, 2019, in classes 9, 35, 38, 41, and 42;
- European Union trade mark No. 017946559 for ONLYFANS (figurative mark), filed on August 22, 2018, and registered on January 9, 2019, in classes 9, 35, 38, 41, and 42;
- United States trademark registration No. 5769267 for ONLYFANS (word mark), filed on October 29, 2018, and registered on June 4, 2019, in class 35; and
- United States trademark registration No. 5769268 for ONLYFANS.COM (word mark), filed on October 29, 2018, and registered on June 4, 2019, in class 35.

The disputed domain name was registered on March 24, 2022, and is pointed to a website publishing adult content and sponsored advertisements and displaying on the top of the home page the indication “Best Onlyfans for free!”.

#### **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 confusingly similar to its trademark ONLYFANS as it reproduces the textual element of its trademark in its entirety with the mere addition of the words “best” and “boys” and the generic Top-Level Domain (TLD) “.fans”.

The Complainant underlines that the use of the descriptive words “best boys” does nothing to exclude the confusing similarity as it refers to the top male models on the Complainant’s ONLYFANS service.

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent has not received any license or other authorization of any kind to make use of the Complainant’s trademark in a domain name or otherwise.

The Complainant also asserts that the Respondent is not commonly known by the disputed domain name and that there is no evidence that the Respondent may have used or made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services since the disputed domain name resolves to a website offering adult entertainment services (including watermarked content pirated from the Complainant’s users) in direct competition with the Complainant’s services.

The Complainant further submits that the Respondent registered and used the disputed domain name not because it refers to or is associated with the Respondent, but because the disputed domain name is identical or confusingly similar to the Complainant's <onlyfans.com> domain name and the ONLYFANS trademark used by the Complainant in association with the Complainant's services.

With reference to the circumstances evidencing bad faith, the Complainant indicates that, considering the disputed domain name was registered long after the Complainant had registered rights in the trademark ONLYFANS and the content is blatantly identical to that of the Complainant's website, the Respondent must have been well aware of the Complainant at the time of registering the disputed domain name and nevertheless began operating a website that provides services in direct competition with the Complainant.

In view of the above, the Complainant also contends that, in registering the disputed domain name, the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of its website.

The Complainant further emphasizes that, besides having hidden its identity behind a WhoIs privacy shield, the Respondent also failed to reply to the cease-and-desist letter it sent on May 24, 2023, demanding the Respondent to stop using and cancel the disputed domain name, which is further evidence of bad faith registration and use.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that 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.

Considering the second-level portion of the domain name "bestboyonly" in combination with the TLD ".fans", the Panel finds the entirety of the Complainant's trademark ONLYFANS is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7 and 1.11.3.

While the addition of other terms “best” and “boys” 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.

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is 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. 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 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.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s trademark. Moreover, there is no element from which the Panel could infer the Respondent’s rights or legitimate interests over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel finds that the Respondent has not made use of, nor any demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s trademark, as the Respondent has pointed the disputed domain name to a website offering adult entertainment services in direct competition with the Complainant and displaying also sponsored advertisements related to third-party products and services.

The Panel also finds that the disputed domain name, reproducing the Complainant’s trademark with the addition of two terms which can be referred to top male models on the Complainant’s ONLYFANS website, is inherently misleading. Even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

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.

In the case at hand, the Panel notes that, in light of the prior registration and use of the trademark ONLYFANS in connection with the Complainant's adult entertainment services, provided via the website at the domain name <onlyfans.com>, and considering the popularity reached in the recent years by the Complainant's website, the Respondent was more likely than not aware of the Complainant's trademark at the time of the registration of the disputed domain name, which occurred on March 24, 2022. Moreover, the explicit reference made by the Respondent to the Complainant's trademark ONLYFANS on the website to which the disputed domain name resolves supports the finding that the Respondent indeed registered the disputed domain names to target the Complainant's trademark.

In addition, the Panel finds that, in view of the fact that the disputed domain name is pointed to a website offering adult entertainment services in direct competition with the Complainant and displaying also sponsored banners related to third-party products and services, the Respondent intentionally attempted to attract Internet users to its website, for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of its website, according to paragraph 4(b)(iv) of the Policy.

The Panel also notes that the Respondent's failure to respond to the Complainant's cease-and-desist letter and to file a Response are further evidence of the Respondent's bad faith.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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 <bestboysonly.fans> be transferred to the Complainant.

*/Luca Barbero/*

**Luca Barbero**

Sole Panelist

Date: September 29, 2023