

## **ADMINISTRATIVE PANEL DECISION**

### **Fenix International Limited v. Qihang Gao**

### **Case No. D2023-3507**

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

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

Respondent is Qihang Gao, United States.

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

The disputed domain name <onlyfans.discount> is registered with Squarespace Domains II LLC (the “Registrar”).<sup>1</sup>

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

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 18, 2023. On August 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 (Contact Privacy Inc.) and contact information in the Complaint. The Center sent an email communication to Complainant on August 21, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on August 21, 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”).

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<sup>1</sup> The Complaint was filed identifying the Registrar as Google LLC. On September 28, 2023, Google LLC confirmed that the disputed domain name is registered with Squarespace Domains II following a purchase agreement. Google LLC has confirmed both Registrars’ compliance with the UDRP and the implementation of the decision by either Registrar.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified 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.

Respondent sent an email Communication to the Center on August 22, 2023.

On September 12, 2023, the Center notified the Parties of the Commencement of Panel Appointment.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on September 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**

Complainant owns and operates a commercial website at the domain name <onlyfans.com>, which it uses in connection with provision of a social media platform that allows users to post and subscribe to audiovisual content on the Internet. In 2023, Complainant's commercial website had 180 million registered users. According to information provided by Complainant, its website is among the top 100 most popular websites on the Internet, and specifically within the United States.

Complainant is owner of numerous registrations for the word, and word and device/design, trademark ONLYFANS, including on the trademark registries of the European Union Intellectual Property Office ("EUIPO"), the United Kingdom Intellectual Property Office ("UKIPO") and the United States Patent and Trademark Office ("USPTO"), as well as in other jurisdictions. As representative registrations: EUIPO word registration number EU17912377, registration dated January 9, 2019, in international classes ("ICs") 9, 35, 38, 41 and 42, covering, *inter alia*, downloadable computer software for enabling transmission and storage of photographs, online subscription services, telecommunications services, entertainment services and technical support services; UKIPO word registration number UK00917912377, registration dated January 9, 2019, in ICs 9, 35, 38, 41 and 42; USPTO word registration number 5769267, registration dated June 4, 2019, in IC 35, covering "Arranging subscriptions of the online publications of others". The word trademark ONLYFANS.COM is registered on the Principal Register of the USPTO, registration number 5769268, registration dated June 4, 2019, in IC 35, covering "Arranging subscriptions of the online publications of others".

According to the Registrar's verification, Respondent is registrant of the disputed domain name. According to a registration search report provided by Complainant, the record of registration for the disputed domain name was created on March 20, 2023.

Complainant has provided evidence that Respondent was using the disputed domain name in connection with a website that offered services competitive with those of Complainant, including by using a similar browser icon, color scheme, fonts, and logo. According to Complainant, some of the video content used on Respondent's website is "watermarked content pirated from Complainant's users", which content Complainant asserts was taken from Complainant's website.<sup>2</sup>

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<sup>2</sup> As evidence, Complainant has attached a single screenshot with the disputed domain name in the header, otherwise predominantly in the Chinese language and with video images blacked out. The Panel cannot independently ascertain the origin of or compare content between Complainant's and Respondent's websites. Respondent uses the Complainant's distinctive browser favicon. The general appearance of Respondent's website is substantially different than that of Complainant's.

## **5. Parties' Contentions**

### **A. Complainant**

Complainant alleges that it owns rights in the trademark ONLYFANS and that the disputed domain name is identical or confusingly similar to that trademark.

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Respondent has no affiliation with Complainant and has not been authorized or licensed to use its trademark in the disputed domain name; (2) Respondent knew or should have known of Complainant's trademark rights when it registered and used the disputed domain name; (3) Respondent's use of the disputed domain name in connection with services competitive with those of Complainant and using its well-known trademark does not establish rights or legitimate interests, and; (4) Respondent by using Complainant's browser tab logo attempts to pass itself off as Complainant.

Complainant argues that Respondent registered and is using the disputed domain name in bad faith because: (1) Respondent registered and began using the disputed domain name after Complainant's trademark was registered and Complainant's website achieved substantial worldwide recognition and use; (2) registration and use of a domain name that is confusingly similar to a widely known trademark creates a presumption of bad faith; (3) there is no benign reason for Respondent to have registered the disputed domain name; (4) Respondent failed to respond to a cease-and-desist letter from Complainant, and used a privacy service, and; (5) Respondent registered the disputed domain name seeking to profit from and exploit the trademark of Complainant.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

### **B. Respondent**

Respondent on August 22, 2023, sent the following communication to the Center:

"Hello,  
I don't understand. What is happening? What is your request / offer?  
Please let me know.  
Thanks."

## **6. Discussion and Findings**

The registration agreement between Respondent and the Registrar subjects Respondent to dispute settlement under the Policy. The Policy requires that domain name registrants submit to a mandatory administrative proceeding conducted by an approved dispute resolution service provider, one of which is the Center, regarding allegations of abusive domain name registration and use (Policy, paragraph 4(a)).

It is essential to Policy proceedings that fundamental due process requirements be met. Such requirements include that a respondent have notice of proceedings that may substantially affect its rights. The Policy and the Rules establish procedures intended to ensure that respondents are given adequate notice of proceedings commenced against them and a reasonable opportunity to respond (see, e.g., Rules, paragraph 2(a)).

The Center formally notified the Complaint to Respondent at the email and physical address provided in its record of registration. Courier delivery of the Written Notice to Respondent could not be completed because of inaccurate address information in the record of registration. Respondent acknowledged receipt of email transmittal of the Complaint by the Center. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) 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.

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

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

Complainant has provided evidence of rights in the ONLYFANS trademark, including by registration at the EUIPO, UKIPO, and USPTO, and through use in commerce. Respondent has not challenged Complainant's rights in its trademark. The Panel determines that Complainant owns rights in the trademark ONLYFANS.<sup>3</sup>

Complainant's trademark is directly and fully incorporated in the disputed domain name. Such direct and full incorporation is sufficient to establish identity or confusing similarity within the meaning of the Policy. Addition by Respondent of the generic Top-Level domain ("gTLD") ".discount" to Complainant's trademark in the disputed domain name does not prevent a finding of identity or confusing similarity to Complainant's trademark. [WIPO Overview 3.0](#), 1.11.1. The Panel determines that the disputed domain name is identical to Complainant's trademark within the meaning of the Policy, and is also confusingly similar to Complainant's trademark.

The Panel determines that Complainant has established rights in the trademark ONLYFANS and that the disputed domain name is identical and confusingly similar to that trademark.

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

Complainant's allegations to support Respondent's lack of rights or legitimate interests in the disputed domain name are outlined above, and the Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests in the disputed domain name.

Respondent has provided a non-substantive reply to the Complaint and has not attempted to rebut Complainant's *prima facie* showing of lack of rights or legitimate interests.

Respondent has used the disputed domain name to direct Internet users to a website using certain design features identical or similar to those used by Complainant on its commercial website. According to Complainant, content on Respondent's website is substantially similar to that on Complainant's website, and at least in some cases has been taken without authorization from Complainant's website. Respondent is presumably using its website for commercial purposes competitive with those of Complainant. Such use of the disputed domain name that incorporates Complainant's trademark is not authorized by Complainant and does not establish rights or legitimate interests in the disputed domain name in favor of Respondent. Such use does not constitute a *bona fide* offer of goods or services, and it does not constitute legitimate noncommercial or fair use of Complainant's trademark.

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<sup>3</sup> This determination is without prejudice to whatever trademark rights Complainant may have in other trademarks. The trademark rights identified by the Panel are sufficient to make a determination in this proceeding.

Respondent has not attempted to challenge the evidence presented by Complainant.  
Respondent's actions do not otherwise manifest rights or legitimate interests in the disputed domain name.

The Panel determines that Complainant has established that Respondent lacks rights or legitimate interests in the disputed domain name.

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

In order to prevail under the Policy, Complainant must demonstrate that the disputed domain name "has been registered and is being used in bad faith" (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy states that "for the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith". These include that, "(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location".

Complainant's acquisition of rights in its trademark substantially predates Respondent's registration and use of the disputed domain name. At the time Respondent registered the disputed domain name Complainant's trademark was well known among Internet users as evidenced by visitor ranking of Complainant's website. A Google or other search of Complainant's trademark predominantly returns results identifying Complainant, including as the subject of reporting and commentary. Respondent knew or reasonably should have known of Complainant's rights in its trademark when it registered the disputed domain name.

Respondent registered and is using the disputed domain name to direct Internet users to a website that shares certain design similarity with Complainant's commercial website, including Complainant's distinctive favicon, and including in its header the disputed domain name that has been determined to be identical or confusingly similar to Complainant's trademark. Respondent's website is alleged to contain content that is at least substantially similar to that on Complainant's website, and in certain cases has been taken without authorization from Complainant's website. Respondent has not attempted to contest the evidence presented by Complainant, nor has it attempted to provide some legitimate justification for its registration and use of the disputed domain name. The registration and use by Respondent of Complainant's trademark in the disputed domain name constitutes an intentional attempt to attract Internet users to Respondent's website by creating Internet user confusion regarding Complainant as the source, sponsor, affiliate or endorser of Respondent's website. Such registration and use constitutes bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

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

The Panel will direct the Registrar to transfer the disputed domain name to Complainant.

### **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.discount>, be transferred to the Complainant.

*/Frederick M. Abbott/*

**Frederick M. Abbott**

Sole Panelist

Date: October 1, 2023