

## **ADMINISTRATIVE PANEL DECISION**

Fenix International Limited v. Freddy Hernandez

Case No. D2023-1296

### **1. The Parties**

The Complainant is Fenix International Limited, United States of America ("United States"), represented by Walters Law Group, United States.

The Respondent is Freddy Hernandez, Peru.

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

The disputed domain name <packsonlyfansfree.com> is registered with NameSilo, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 24, 2023. On March 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 27, 2023, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 April 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 3, 2023. The Respondent sent three emails to the Center on May 30 and June 3, 2023.

The Center appointed James Wang as the sole panelist in this matter on June 8, 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>, which was registered on January 29, 2013, and has used its domain for years in connection with the provision of a social media platform that allows users to post and subscribe to audiovisual content. In providing its services, the Complainant has made extensive use of the ONLYFANS trademark.

The Complainant is the owner of multiple trademark registrations for ONLYFANS across various jurisdictions, including but not limited to the following:

- ONLYFANS, United States Registration No. 5769267 in class 35, registered on June 4, 2019;
- ONLYFANS.COM, United States Registration No. 5769268 in class 35, registered on June 4, 2019;
- ONLYFANS, UKIPO Trade Mark No. UK00917912377 in classes 9, 35, 38, 41, and 42, registered on January 9, 2019.

The disputed domain name was registered on September 23, 2022, and resolved to a website offering adult entertainment content in competition with the Complainant's services.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends as follows:

The disputed domain name is identical or confusingly similar to the ONLYFANS trademark in which the Complainant has rights. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name was registered and is being used in bad faith.

The Complainant requested that the disputed domain name be transferred to the Complainant.

##### **B. Respondent**

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

The Respondent sent emails to the Center on May 30 and June 3, 2023, saying that he may delete and disable the disputed domain name without any problem.

#### **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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**

The Complainant has provided evidence that it is the registrant of multiple ONLYFANS trademark registrations across different jurisdictions.

The disputed domain name incorporates the entirety of the Complainant's ONLYFANS trademark. As the ONLYFANS trademark is recognizable within the disputed domain name, the disputed domain name is confusingly similar to the Complainant's ONLYFANS trademark. Wrapping the descriptive terms "packs" and "free" around the Complainant's ONLYFANS trademark does not prevent a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

The Panel therefore finds that the Complaint has satisfied paragraph 4(a)(i) of the Policy.

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

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 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1.

According to the Complaint, 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 Complainant's ONLYFANS trademark in any manner.

The Respondent is not commonly known by the ONLYFANS trademark and does not hold any trademarks for the disputed domain name. The disputed domain name resolved to a website offering adult entertainment content in direct competition with the Complainant's services, including "providing entertainment services ... in the nature of a website featuring non-downloadable video, photographs, images, audio, and ... in the field of adult entertainment." In the Panel's view, such use does not confer rights or legitimate interests on the Respondent.

Moreover, while it is possible for resellers, distributors, or service providers to use a complainant's trademark in a domain name to make a *bona fide* offering of goods and services, and thus have a legitimate interest in such domain name; in this case, it is clear that the Respondent has not only failed to accurately and prominently disclose the Respondent's lack of relationship with the Complainant, but actively sought to create a false impression of association with the Complainant. Accordingly, the Respondent does not have a right or legitimate interest in the disputed domain name. See [WIPO Overview 3.0](#), section 2.8.

Furthermore, the composition of the disputed domain name, which incorporates the Complainant's ONLYFANS trademark with additional terms related to the Complainant's services and business, carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

The Respondent submitted no response or evidence to rebut the allegations of the Complainant, or to establish that the Respondent is making a *bona fide* use, or a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, and the Respondent failed to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel therefore finds that the Complaint has satisfied paragraph 4(a)(ii) of the Policy.

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

The Complainant has provided evidence that the Complainant's ONLYFANS trademarks and domain name

<onlyfans.com> were registered earlier than the date of registration of the disputed domain name, and that the website that the Complainant has been operating at the domain <onlyfans.com> is one of the most popular websites in the world, with more than 180 million registered users. As such, a simple online search could reveal that the trademark ONLYFANS is in wide use by the Complainant.

Given the above, it would be inconceivable that the Respondent registered the disputed domain name without knowledge of the Complainant's website or ONLYFANS trademark at the time of the registration. Moreover, the Respondent's use of the disputed domain name supports this finding. The Panel therefore finds that the disputed domain name was registered in bad faith.

Meanwhile, the Complainant's evidence shows that the disputed domain name resolved to a website offering adult entertainment content in direct competition with the Complainant's services. Such use is an intentional attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, affiliation, or endorsement of the disputed domain name. It indicates that the Respondent is seeking to cause confusion for the Respondent's commercial benefit or has an intent to profit in some fashion from the Complainant's trademark. The Panel therefore finds that the Respondent is using the disputed domain name in bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

The Panel finds that the Complaint 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 disputed domain name <packsonlyfansfree.com> be transferred to the Complainant.

*/James Wang/*

**James Wang**

Sole Panelist

Date: June 22, 2023