

## **ADMINISTRATIVE PANEL DECISION**

### **Fenix International Limited v. Maslov Igor Alekseevich Case No. D2023-3506**

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

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

The Respondent is Maslov Igor Alekseevich, Russian Federation.

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

The disputed domain name <onlyfann.site> is registered with Beget LLC (the “Registrar”).

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

The Complaint was filed in English 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 September 12, 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, Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 15, 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 amended Complaint on September 15, 2023.

On September 15, 2023, the Center informed the Parties in both English and Russian, that the language of the registration agreement for the disputed domain name is Russian. On the same day, the Complainant requested that English be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

The Center verified that the Complaint together with the amended 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 in both English and Russian, and the proceedings commenced on September 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 12, 2023. The

Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 18, 2023.

The Center appointed Alissia Shchichka as the sole panelist in this matter on October 23, 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 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, the Complainant's commercial website had 180 million registered users. According to information provided by the Complainant, its website is among the top 100 most popular websites on the Internet, and specifically within the United States.

The Complainant owns multiple trademarks for ONLYFANS including, but not limited, to the following:

- The European Union Trade mark Registration for ONLYFANS No. EU017912377 registered on January 9, 2019, for goods and services in classes 9, 35, 38, 41 and 42;
- The United States Patent and Trademark Office ("USPTO") Registration No. 5769267 for ONLYFANS, registered on June 4, 2019 for services in class 35;
- The USPTO Registration No. 6918292 for ONLYFANS, registered on December 6, 2022 for goods in class 9.

The Complainant emphasized the goodwill and recognition that have been achieved under the trademark ONLYFANS, which is a distinctive identifier associated with the Complainant's services.

The above trademarks and domain name were registered prior to the registration of the disputed domain name, which was registered on March 16, 2023.

The disputed domain name currently displays an inactive webpage. However, according to the evidence provided by the Complainant, the disputed domain name previously resolved to a webpage that redirected visitors to third party dating services containing nude images which offer adult entertainment and dating services. These services are similar to those offered by the Complainant.

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

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

In summary, the Complainant made the following submissions:

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's ONLYFANS trademarks. To this end, such underlines that it owns registered trademarks for ONLYFANS and that there is a goodwill and recognition attained under the trademark ONLYFANS, which is a distinct identifier associated with the Complainant's services.

The Complainant states that the disputed domain name is confusingly similar to its trademark ONLYFANS, as it is a misspelled version of the ONLYFANS trademarks.

In respect of the generic Top-Level Domain ("gTLD") ".site", which forms part of the disputed domain name, the Complainant requests that the Panel disregard it under the first element as it is a standard registration requirement.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name, has not used or prepared to use the disputed domain name in connection with a *bona fide* offering of goods or services, and has not been authorized, licensed, or otherwise permitted by the Complainant to register and/or use the disputed domain name.

The Complainant further submits that the disputed domain name redirected to third party dating websites competitive with those of the Complainant. Furthermore, at least one of those websites featured a logo that is identical to the Complainant's registered logo. This usage cannot be considered a *bona fide* offering of goods or services.

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and Rules.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Language of the Proceedings**

The language of the Registration Agreement for the disputed domain name is Russian. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.5.1).

The Complaint was submitted in English. The Complainant requested that English be the language of the proceedings for several reasons. These include the presumption that the Respondent is proficient in English, whereas the Complainant would incur unreasonable effort and costs to provide the Complaint in Russian. Indeed, the disputed domain name is written in Latin script rather than Cyrillic script. Additionally, it used to redirect users to websites in English script.

The Center has sent all its communications to the Respondent in both English and Russian, and has invited the Respondent to express its views on the language of the proceeding. The Respondent has not submitted a response or any objections to the Complainants' request that the proceedings be conducted in English.

Having considered all the matters above, the Panel considers that the Respondent would not be disadvantaged if the language of the proceeding is English, and that using the English language in this proceeding would be fair and efficient. Therefore, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### **6.2. Substantive Issues**

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

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

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

The Respondent's default in the case at hand does not automatically result in a decision in favor of the Complainant, however, paragraph 5(f) of the Rules provides that if the Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint.

Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from the Respondent's failure to submit a response as it considers appropriate.

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

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a trademark for purposes of paragraph 4(a)(i) of the Policy (see [WIPO Overview 3.0](#), section 1.2.1).

The Complainant has provided evidence of its rights in the ONLYFANS trademarks, as noted above. The Complainant has therefore proven that it has the requisite rights in the ONLYFANS trademarks.

With the Complainant's rights in the ONLYFANS trademarks established, the remaining question under the first element of the Policy is whether the disputed domain name, typically disregarding the gTLD in which it is registered (in this case, ".site"), is identical or confusingly similar to the Complainant's trademark.

The ONLYFANS trademark is recognizable in the disputed domain name. The only alteration made to the mark is the use of the "fan" word in singular with the additional letter "n". Numerous UDRP panels have considered that a domain name which consists of a common, obvious, or intentional misspelling of a trademark to be confusingly similar to the relevant mark for purposes of the first element (see [WIPO Overview 3.0](#), section 1.8).

Thus, the Panel finds that the Complainant has satisfied the first element of the Policy.

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

The Complainant must show that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) "before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

In the case at hand, the Panel finds that the Complainant has made a *prima facie* case and that the Respondent, by not having submitted a Response, has failed to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy for the following reasons.

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 trademarks. Moreover, there is no element from which the Panel could infer a Respondent's right over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

There is no evidence of use of 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 profit from the goodwill of the Complainant's trademarks. Indeed, the disputed domain name, being pointed to an inactive page, is passively held. In view of the Respondent's default, the Panel shares the view held in *Teachers Insurance and Annuity Association of America v. Wreaks Communications Group*, WIPO Case No. [D2006-0483](#), where the panel found that, absent some contrary evidence from a respondent, passive holding of a domain name does not constitute legitimate noncommercial or fair use.

Before, as the Complainant has demonstrated on record, the disputed domain name resolved to a webpage that redirected users to dating websites. At least one of these websites prominently featured the Complainant's ONLYFANS trademarks and advertised similar services. None of such use constitutes a *bona fide* offering of goods or services or a legitimate noncommercial or fair use and cannot under the circumstances confer on the Respondent any rights or legitimate interests in the disputed domain name.

Moreover, the disputed domain name is inherently misleading given that it is a misspelling of the Complainant's ONLYSFANS trademarks, which therefore reflects the Respondent's intent to confuse unsuspecting Internet users expecting to find the Complainant when accessing the disputed domain name.

Therefore, the Panel concludes that the Respondent does not have any rights or legitimate interests in the disputed domain name and the Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

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

The third element of paragraph 4(a) of the Policy requires that the Complainant demonstrate that the Respondent registered and is using the disputed domain name in bad faith.

On the issue of registration, the Panel notes that the Complainant's ONLYFANS trademarks substantially predate the Respondent's registration of the disputed domain name. The Complainant is also well established and known. Indeed, at the time the Respondent registered the disputed domain name the Complainant's trademark was well known among Internet users as evidenced by visitor ranking of the Complainant's website. Therefore, the Respondent knew or should have known the Complainant's trademarks at the time of registering the disputed domain name (see [WIPO Overview 3.0](#), section 3.2.2).

Further, the mere registration of the domain name that is confusingly similar to the Complainant's widely known trademarks by the Respondent, who is unaffiliated with the Complainant, can by itself create a presumption of bad faith (see [WIPO Overview 3.0](#), section 3.1.4).

Moreover, the Respondent's knowledge of the Complainant and its trademarks can be readily inferred from the Respondent's use of the disputed domain name. The misspelling used to create the disputed domain name, and its previous use in directing users to websites with similar content to that of the Complainant's website, clearly indicate that the Respondent was aware of the nature of the business associated with the Complainant's ONLYFANS trademarks.

In the Panel's view, 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 trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its website. Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith (see [WIPO Overview 3.0](#), section 3.1.4).

On the issue of use, the Complainant's evidence is that the disputed domain name is currently inactive and unconnected with any *bona fide* supply of services by the Respondent. Previous UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see [WIPO Overview 3.0](#), section 3.3).

The Panel finds that passive holding of the disputed domain name does not, in the circumstances of this case, prevent a finding of bad faith, given: (i) the degree of distinctiveness or reputation of the

Complainant's mark, (ii) the failure of the Respondent to submit a Response or to provide any evidence of actual or contemplated good-faith use, and (iii) the prior use and implausibility of any good faith use to which the disputed domain name may be put.

In the absence of any evidence to contend against the Complainant's evidence and claims, this Panel accepts the Complainant's evidence and finds that the Respondent has registered and used the disputed domain name, without the Complainant's consent or authorization, for the likely purpose of capitalizing on the reputation of the Complainant's trademarks to target the Complainant's rights.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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, <onlyfann.site>, be transferred to the Complainant.

*/Alissia Shchichka/*

**Alissia Shchichka**

Sole Panelist

Date: November 6, 2023