

## **ADMINISTRATIVE PANEL DECISION**

Fenix International Limited v. bai yu fang

Case No. D2023-3878

### **1. The Parties**

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

The Respondent is bai yu fang, Cambodia.

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

The disputed domain name <onlyfans001.com> is registered with Gname.com Pte. Ltd. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 16, 2023. On September 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 20, 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 September 20, 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 September 20, 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 October 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 27, 2023.

The Center appointed Linda Chang as the sole panelist in this matter on November 20, 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 registered domain name <onlyfans.com> on January 29, 2013, and operates a website located at the domain name allowing users to post and subscribe to audiovisual content. In 2023, the Complainant has more than 180 million registered users.

The Complainant registered a number of ONLYFANS trademarks, including the European Union Trademark Nos. 017912377 and 017946559, both registered on January 9, 2019; the United Kingdom Trademark Nos. UK00917912377 and UK00917946559, both registered on January 9, 2019; and the United States Trademark Registration Nos. 5769267 and 5769268, both registered on June 4, 2019.

The disputed domain name was registered on February 7, 2023, and resolves to a website that provides download of a software application offering adult entertainment content.

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

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

The Complainant contends that the disputed domain name consists of the Complainant's ONLYFANS trademark with only the insertion of the generic numeral "001". As the insertion does nothing to avoid confusing similarity, the disputed domain name is confusingly similar to the ONLYFANS trademark.

The Complainant further contends that the Respondent has no connection or affiliation with the Complainant and has not received any authorization, license, or consent to use the ONLYFANS trademark in the disputed domain name. The disputed domain name is offering adult entertainment services, and such commercial activities do not give rise to legitimate rights or interests. The Respondent thus has no rights nor legitimate interests in the disputed domain name.

The Complainant finally contends that the disputed domain name was registered and is being used in bad faith.

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

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

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

According to paragraph 4(a) of the Policy, each of the following factors should be proven, for the Complainant to win the case, namely that:

- (i) the disputed domain name is identical or confusingly similar with 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 was registered and is being used in bad faith.

The Panel's decision is based on the consideration of three elements below.

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

The Complainant has successfully established its registered trademark rights in the ONLYFANS mark.

It is well established that the generic Top-Level Domain suffix “.com” as a standard registration requirement should be disregarded in the assessment of similarity under the Policy. Hence the relevant part of the disputed domain name is “onlyfans001”, which closely resembles the Complainant's ONLYFANS trademark and differs only with the addition of the numeral “001”. As the ONLYFANS trademark is clearly recognizable in the disputed domain name, the Panel holds that mere addition of the numeral “001” cannot prevent a finding of confusing similarity between the ONLYFANS trademark and the disputed domain name.

Therefore, the Panel holds that the disputed domain name is confusingly similar to the Complainant's ONLYFANS trademark.

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

The Respondent has no connection to or affiliation with the Complainant, and has not been authorized to use the ONLYFANS trademark of the Complainant in any way.

The disputed domain name is resolving to a website that provides download of a software application offering adult entertainment content. By using the disputed domain name, the Respondent is attempting to divert traffic to its own site offering services in direct competition with the Complainant, which in no way can amount to a *bona fide* offering of goods or services, or a legitimate noncommercial or fair use of the disputed domain name.

The Panel holds that the Complainant has made out a *prima facie* case that the Respondent does not have rights or legitimate interests in respect of the disputed domain name. The burden of production on this element hence shifts to the Respondent to rebut the Complainant's contentions. In this case, the Respondent did not respond and failed to rebut the Complainant's *prima facie* case.

Therefore, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

In view of the adoption of the distinctive ONLYFANS trademark in the disputed domain name and provision of adult entertainment services in the associated website, the Panel holds that the Respondent must have knowledge of the Complainant and its ONLYFANS trademark before registering the disputed domain name, which on its own is sufficient for a finding of registration and use in bad faith.

The Respondent is using the disputed domain name to host a website offering download of a software application in direct competition with the Complainant. The Panel holds that the Respondent is intentionally attempting to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the disputed domain name. The Panel is convinced that bad faith can be inferred from the Respondent's use of the disputed domain name when the Respondent is deliberately seeking to exploit and profit from the ONLYFANS trademark by diverting Internet traffic to its own site.

Besides, the Complainant sent a cease-and-desist letter to the Respondent demanding cease of use and cancellation of the disputed domain name. The Respondent, however, did not reply. Inference of bad faith registration and use can be drawn from such failure of response both to the letter and this administrative proceeding.

Therefore, the Panel holds that the disputed domain name was registered and is being used in bad faith.

## **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 <onlyfans001.com> be transferred to the Complainant.

*/Linda Chang/*

**Linda Chang**

Sole Panelist

Date: December 4, 2023