

## **ADMINISTRATIVE PANEL DECISION**

Fenix International Limited v. myviproomss.com  
Case No. D2022-0217

### **1. The Parties**

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

The Respondent is myviproomss.com, United States.

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

The disputed domain name <onlyfans3.com> is registered with Internet Domain Service BS Corp (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 22, 2022. On January 24, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 25, 2022, 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 February 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 24, 2022. The Respondent did not submit a formal response in this period. Accordingly, the Center notified the Respondent’s default on February 25, 2022. On February 25, 2022 and February 28, 2022, respectively, the Center received two emails from the Respondent claiming that the Complainant does not have rights to the disputed domain name as it was available when the Respondent purchased it.

The Center appointed Martin Schwimmer as the sole panelist in this matter on March 2, 2022. 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, Fenix International Limited, owns and operates a social media platform that allows users to post and subscribe to adult-oriented content on the Internet. The Complainant has used the name and mark ONLYFANS to identify its service, which is accessible through the Complainant's website at "www.onlyfans.com". The Complainant owns trademark registrations for the ONLYFANS mark in connection with its services including, *inter alia*, European Union Trade Mark Nos. 017912377 and 017946559 (both registered on January 9, 2019), United Kingdom Trade mark Nos. UK00917946559 and UK00917912377 (both registered on January 9, 2019), and the United States Registration No. 5,769,267 (registered on June 4, 2019). The Complainant also asserts common law rights arising from its use of the mark since 2016.

The Respondent appears to be based in the United States. The disputed domain name was registered on June 27, 2021. At some point thereafter, the disputed domain name to redirected to a website at "www.myviprooms.com" (in contrast to the domain name that has been disclosed by the Registrar as the name of the Respondent, which name had two "s" letters, the domain name to which the disputed domain name redirected contains a single "s"). The website depicts adult-oriented content.

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

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

The Complainant asserts that it owns rights in the ONLYFANS mark through its trademark registrations for the ONLYFANS mark and through its extensive use of ONLYFANS since June 2016 for its website, which it contends is the 264th most popular website in the United States.

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's ONLYFANS name and mark as the disputed domain name contains the entire ONLYFANS mark with the addition solely of the numeral "3" and the generic Top-Level Domain ("gTLD") ".com".

The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name as the Respondent (i) registered the disputed domain name in bad faith, (ii) is not known by the name and mark ONLYFANS, (iii) and has no rights in the ONLYFANS mark which is associated with the Complainant and its services.

Lastly, the Complainant maintains that the Respondent has registered and used the disputed domain name in bad faith as the Respondent registered the disputed domain name well after the Complainant had developed rights in the ONLYFANS mark and did so in full knowledge of the Complainant's rights in the ONLYFANS mark. The Complainant also argues that the Respondent has acted in bad faith by (i) using the disputed domain name to redirect to a website at "www.myviprooms.com", which website contains content competitive with and/or similar to the content hosted by the Complainant's website.

Accordingly, the Complainant requests the disputed domain name be cancelled.

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

The Respondent sent emails to the Center (after the formal due date for a response) alleging that the Complainant did not have rights in the disputed domain name because the disputed domain name had been available for registration, and that the Respondent was using neither the Complainant's ONLYFANS trademark nor the Complainant's logo (implying that the use of "onlyfans3" (or any variant of "onlyfans" with

an amended numeral) does not represent use of the ONLYFANS trademark).

## 6. Discussion and Findings

As an introductory point, the Panel chooses to consider as part of the record the emails of February 25, 2022, and February 28, 2022, sent to the Center, purportedly on behalf of the Respondent.

### A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.2.1. The Complainant has provided evidence that it obtained trademark registrations for the ONLYFANS mark in the European Union, the United Kingdom, and the United States. The Complainant has also provided evidence regarding its use of the ONLYFANS mark since 2016.

The disputed domain name incorporates the ONLYFANS mark in its entirety, with the sole addition of the numeral "3", which does not prevent a finding of confusing similarity. Additionally, the gTLD ".com" is a standard registration requirement for the disputed domain name and as such may be disregarded under the first element confusing similarity test.

Accordingly, the Panel therefore finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the Complainant's ONLYFANS mark and in showing that the disputed domain name is confusingly similar to that trademark.

### B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the complainant must make at least a *prima facie* showing that the respondent possesses no rights or legitimate interests in a disputed domain name. See *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once the complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

The Complainant alleges that 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 ONLYFANS mark in the disputed domain name or in any other manner. The Complainant further alleged that the Respondent is not commonly known by the mark and does not hold any trademarks for the disputed domain name.

The Respondent's emails alleging that it did not need authorization to use the Complainant's mark, without more, can be read an admission of the absence of authorization, without a clear rationale as to why it does not need authorization. The Respondent's emails appear to misunderstand the nature and scope of the trademark rights in the context of domain name registration and UDRP disputes.

As noted above, the Respondent is not known by the disputed domain name, and does not make fair use of the trademark. The Respondent's use of the disputed domain name to redirect traffic to a website that competes with that of the Complainant, is not a good faith use.

Accordingly, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent. The Panel concludes that the Complainant has established the second element of the Policy.

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

The Policy, paragraph 4(b), lists circumstances that “shall be evidence of the registration and use of a domain name in bad faith”, including the following:

“(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The Complainant began use of its ONLYFANS mark in 2016, five years before the Respondent registered the disputed domain name. The Panel finds the idea that the Respondent would utilize the disputed domain name to redirect traffic to its competitive website without being aware of the Complainant’s reputation in its ONLYFANS mark at the time of registration of the disputed domain name is not credible. Accordingly, it is clear from the evidence that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent’s website, by creating a likelihood of confusion with the ONLYFANS mark, as provided under 4(b)(iv) of the Policy. Taking into consideration all the circumstances, the Respondent’s emails do not support any conceivable good faith use or otherwise prevent a finding of bad faith registration and use of the disputed domain name.

The Panel concludes that the Complainant has established the third element 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 <onlyfans3.com> be cancelled.

*/Martin Schwimmer/*

**Martin Schwimmer**

Sole Panelist

Date: March 16, 2022