

## **ADMINISTRATIVE PANEL DECISION**

Fenix International Limited v. Domain Admin, Whoisprotection.cc / Numaniya  
Numaniya

Case No. D2022-0275

### **1. The Parties**

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

The Respondent is Domain Admin, Whoisprotection.cc, Malaysia / Numaniya Numaniya, Bangladesh.

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

The disputed domain name <onlyfansbahamas.com> (the “Domain Name”) is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 26, 2022. On January 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 27, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 28, 2022, 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 January 28, 2022.

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 February 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 22, 2022.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on March 1, 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 owns and operates the website located at the domain name <onlyfans.com>, which provides a social media platform that allows users to post and subscribe to audiovisual content on the World Wide Web.

The Complainant holds, *inter alia*, the following trade mark registrations (the "Trade Marks"):

- European Union device/word mark ONLYFANS, registered on January 9, 2019 under No. 017946559;
- European Union word mark ONLYFANS, registered on January 9, 2019 under No. 017912377;
- United States word mark ONLYFANS, registered on June 4, 2019 under No. 5,769,267;
- United States word mark ONLYFANS.COM, registered on June 4, 2019 under No. 5,769,268.

The Domain Name was registered on July 20, 2021 and resolves to a website containing an image of the front of two overlapping mobile phones, the stylized words "onlyfansbahamas", the text "Come for what you love. Stay for what you discover.", and a log in form.

The Complainant sent a cease-and-desist letter to the Respondent on November 18, 2021, demanding the Respondent stop using and cancel the Domain Name, to which the Respondent did not respond.

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

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

The Complainant submits that the Domain Name is identical or confusingly similar to the Trade Marks, as it consists of ONLYFANS with the addition of the geographic term "bahamas", which term does not avoid the confusing similarity. Furthermore, the Complainant contends, the ".com" generic Top Level Domain ("gTLD") does not distinguish the Domain Name from the Trade Marks, as it is a standard registration requirement and as such is disregarded under the confusing similarity test, and points to the Complainant's United States word mark ONLYFANS.COM.

According to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name as it has no connection or affiliation with the Complainant and has not received any authorization, license, or consent to use the Trade Marks in the Domain Name or in any other manner, while the Respondent is not commonly known by the Trade Marks and does not hold any trademarks for the Domain Name. In addition, the Complainant states that the Respondent cannot claim a right to use the Domain Name under fair use, since it includes the Trade Mark and the geographical term "bahamas" which incorrectly suggests sponsorship by the Complainant, as the official method of accessing the Complainant's services in the Bahamas. The Complainant also points out that the Respondent does not use the Domain Name for a *bona fide* offering of goods or services, since it directs Internet users to a web page that is substantially similar to the home page of the Complainant's website under the domain name <onlyfans.com>, so that it is very probable that an Internet user might be misled into thinking that the web site under the Domain Name is related to or operated by the Complainant.

According to the Complainant, the Domain Name was registered in bad faith, since it is more probable than not that the Respondent was fully aware of the Trade Marks at the time of registration, as the Domain Name was registered well after the registration date of the Trade Marks and considering the similarity of the web pages and that the website at the Domain Name contains a logo similar to the European Union device/word mark ONLYFANS. The Complainant submits that bad faith also lies in the combination of the use of the Trade Marks and the additional term “bahamas” in the Domain Name, as this would enhance the likelihood of confusion, because it makes it appear as if the website located at the Domain Name is the official version of the Complainant’s website for the Bahamas. In addition, the Complainant has mentioned a number of circumstances which in its view amount to bad faith registration and/or use of the Domain Name, in particular:

- the Respondent has not reacted to the Complainant’s cease-and-desist letter of November 18, 2021;
- the website to which the Domain Name directs is a copy of the website under the Complainant’s domain name <onlyfans.com>;
- the use on that website of a logo that is similar to the European Union ONLYFANS word/device mark;
- the lack of plausible circumstances under which the Respondent could legitimately register or use the Domain Name.

Accordingly, the Complainant requests the Domain Name be cancelled.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Complainant has shown that it has registered rights in the Trade Marks. The Domain Name is confusingly similar to the Trade Marks as it incorporates the Trade Marks in their entirety. The addition of the geographical term “bahamas” 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 gTLD “.com” is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11).

Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Marks in which the Complainant has rights.

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

Under paragraph 4(c) of the Policy, the second element a complainant has to prove is that a respondent lacks rights or legitimate interests in a domain name. This 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. In order to satisfy the second element, the Complainant has to make out a *prima facie* case that the Respondent does not have rights or legitimate interests in the Domain Name. If the Complainant succeeds in doing so, 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)

Based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has no connection or affiliation with the Complainant, has not received the Complainant's consent to use the Trade Marks as part of the Domain Name, and has not acquired trade mark rights in the Domain Name. In assessing whether the Respondent has a legitimate interest in the Domain Name, it should also be taken into account that (i) since the Domain Name incorporates the Trade Marks in their entirety and is confusingly similar to the Trade Marks, it carries a risk of implied affiliation ([WIPO Overview 3.0](#), section 2.5.1); and (ii) the Respondent has not provided evidence, nor is there any indication in the record of this case, that the Respondent is commonly known by the Domain Name. Furthermore, as evidenced by screen shots submitted by the Complainant, the Domain Name resolves to a website which both in general lay out and in respect of images and logo used appears to be similar to (those used on) the home page of the Complainant's website under the domain name <onlyfans.com>. The screen shot relating to the Complainant's website was dated August 5, 2020 and, upon visiting the website the Panel noted that the lay out has changed considerably; however, these changes do not alter the impression that the website at the Domain Name was seeking to target the Complainant, the Trade Marks, and the Complainant's (previous) website. In view of the similarity between the Domain Name and the Trade Marks and the fact that on the website to which the Domain Name resolves, a stylized version of "onlyfansbahamas" is used, there is a risk that Internet users are misled to believe that the website is affiliated with or approved by the Complainant. Finally, there is no evidence in the file that the Respondent is otherwise making a legitimate noncommercial or fair use of the Domain Name so that its use constitutes a *bona fide* offering of goods or services.

In view of all of the above, the Panel concludes that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Name.

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

Based on the undisputed information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the Domain Name the Respondent was or should have been aware of the Trade Marks, since:

- the Respondent's registration of the Domain Name occurred more than two years after the registration of the earliest of the Trade Marks;
- the nature of the Domain Name, incorporating the entirety of the Trade Marks along with the term "bahamas"; and
- the fact that a simple trade mark register search, or even an Internet search, prior to registration of the Domain Name would have informed the Respondent of the existence of the Trade Marks.

With regard to bad faith use, the Panel finds that the following circumstances taken together warrant a finding of bad faith use of the Domain Name:

- the probability that the Respondent was aware or should have been aware of the Complainant's rights in the Trade Marks;
- the lack of a reaction to the cease and desist letter of November 18, 2021, and the lack of a formal response of the Respondent;
- the similarity of the Domain Name and the Trade Marks, taken together with the use of a general lay out and images on the website to which the Domain Name resolves, which are similar to a previous version of the Complainant's website under the domain name <onlyfans.com>, as well as the use of a stylized version of "onlyfansbahamas" on the Respondent's website to create a likelihood of confusion with the Trade Marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

Therefore, the Panel concludes on the basis of all of the above circumstances, taken together, that the Domain Name has been 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 <onlyfansbahamas.com> be cancelled.

*/Wolter Wefers Bettink/*

**Wolter Wefers Bettink**

Sole Panelist

Date: March 15, 2022