

## **ADMINISTRATIVE PANEL DECISION**

### **Fenix International Limited v. Yusuf Massa**

### **Case No. D2022-3445**

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

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

The Respondent is Yusuf Massa, Netherlands.

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

The disputed domain name <watchonlyfan.com> is registered with Porkbun LLC (the “Registrar”).

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

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 16, 2022. On September 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 16, 2022, 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 (Privacy by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 22, 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 September 23, 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 September 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 20, 2022.

The Center appointed Alvaro Loureiro Oliveira as the sole panelist in this matter on October 31, 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, a limited company incorporated in the USA, which seat is in the State of Florida, USA.

The Complainant owns and operates the website located at the domain <onlyfans.com> and has used its domain for several years in connection with the provision of a social media platform that allows users to post and subscribe to audiovisual content on the World Wide Web. Over the years, the Complainant has made extensive use of the ONLYFANS trademark.

The Complainant has registered rights in the ONLYFANS trademarks with the European Union Intellectual Property Office ("EUIPO"), the United Kingdom Intellectual Property Office ("UKIPO"), and the United States Patent and Trademark Office ("USPTO"), and the Complainant has developed extensive common law rights throughout the world.

The Complainant owns several registrations and applications for the ONLYFANS trademark, both as word marks or word and design marks, covering several jurisdictions, as states Annex C of the Complaint, including European Union Trade Mark Number 017912377, registered on January 9, 2019, and USA trademark Registration Number 5,769,267, registered on June 4, 2019.

An extensive list of prior panels endorses the renown of the mark ONLYFANS, as they all resulted in the cancellation or transfer of the domain names.

The Complainant registered the <onlyfans.com> domain on January 29, 2013 and has extensive common law rights in the trademarks throughout the world that commenced by at latest July 4, 2016.

The disputed domain name resolves to a website that offers adult entertainment services (including content pirated from the Complainant's users) in direct competition with the Complainant's services, giving the impression that it is associated with the Complainant.

The disputed domain name was registered on January 13, 2022.

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

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

The Complainant contends that the disputed domain name <watchonlyfan.com> contains its worldwide known trademark ONLYFANS.

The Complainant has obtained registrations for the trademark ONLYFANS throughout the world since 2018, as well as has been using the mark in common law countries since 2016. Also, the Complainant's domain name formed by this trademark was registered in 2013, as stated above.

The Complainant claims that it has never licensed or authorized the Respondent to use its mark or to apply for any kind of domain name.

Besides, the term chosen by the Respondent to compose the disputed domain name together with “ONLYFAN(S)” is “watch”, which is directly related to the Complainant’s main activities: “watch” a video, a streaming on the website. This descriptive term does not negate the confusing similarity between the disputed domain name and the Complainant’s trademark.

The Complainant also states that the Respondent is not making a legitimate use of the disputed domain name. Further, the Complainant contends that the Respondent’s incorporation of its trademark into the disputed domain name, with the addition of the term “watch” and using the disputed domain name to host a webpage that offers goods and services in direct competition with the Complainant, demonstrates knowledge of the Complainant’s mark and business, showing evidence of bad faith.

Before starting this proceeding, the Complainant tried to contact the Respondent through a cease-and-desist letter, in an attempt to obtain the voluntary transfer of the disputed domain name to its name (Annex F to the Complaint). No response was ever received to this letter.

## **B. Respondent**

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

## **6. Discussion and Findings**

The Policy, in its paragraph 4(a), determines that three elements must be present and duly proven by a complainant to obtain relief. These elements are:

- 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 to 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**

Regarding the first of the elements, the Panel is satisfied that the Complainant has presented adequate proof of having rights in the trademark ONLYFANS, which is registered in several jurisdictions and clearly used regularly throughout the world.

Further, the Panel finds that disputed domain name is confusingly similar to the trademark belonging to the Complainant, since this mark is reproduced in the disputed domain name registered by the Respondent with the addition of term “watch”.

According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms, whether descriptive, geographical, pejorative, meaningless, or otherwise would not prevent a finding of confusing similarity under the first element.

Moreover, the Panel finds that the omission of the letter “s” at the end of the term “fans” does not dispel a confusing similarity to the trademark ONLYFANS.

Further, it is well established that “.com”, as a generic Top-Level Domain, may be disregarded in the assessment of the confusing similarity between the disputed domain name and the Complainant’s trademark (section 1.11.1 of the [WIPO Overview 3.0](#)).

In view of the Complainant's registrations for the ONLYFANS trademark, and the Respondent's incorporation of that trademark in its entirety in the disputed domain name, the Panel concludes that the Complainant has established the first element of the Policy.

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

The Panel understands that the trademark ONLYFANS is naturally associated with the Complainant, since it is not only registered as a trademark in its name, but also has been used to identify the services rendered by the Complainant for several years.

Further, the Complainant provided evidence of the renown of the mark ONLYFANS and the services rendered under this mark to its clients worldwide. Hence, the Panel considers that the Respondent, in all likelihood, could not be unaware of the mark ONLYFANS, and its direct relation to the Complainant.

In fact, the Complainant presented evidence that the disputed domain name has been used to link to a website that bears a logo that has a resemblance with the one used by the Complainant, and offers adult entertainment services (including content allegedly pirated from the Complainant's users) 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.", as seen on their webpage (annex E to the Complaint).

The Complainant has not authorized the Respondent to use its trademark ONLYFANS or register a domain name incorporating the trademark. There is no evidence that the Respondent is commonly known by the disputed domain name or has made a *bona fide* or noncommercial fair use of the disputed domain name.

The Panel is satisfied that the Complainant has made a *prima facie* showing of the Respondent's lack of rights or legitimate interests in the disputed domain name. This has not been rebutted by the Respondent.

Thus, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name. For this reason, the Panel finds that the Complainant has satisfied the second element of the Policy.

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

It is clear to the Panel that the Respondent has in all probability registered the disputed domain name with the purpose of taking advantage of the Complainant's trademark.

The Panel finds that the disputed domain name was likely registered to mislead Internet users, hence the addition of the term "watch". Further, the additional term can surely be considered as an allusion to the Complainant's business, a fact from which the Respondent may well profit by giving Internet users the impression that the disputed domain name is affiliated with the Complainant.

The Respondent intended to give an overall impression that the disputed domain name is associated with the Complainant, and the Panel accepts that the disputed domain name may be intended for illegitimate purposes.

Besides, with regards to the use of the disputed domain name in bad faith, the Panels finds that by linking the disputed domain name to a website that bears a logo that has a resemblance with the one used by the Complainant, and offers adult entertainment services (including content allegedly pirated from the Complainant's users) in direct competition with the Complainant's services, the Respondent has intended to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with the Complainant's trademark.

In addition, it appears that the Respondent employed a privacy or proxy service merely to avoid being notified of the UDRP proceeding filed against it. In similar cases in the past, UDRP panels tended to find that this can be understood as a further factor supporting an inference of bad faith in certain circumstances. [WIPO Overview 3.0](#), section 3.6 (*Fifth Third Bancorp v. Secure Whois Information Service*, WIPO Case No. [D2006-0696](#)).

Based on all the above evidence, the Panel finds that the Respondent has registered and is using the disputed domain name with the intention of illegally obtaining benefits and harming the Complainant's reputation in the market.

The Panel hence finds that the Complainant has also proved 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 <watchonlyfan.com> be transferred to the Complainant

*/Alvaro Loureiro Oliveira/*  
**Alvaro Loureiro Oliveira**  
Sole Panelist  
Date: November 24, 2022