

## **ADMINISTRATIVE PANEL DECISION**

### **Fenix International Limited v. Dmitry Balanda Case No. D2023-2535**

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

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

The Respondent is Dmitry Balanda, Ukraine.

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

The disputed domain names <onlybestfans.cyou> and <onlybestfans.fun> are registered with NameCheap, Inc.(the “Registrar”).

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

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 12, 2023. On June 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 13, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy, c/o Privacy services provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 16, 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 June 16, 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 June 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 25, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on August 7, 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. Further Procedural Considerations**

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision that may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the Complaint was delivered to the Respondent's email address provided by the Registrar.

The Panel also notes that the Complainant has specified in the Complaint that any challenge made by the Respondent to any decision to transfer or cancel the disputed domain names shall be referred to the jurisdiction of the courts of the location of the principal office of the concerned registrar. In this case, the principal office of the Registrar, NameCheap, Inc. is in the United States.

It is moreover noted that, for the reasons which are set out later in this Decision, the Panel has no doubt whatsoever that the Respondent registered and has used the disputed domain names in bad faith and with the intention of unfairly targeting the Complainant's goodwill in its trademark and misleading consumers.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding should take place with due expedition the Panel will proceed to a Decision accordingly.

#### **5. Factual Background**

The Complainant owns and operates an online media platform, which enables its users to post and subscribe to online audiovisual content. Since at least 2016 the Complainant's online platform is accessible through the Complainant's website resolving from its domain name <onlyfans.com> and enjoys increasing popularity (Annexes C and E to the Complaint).

The Complainant owns various word and figurative ONLYFANS trademark registrations. According to the provided documents in the case file, the Complainant is, *inter alia*, the registered owner of the European Union Trademark Registration No. 017912377 for ONLYFANS (filed on June 5, 2018 and registered on January 9, 2019) covering goods and services in classes 9, 35, 38, 41, and 42 (Annex D to the Complaint).

The Respondent is reportedly an individual from Ukraine, as disclosed by the Registrar.

The disputed domain names were both registered on January 5, 2023.

Based on screenshots provided by the Complainant in the case file, the disputed domain names resolved to commercial websites that offer a subscription platform which allows users to post adult entertainment content similar to the services offered by the Complainant (Annex B to the Complaint).

At the time of the Decision, the disputed domain names do not resolve to active websites anymore.

On March 3, 2023, the Complainant sent a cease-and-desist letter to the Respondent and tried to solve the dispute amicably by asking for a cancellation of the disputed domain names (Annex F to the Complaint).

## **6. Parties' Contentions**

### **A. Complainant**

The Complainant requests the transfer of the disputed domain names and contends that it has satisfied each of the elements required under the Policy for such transfer.

### **B. Respondent**

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

## **7. Discussion and Findings**

According to paragraphs 14(a) and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint where no substantive response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not substantively replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 4.3.

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain names. See [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the ONLYFANS trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

The Panel further finds the mark is recognizable within the disputed domain names. The disputed domain names consist of the Complainant's ONLYFANS trademark with the only difference being the insertion of the term "best" in between the Complainant's mark. While the addition of another term (here: "best") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.8.

Also, the Panel notes that the applicable generic Top-Level Domains ("gTLDs") (".cyou" and ".fun" in this case) are viewed as a standard registration requirement, and may as such be disregarded by the Panel. See [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the disputed domain names are found by the Panel to be confusingly similar to the ONLYFANS mark for the purposes of the Policy.

Based on the available record, the Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name 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. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

On the contrary, and noting that the disputed domain names are confusingly similar to the Complainant's ONLYFANS trademark, the Panel has no doubt that the Respondent's intent is to create confusion with the Complainant by offering a subscription platform on the websites at the disputed domain names and allowing users to post adult entertainment content similar to the services offered by the Complainant, which in view of the Panel results in an illegitimate use that cannot confer rights or legitimate interests upon the Respondent.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent must have had the Complainant and its widely-known ONLYFANS trademark in mind when registering the disputed domain names. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain names to target and mislead third parties. Consequently, the Panel is convinced that the Respondent has registered the disputed domain names in bad faith.

With respect to the use of the disputed domain names in bad faith, the Panel notes that the disputed domain names resolved to websites providing products and services in direct competition to the offers of the Complainant (Annex B to the Complaint). In addition, the Respondent used an almost identical logo to the Complainant's official ONLYFANS logo on the website at the disputed domain names. The Panel further notes that the Respondent has not published a prominent and accurate disclaimer on the websites associated to the disputed domain names to explain that there is no existing relationship between the Respondent and the Complainant. In light of the above, the Panel is convinced that the Respondent has intentionally registered the disputed domain names in order to generate traffic to its own websites for commercial gain.

The fact that the disputed domain names currently do not resolve to any active websites does not prevent a finding of bad faith, particularly when considering the present circumstances of the case file, namely (i) the degree of reputation of the Complainant's ONLYFANS trademark, (ii) the failure of the Respondent to submit a response or even to provide any evidence of actual or contemplated good-faith use, and (iii) the implausibility of any good faith use to which the domain names may be put.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **8. 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 names <onlybestfans.cyou> and <onlybestfans.fun> be transferred to the Complainant.

/Kaya Köklü/

**Kaya Köklü**

Sole Panelist

Date: August 21, 2023