

## **ADMINISTRATIVE PANEL DECISION**

Fenix International Limited v. fgfgf yty  
Case No. D2023-4618

### **1. The Parties**

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

The Respondent is fgfgf yty, China.

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

The disputed domain name <onlyfans88.com> is registered with GoDaddy.com, LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 8, 2023. On November 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 8, 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 (Domains by Proxy, LLC, DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 13, 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 amended Complaint on November 13, 2023.

The Center verified that the Complaint together with the amended 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 November 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 7, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 20, 2023.

The Center appointed Daniel Kraus as the sole panelist in this matter on January 8, 2024. 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 the 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 had 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 June 26, 2023, and resolves to a website that contains a logo identical to the Complainant's registered stylized logo and that suggests the site matches users with OnlyFans creators and models for dates.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name consists of the Complainant's ONLYFANS trademark with only the insertion of the generic numeral "88". 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**

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 name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or at least confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms - here, the numeral "88" - 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 name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 "onlyfans88", which closely resembles the Complainant's ONLYFANS trademark and differs only with the addition of the numeral "88". As the ONLYFANS trademark is clearly recognizable in the disputed domain name, the Panel holds that mere addition of the numeral "88" 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.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. 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 name such as those enumerated in the Policy or otherwise.

The Respondent has no connection or affiliation with the Complainant and has not received an authorization, license or consent to use the Marks in the disputed domain name or in any other manner.

Panels have held that the use of a domain name for illegal activity - here, claimed passing off as a website of the Complainant whilst featuring a logo that was similar to the Complainant's ONLYFANS logo and directing Internet users to a website offering potentially illegal services - can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

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 had 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 dates with OnlyFans models. 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.

The Panel finds 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 <onlyfans88.com> be transferred to the Complainant.

/Daniel Kraus/

**Daniel Kraus**

Sole Panelist

Date: January 22, 2024