

ADMINISTRATIVE PANEL DECISION

Fashion Nova, LLC v. Domains By Proxy, LLC / Sophia Liu
Case No. D2022-1151

1. The Parties

The Complainant is Fashion Nova, LLC, United States of America, represented by Ferdinand IP, LLC, United States of America (“United States”).

The Respondent is Domains By Proxy, LLC/ Sophia Liu, China.

2. The Domain Name and Registrar

The disputed domain name <topsfashionnovas.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 April 1, 2022. On April 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 6, 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 amended Complaint on April 7, 2022.

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 April 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 12, 2022.

The Center appointed Tuukka Airaksinen as the sole panelist in this matter on May 17, 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 is the owner of the trademark FASHION NOVA, registered in various countries, such as in the United States Registration No. 4785854 as of August 4, 2015. The Complainant was established in 2006 and is now one of the most well-known apparel and e-commerce companies in the United States.

The Complainant's apparel lines include clothing, accessories and other merchandise, such as beauty products. The Complainant displays its trademark FASHION NOVA extensively on social media sites, including Instagram and Facebook as well as on promotional and point of sale materials, billboards, magazines and industrial publications, at trade shows and live events and on the "www.fashionnova.com" website. In 2018 and 2019, the Complainant was the most searched fashion label on Google.

The disputed domain name was registered on December 23, 2021. At the time of filing the disputed domain name lead to a copycat website.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's trademark as it incorporates the Complainant's trademark in its entirety. The word "Tops" at the beginning and the letter "s" at the end of the disputed domain name should be considered non-material differences.

The Respondent has no rights or legitimate interests in or to the disputed domain name. The Respondent is not commonly known by a name that includes the Complainant's trademark. The Complainant has not authorized the Respondent to use the Complainant's trademark.

The Respondent's use of the disputed domain name is solely an attempt to pass itself off as the Complainant. The website to which the disputed domain name resolves displays the mark "FASHIONNOVA" with an appearance similar to the Complainant's own e-commerce website, and uses many of the same photos and style elements of the Complainant's website in an effort to mislead the public into believing that the Respondent's website is operated by the Complainant.

The Respondent's website is nothing more than a reproduction of the Complainant's e-commerce website. The disputed domain name is used to intentionally attempt to attract Internet users to the Respondent's website for commercial gain, by creating a likelihood of confusion with the Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

In order to obtain the transfer of a domain name, a complainant must prove the three elements of paragraph 4(a) of the Policy, regardless of whether the respondent files a response to the complaint or not. The first element is that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The second element a complainant must prove is that the respondent has no

rights or legitimate interests in respect of the domain name. The third element a complainant must establish is that the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires that the Complainant establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Consequently, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to this trademark.

According to section 1.11 of the [WIPO Overview 3.0](#), “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”.

Furthermore, “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. The nature of such additional term(s) may however bear on assessment of the second and third elements”. See section 1.8 of the [WIPO Overview 3.0](#).

The disputed domain name is confusingly similar to the Complainant’s trademark, which is clearly recognizable in the disputed domain name. The addition of the term “Tops” and the letter “s” are not sufficient to remove similarity with the Complainant’s trademark.

This means that the disputed domain name is confusingly similar with the Complainant’s trademark and hence the first element of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests to the disputed domain names.

It is widely accepted among UDRP panels that once a complainant has made a *prima facie* showing indicating the absence of the respondent’s rights or legitimate interests in a disputed domain name the burden of proof shifts to the respondent to come forward with evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of the Policy. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#), and section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain name, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain name and is not commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy.

Moreover, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant’s trademark. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that has not been rebutted by the Respondent. Considering the Panel’s findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain name. Therefore, the Panel finds that the second element of the Policy is fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain names have been registered and are being used in bad faith. Paragraph 4(b) of the Policy provides that the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that [the respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent’s] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business or competitor; or

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

Considering that the disputed domain name is confusingly similar to the Complainant’s trademark, and that the Respondent’s website is clearly imitating the Complainant’s website and logo, it is inconceivable that the Respondent would not have been aware of the Complainant’s trademark when registering the disputed domain name.

The disputed domain name resolves to a website which appears to be a reproduction of the Complainant’s e-commerce website. The Respondent’s website uses a logo similar to the Complainant’s logo and other material, such as photos and other style elements, from the Complainant’s website. The disputed domain name is therefore used to attract, for commercial gain, Internet users to the Respondent’s website by creating a likelihood of confusion with the Complainant’s mark.

Therefore, the Panel finds that the third element of the Policy is fulfilled.

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, <topsfashionnovas.com> be transferred to the Complainant.

/Tuukka Airaksinen/

Tuukka Airaksinen

Sole Panelist

Date: May 31, 2022