

ADMINISTRATIVE PANEL DECISION

Fashion Nova, LLC v. Blue Face
Case No. D2022-1581

1. The Parties

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

Respondent is Blue Face, United States.

2. The Domain Name and Registrar

The disputed domain names <fashionnovausaonline.com> and <topfashionnovaclouds.com> (the “Domain Names”) are registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 1, 2022. On May 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On May 3, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on May 18, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 20, 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 Respondent of the Complaint, and the proceedings commenced on May 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 11, 2022.

The Center appointed John C. McElwaine as the sole panelist in this matter on July 21, 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

Complainant is a United States company engaged in the business of apparel retail and e-commerce. Complainant is the owner of numerous valid U.S. trademark registrations for the FASHION NOVA brand, including registrations for its retail sale of apparel and other fashion products and registrations for its computerized on-line ordering services.

Complainant is the owner of the FASHION NOVA United States trademark registrations and international registrations, including the following registrations in the United States most relevant to this proceeding.

- FASHION NOVA, U.S. Reg. No. 4,785,854, registered on August 4, 2015, in Class 25;
- FASHION NOVA, U.S. Reg. No. 5,328,984, registered on November 7, 2017, in Class 25;
- FASHIONNOVA (stylized), U.S. Reg. No. 5,886,070, registered on October 15, 2019, in Class 35; and
- FASHIONNOVA.COM (stylized), U.S. Reg. No. 5,892,024, registered on October 22, 2019, in Class 25.

Collectively, the FASHION NOVA word marks and stylized marks are referred to herein as the “FASHION NOVA Mark.”

On February 16, 2022, Respondent registered <fashionnovausaonline.com> and on April 2, 2022, Respondent registered <topgashioinnovaclouds.com>. The websites that resolve from the Domain Names are identical and link to each other, which Complainant contends display Complainant’s FASHION NOVA Mark and content from Complainant’s official website.

5. Parties’ Contentions

A. Complainant

Complainant is a United States-based apparel company that operates its business through retail stores and through its e-commerce platform. Complainant alleges its products are offered throughout the world and that through its social media and marketing efforts, Complainant’s name and brand has garnered worldwide recognition and reputation. Complainant asserts that it has used the FASHION NOVA Marks in connection with its retail fashion stores since 2006, and in connection with its e-commerce platform since 2013.

With respect to the first element of the policy, Complainant alleges that the Domain Names incorporate Complainant’s FASHION Nova Mark entirely and simply adds modifiers, thus creating confusingly similar Domain Names.

With respect to the second element of the policy, Complainant alleges that Respondent has not received any license, authorization, or permission to use its FASHION NOVA Mark or any of Complainant’s other trademarks currently or previously in use, nor does Respondent have any business relations with Complainant. Instead, Complainant asserts that Respondent maintained a website that is making unauthorized use of Complainant’s FASHION NOVA Mark, both in the Domain Names and in the website’s content. Complainant further asserts that Respondent has created an infringing website by copying and using hundreds of Complainant’s images that are displayed on Complainant’s home page located at the domain name <fashionnova.com>.

With respect to the third element of the Policy, Complainant asserts Respondent registered and used the Domain Names in bad faith, as evidenced by the fact that it is using Complainant's FASHION NOVA Mark on the website and in the Domain Names without authorization, and that Respondent was attempting to profit off the goodwill Complainant established in its FASHION NOVA Mark.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Even though Respondent has defaulted, paragraph 4 of the Policy requires that, in order to succeed in this UDRP proceeding, Complainant must still prove its assertions with evidence demonstrating:

- (i) each Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of each Domain Name; and
- (iii) each Domain Name has been registered and is being used in bad faith.

Because of Respondent's default, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kasso Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules, and applicable principles of law, the Panel's findings on each of the above cited elements are as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires Complainant show that each of the Domain Names is identical or confusingly similar to a trademark or service in which Complainant has rights. Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2. Here, Complainant has provided evidence that it owns several trademark registrations for the FASHION NOVA Mark.

The Domain Names are confusingly similar to Complainant's FASHION NOVA Mark. 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. See [WIPO Overview 3.0](#), section 1.8; *Mastercard International Incorporated v. Dolancer Outsourcing Inc.*, WIPO Case No. [D2012-0619](#); *Air France v. Kitchkulture*, WIPO Case No. [D2002-0158](#); *DHL Operations B.V. and DHL International GmbH v. Diversified Home Loans*, WIPO Case No. [D2010-0097](#). The addition of the terms "top," "usa," "online," and "clothes" do not prevent the confusing similarity between the Domain Names from the FASHION NOVA Mark.

Moreover, the FASHION NOVA Mark is wholly encompassed and recognizable within the Domain Names.

Accordingly, the Panel finds that the Domain Names are confusingly similar to Complainant's FASHION NOVA Mark in which Complainant has valid trademark rights. Therefore, Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the Policy, paragraph 4(a)(ii), Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the Domain Name. Complainant need only make a *prima facie* showing on this element, at which point the burden shifts to Respondent to present evidence that it has rights or legitimate interests in the Domain Name. If Respondent has failed to do so, Complainant is deemed to have satisfied its burden under paragraph 4(a)(ii) of the Policy. See *Vicar Operating, Inc. v. Domains by Proxy, Inc. / Eklin Bot Systems, Inc.*, WIPO Case No. [D2010-1141](#); see also *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. [D2000-1415](#); *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. [D2000-0252](#).

Complainant asserts that Respondent was not authorized to register the Domain Names and that Respondent allegedly set up a website that mimics Complainant's website. Although properly notified by the Center, Respondent failed to submit any response on these assertions. The silence of a respondent may support a finding that it has no rights or legitimate interests in respect of the domain name. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. [D2000-0007](#); *Ronson Plc v. Unimetal Sanayi ve Tic. A.S.*, WIPO Case No. [D2000-0011](#). Additionally, previous UDRP panels have found that when respondents have not availed themselves of their rights to respond to complainant, it can be assumed in appropriate circumstances that respondents have no rights or legitimate interests in the disputed domain name. See *AREVA v. St. James Robyn*, WIPO Case No. [D2010-1017](#); *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. D2003-0269.

Even without a response, under paragraph 4(c) of the Policy, a respondent's rights or legitimate interests to a domain name may be established by demonstrating any of the following three conditions: (i) before any notice to respondent of the dispute, respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or (ii) respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if respondent has acquired no trademark or service mark rights; or (iii) respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As an initial matter, Respondent cannot satisfy paragraph 4(c)(ii) of the Policy. There is no evidence in the record that Respondent is commonly known by the Domain Names. In fact, to the contrary, the Whois information indicates that Respondent's name is Blue Face.

The Domain Names are linked to the same website, which displays the FASHION NOVA Mark, giving the impression to consumers that the website is sponsored by or affiliated with Complainant. Further, the website displays hundreds of images which were copied from Complainant's website, displaying Complainant's models wearing the Fashion Nova clothing. Additionally, the website displays the name NOVA LUXE, which is Complainant's new product assortment. The Panel finds that the use of the Domain Names to divert Internet traffic or to confuse and deceive the Internet users is not a *bona fide* offering of goods or services under paragraph 4(c)(i) of the Policy. Prior UDRP panels deciding this issue have held that such use of a domain name cannot be a "*bona fide* offering of goods or services" and is not "fair use of the domain name." See *Microsoft Corporation v. Microsof.com aka Tarek Ahmed*, WIPO Case No. [D2000-0548](#) ("by using a domain name and establishing a website deliberately designed to confuse Internet users and consumers regarding the identity of the seller of the goods and services, Respondent has not undertaken a *bona fide* or good faith offering of the goods and services."); see also *Hulu, LLC v. Helecops, Vinod Madushanka*, WIPO Case No. [D2016-0365](#). Without a response from Respondent justifying its use of the Domain Names as authorized by Complainant or as fair use, the Panel cannot find Respondent has a legitimate interest.

In sum, for the reasons detailed above, Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the Domain Names. Respondent had the opportunity to put forth evidence of its rights or legitimate interests yet provided no response as to why its conduct amounts to a right or legitimate interest in the Domain Names under the Policy. In the absence of such a response and

combined with the factors as detailed above, the Panel finds that Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Names in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Bad faith registration can be found where a respondent “knew or should have known” of a complainant’s trademark rights and nevertheless registered a domain name in which it had no right or legitimate interest. See *Accor v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#). As detailed above, Respondent registered the Domain Names, which are confusingly similar to the well-known FASHION NOVA Mark. There is no explanation for Respondent to have chosen to register the Domain Names other than to intentionally trade off the goodwill and reputation of Complainant’s trademarks or otherwise create a false association with Complainant. In fact, the Domain Names linked to websites displaying Complainant’s trademarks and images from Complainant’s website, which demonstrates that Respondent must have had knowledge of Complainant when the Domain Names were registered. With no response from Respondent, such a claim of bad faith registration is undisputed.

Respondent’s use of Complainant’s FASHION NOVA Marks, photographs, and Domain Names that are confusingly similar to the Complainant’s FASHION NOVA Mark is an attempt to profit off the goodwill and reputation of Complainant’s trademark. With no response from Respondent, this claim is also undisputed.

As discussed above, Respondent registered the Domain Names and linked each to a website using Complainant’s FASHION NOVA Mark, including a reproduction of Complainant’s stylized FASHION NOVA trademark and copies of Complainant’s photos and product names to allegedly sell fashion apparel and accessories. This amounts to bad faith use of the Domain Names by Respondent. See *Identigene, Inc. v. Genetest Labs*, WIPO Case No. D2000-1100 (finding bad faith where the respondent’s use of the domain name at issue to resolve to a website where similar services are offered to Internet users is likely to confuse the user into believing that the complainant is the source of or is sponsoring the services offered at the site); *MathForum.com, LLC v. Weiguang Huang*, WIPO Case No. [D2000-0743](#) (finding bad faith under paragraph 4(b)(iv) of the Policy where the respondent registered a domain name confusingly similar to the complainant’s mark and the domain name was used to host a commercial website that offered similar services offered by the complainant under its mark).

In conclusion, the Panel finds that Respondent’s registered and used each Domain Name to attract, for purposes of profiting, Internet users to Respondent’s website by creating a likelihood of confusion with the FASHION NOVA Mark as to the affiliation of its website and product offering. Thus, the Panel finds that Complainant has met its burden of providing sufficient evidence that Respondent registered and is using the Domain Names in bad faith under paragraph 4(a)(iii) 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 Domain Names, <fashionnovausaonline.com> and <topfashionnovaclouds.com>, be transferred to Complainant.

/John C McElwaine/

John C McElwaine

Sole Panelist

Date: August 3, 2022