

## **ADMINISTRATIVE PANEL DECISION**

Fashion Nova, LLC v. Justin Garcia  
Case No. D2022-2013

### **1. The Parties**

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

Respondent is Justin Garcia, United States.

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

The disputed domain name <claimfashionnova.com> is registered with IONOS SE (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 2, 2022. On June 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 7, 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 Complainant on June 8, 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 June 12, 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 June 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 4, 2022.

The Center appointed Timothy D. Casey as the sole panelist in this matter on July 13, 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 fashion apparel company that first began selling clothing at a retail store in Southern California in 2006, eventually growing to six stores, and is offering its products on a variety of e-commerce web and on social media sites since 2013. Complainant has over 20 million followers on Instagram, nearly 2.7 million followers on Facebook, 2.3 million followers on TikTok, and 161,000 followers on Twitter. In 2018 and 2019 Complainant was the topmost searched fashion label on Google, and in 2020 one of the most popular brands on YouTube. Complainant has used FASHION NOVA and FASHIONNOVA (Design) Trademarks in connection with such products and services. Complainant owns several registrations in the United States that comprise or include FASHION NOVA, as well as various corresponding marks in North America, Europe, and Asia, including the following representative marks (the “FASHION NOVA Marks”):

Mark	International Class(es)	Registration No.	Registration Date
FASHION NOVA	25	4,785,854	August 4, 2015
FASHION NOVA	25	5,328,984	November 7, 2017
FASHIONNOVA (DESIGN)	25	5,869,081	September 24, 2019
FASHIONNOVA.COM	25	5,892,024	October 22, 2019
FASHIONNOVA (DESIGN)	35	5,891,994	October 22, 2019
FASHIONNOVA (DESIGN)	35	5,886,070	October 15, 2019

Complainant owns the <fashionnova.com> domain name and features information about Complainant and its various products and services through a website associated with this domain name.

The disputed domain name was registered on August 13, 2020. The disputed domain name resolves to a website bearing one or more of the FASHION NOVA Marks and offering gift cards.

#### 5. Parties' Contentions

##### A. Complainant

Complainant contends that the disputed domain name, which includes “fashion” and “nova” preceded by the descriptive term “claim”, is confusingly similar to the FASHION NOVA Marks. Complainant contends that the addition of the descriptive terms is a non-material difference that does not lessen confusion and that the slight variation should still be recognized as confusingly similar and/or virtually identical.

Complainant contends that Respondent has no rights or legitimate interests in the FASHION NOVA Marks, is not commonly known by a name that includes the FASHION NOVA Marks, was not authorized to use the FASHION NOVA Marks or licensed to them and did not register the disputed domain name until many years after Complainant first started using the FASHION NOVA Marks.

Complainant further contends that Respondent is using the disputed domain name in an attempt to pass itself off as Complainant. As evidence, Complainant provides a screenshot of the home page of a website to which the disputed domain name resolves showing an exact replica of a design mark among the FASHION NOVA Marks at the top of the page, offering a USD 1,000 gift card with a picture of a woman on it, and including the wording “Click Here To Claim Your Fashion Nova Gift Card”. Complainant also contends that the picture of the woman on the card was stolen from Complainant’s website and the gift card is illegitimate because it was not authorized by Complainant and therefore cannot constitute a *bona fide* offering of goods and services.

Complainant further contends that Respondent is using the disputed domain name in bad faith by passing itself off as Complainant so as to free-ride and profit off of Complainant's reputation and goodwill in an effort to sell fraudulent gift cards that are not affiliated with Complainant.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

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

Complainant's use of the FASHION NOVA Marks as early as 2006 and Complainant's registration of numerous FASHION NOVA Marks since that date are more than sufficient to establish that Complainant has trademark rights in the FASHION NOVA Marks.

Complainant contends that the disputed domain name is confusingly similar to the FASHION NOVA Marks. Complainant also contends that Respondent's use of the term "claim" before "fashion" and "nova" in the disputed domain name is a non-material difference and that the disputed domain name is confusingly similar and/or virtually identical to the FASHION NOVA Marks.

The Panel finds that the addition of the term "claim" to the disputed domain name that otherwise completely encompasses one or more of the FASHION NOVA Marks does nothing to avoid a finding that the disputed domain name is confusingly similar to the FASHION NOVA Marks since these trademarks are easily recognizable within the disputed domain name. See [WIPO Overview 3.0](#), sections 1.7 and 1.8.

Accordingly, the Panel finds the disputed domain to be confusingly similar to the FASHION NOVA Marks.

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

The Panel finds that Respondent has no rights or legitimate interests in the disputed domain name. Respondent does not appear to be commonly known by the disputed domain name or the FASHION NOVA Marks. Complainant has not licensed or authorized Respondent to use or register the disputed domain name.

The Panel also agrees that Respondent's offering of gift cards using the FASHION NOVA Marks (with copied material), that are not authorized by Complainant, does not constitute a *bona fide* offering of goods or services. Respondent has not rebutted Complainant's *prima facie* case in this regard and has provided no arguments or evidence showing potential rights or legitimate interests in the disputed domain name. See in this regard [WIPO Overview 3.0](#), section 2.13.

Furthermore, the nature of the disputed domain name, comprising substantially all of at least some of the FASHION NOVA Marks and a descriptive term, carries a risk of implied affiliation with Complainant as it effectively impersonates or suggests sponsorship or endorsement by Complainant, and accordingly cannot constitute a fair use in these circumstances. See in this regard [WIPO Overview 3.0](#), section 2.5.1.

Respondent's use of the term "claim" in the disputed domain name, coupled with the wording "Click Here To Claim Your Fashion Nova Gift Card" on Respondent's website, is additional evidence that Respondent was seeking to target the FASHION NOVA Marks through use of the disputed domain name.

For these reasons, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

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

While the Complaint does not explicitly and separately state that the disputed domain name was registered in bad faith, there can be no question from the overall tone of the Complaint that Complainant nevertheless implied bad faith registration. Therefore, given i) the timing of Complainant's first use and first registration of the FASHION NOVA Marks and Complainant's use of the FASHION NOVA Marks in association with the noted goods and services, ii) the nature of the disputed domain name in combination with Respondent's offering of unauthorized gift cards, iii) the timing of the registration of the disputed domain name, and iv) Complainant's prior trademark rights in the United States and abroad, the Panel finds that Respondent clearly knew of the FASHION NOVA Marks at the time of registration of the disputed domain name and registered the disputed domain name so as to profit from or otherwise exploit the FASHION NOVA Marks. See in this regard [WIPO Overview 3.0](#), section 3.2.1. Respondent's registration of the disputed domain name was therefore in bad faith.

In addition, the Panel finds Respondent's usage of the disputed domain name, along with a stolen image from Complainant's website, that trades off of FASHION NOVA Marks in order to offer unauthorized gift cards, constitutes use in bad faith consistent with paragraph 4(b)(iv) of the Policy.

The Panel concludes that the disputed domain name was registered and is being used in bad faith.

### **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 <claimfashionnova.com> be transferred to the Complainant.

*/Timothy D. Casey/*

**Timothy D. Casey**

Sole Panelist

Date: July 29, 2022