

ADMINISTRATIVE PANEL DECISION

Fashion Nova, LLC, v. Privacy service provided by Withheld for Privacy ehf /
harry trans

Case No. D2022-2028

1. The Parties

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

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / harry trans, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <topfashionova.com> (“the Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 4, 2022. On June 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On the same date, 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 June 8, 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 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 the Respondent of the Complaint, and the proceedings commenced on June 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 11, 2022.

The Center appointed Christiane Féral-Schuhl as the sole panelist in this matter on July 18, 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 one of the leading fashion companies in the United States. The Complainant is an apparel company established in 2006 with a strong presence and reputation online and notably on social networks.

The Complainant underwent a company conversion from incorporation to a limited liability company effective December 31, 2020, and is therefore the successor in interest to Fashion Nova, Inc. to all right, title interest and in the FASHION NOVA Trademarks.

The Complainant is the owner of many trademarks in the world, including in particular the following trademarks (the "FASHION NOVA Trademarks"):

- The US trademark FASHION NOVA, No. 4,785,854, registered on August 4, 2015, for products and services in class 25;
- The US trademark NOVAKIDS, No. 5,656,374, registered on January 15, 2019, for products and services in class 25;
- The US trademark FASHION NOVA, No. 5,328,984, registered on November 7, 2017, for products and services in class 25;
- The US trademark FASHION NOVA CURVE, No. 5,421,675, registered on March 13, 2018, for products and services in class 25;
- The US trademark NOVA BABE, No. 5,577,210, registered on October 2, 2018, for products and services in class 26;
- The US trademark FASHIONNOVA, No. 5,886,070, registered on October 15, 2019, for products and services in class 25;
- The US semifigurative trademark FASHIONNOVA, No. 5,891,994, registered on October 22, 2019, for products and services in class 25;
- The US trademark FASHIONNOVA.COM, No. 5,892,024, registered on October 22, 2019, for products and services in class 25;
- The US trademark FASHIONNOVA, No. 5,869,081, registered on September 24, 2019, for products and services in class 25;
- The US trademark FASHIONNOVAMAN, No. 5,887,124, registered on October 15, 2019, for products and services in class 25;
- The US trademark FASHIONNOVAMEN, No. 5,887,125, registered on October 15, 2019, for products and services in class 25.

The Complainant has also registered the domain name <fashionnova.com> containing the FASHION NOVA Trademarks.

The Disputed Domain Name was registered by the Respondent on February 11, 2019, and at the time of the Complaint and of the decision reverts to an e-commerce website enabling Internet users to buy apparel. The information provided on the website linked to the Disputed Domain Name indicates that the e-commerce shop is located in the United States.

5. Parties' Contentions

A. Complainant

First, the Complainant states it is the owner of all right, title and interest in the US and internationally in the FASHION NOVA Trademarks. The Complainant specifies that it is one of the most well-known apparel and e-commerce companies in the US with a growing popularity internationally. The Complainant indicates that due to an extensive promotion and advertising, including several collaborations with worldwide known celebrities, of its FASHION NOVA Trademarks, the Complainant has established a valuable reputation and has achieved enormous goodwill of great value in these trademarks. The Complainant explains that it has continuously used the FASHION NOVA Trademarks since 2006.

The Complainant states that the Disputed Domain Name is confusingly similar in appearance, sound, connotations and commercial impression to its FASHION NOVA Trademarks given that it incorporates the FASHION NOVA Trademarks with only a minor spelling variation – the deletion of the letter “n” – and that the addition of the descriptive term “top” as a prefix does not make a material difference and lessen the confusion especially given that this term is used in the apparel industry as a shirt.

Then, the Complainant states that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant specifies that there is no evidence that the Respondent is known under the Disputed Domain Name and that it was never authorized by the Complainant to use the FASHION NOVA Trademarks. The Complainant then explains that the Disputed Domain Name is solely an attempt of the Respondent to pass itself off as the Complainant to sell the same type of fashion items. For the Complainant, the Disputed Domain Name resolves to a website that displays a near reproduction of the FASHION NOVA Trademarks with an appearance similar to the Complainant's one. The Complainant states that some photos and products displayed on the Disputed Domain Name's website are the same and were extracted from its own website.

Finally, the Complainant states that the Disputed Domain Name was registered and is being used in bad faith. Indeed, the Complainant specifies that the Disputed Domain Name is used by the Respondent to pass itself off as the Complainant, or a partner or affiliated entities thereof to freeride and profit from the FASHION NOVA Trademarks' good will. The Complainant's states that the Disputed Domain Name's website reproduces photos and sells products sold on the Complainant's website. The Complainant also explains that the information provided on the Disputed Domain Name's website gives a false indication that it is owned by, controlled by, or affiliated with the Complainant because it bears a near reproduction of the FASHION NOVA Trademarks in multiple places, giving consumers the false and misleading impression that the site is affiliated with the Complainant when it is not the case.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that the Complainant shall prove the following three elements:

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

A. Identical or Confusingly Similar

According to the Policy, paragraph 4(a)(i), the Complainant shall prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

First of all, the Panel finds that the Complainant has provided evidence that it has rights in the FASHION NOVA Trademarks.

Then, the Panel wishes to remind that the first element of the UDRP serves essentially 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.

This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of the UDRP (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#))).

The Panel finds that the Disputed Domain Name is composed of:

- the FASHION NOVA Trademarks in their entirety with a minor misspelling construed with the deletion of the second letter "n";
- the term "top"; and
- the generic Top-Level Domain ("gTLD") ".com".

The Disputed Domain Name therefore mainly consists of a misspelling of the FASHION NOVA Trademarks. This conduct is commonly referred to as "typosquatting" and creates a virtually identical and/or confusingly similar mark to the Complainant's trademarks (*Wachovia Corporation v. Peter Carrington*, WIPO Case No. [D2002-0775](#), and section 1.9 of the [WIPO Overview 3.0](#)). Regarding the FASHION NOVA Trademarks, a prior panel decision has declared that the mere deletion of the second letter "n" in a disputed domain name did not prevent a finding a confusing similarity (See *Fashion Nova, Inc. v. Harry Trans*, WIPO Case No. [D2020-1661](#)).

The Panel considers that, in this case, the addition of the term "top" to the distinctive trademark "FASHION NOVA" does not prevent a finding of confusing similarity between the latter and the FASHION NOVA Trademarks.

Finally, the gTLD in a domain name is viewed as a standard registration requirement and as such is disregarded for the purpose of determining whether a domain name is identical or confusingly similar to a trademark.

Therefore, the Panel holds that the Disputed Domain Name is confusingly similar to the FASHION NOVA Trademarks and that the Complainant has established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant shall demonstrate that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Policy, paragraph 4(c), outlines circumstances that if found by the Panel to be proved shall demonstrate the Respondent's rights or legitimate interests in the Disputed Domain Name.

These circumstances are:

- before any notice of the dispute, the 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
- the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- the 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.

According to prior UDRP panel decisions, it is sufficient that a complainant shows *prima facie* that a respondent lacks rights or legitimate interests in a domain name in order to shift the burden of production to the respondent (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Indeed, while the overall burden of proof in a UDRP proceedings is on the complainant, UDRP 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 *prima facie* that a 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 (see section 2.1 of the [WIPO Overview 3.0](#)).

According to the Panel, the Complainant has shown *prima facie* that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

Indeed, it appears that the Complainant has not given any license or authorization of any kind to the Respondent to use the FASHION NOVA Trademarks. Moreover, the Panel finds that there is no evidence that the Respondent is commonly known by the Disputed Domain Name or that the Respondent has the intent to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. On the contrary, at the time of the decision, the Disputed Domain Name reverts to an e-commerce website trying to pass off as the Complainant by repeatedly using the FASHION NOVA Trademarks and by fraudulently using photos from the Complainant's website.

In any case, the Respondent did not reply to the Complainant's contentions, and consequently, did not rebut the Complainant's *prima facie* case.

Therefore, according to the Policy, paragraphs 4(a)(ii) and 4(c), the Panel considers that the Respondent does not have rights to or legitimate interests in the Disputed Domain Name <topfashionova.com>.

C. Registered and Used in Bad Faith

According to the Policy, paragraph 4(a)(iii), the Complainant shall prove that the Disputed Domain Name has been registered and is being used in bad faith.

Thus, paragraph 4(b) provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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.

First, the Panel considers that it is established that some of the Complainant's FASHION NOVA Trademarks were registered and used before the registration of the Disputed Domain Name and that the Complainant is well known by its trademarks. Therefore, there is a presumption of bad faith registration of the Disputed Domain Name given that it nearly wholly reproduces the FASHION NOVA Trademarks.

Moreover, the Panel points out that the Disputed Domain Name revolves to an e-commerce website selling apparel while using photos from the Complainant's own ecommerce website to illustrate the Respondent's products.

Finally, according to prior UDRP panels decisions a pattern of bad faith can be found when as few as two instances of abusive domain name registration were noticed. This may include a scenario where a respondent, on separate occasions, has registered trademark-abusive domain names, even if they are directed at the same brand owner (See section 3.1.2 of the [WIPO Overview 3.0](#)).

In this case, it also appears that the Respondent has already been involved in a UDRP proceeding against the Complainant in the past, where the relevant disputed domain name was also resolving to an ecommerce website trying to pass off as the Complainant, which supports the existence of a pattern of bad faith (See *Fashion Nova, Inc. v. Harry Trans*, WIPO Case No. [D2020-1661](#)).

Considering all of the above, it is not possible to conceive of any plausible actual or contemplated good faith registration and use of the Disputed Domain Name by the Respondent.

Therefore, in view of all the circumstances of this case, the Panel holds that the Respondent has registered and is using the disputed domain name in bad faith according to the Policy, paragraph 4(a)(iii) and 4(b).

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

/Christiane Féral-Schuhl/

Christiane Féral-Schuhl

Sole Panelist

Date: July 20, 2022