

## **ADMINISTRATIVE PANEL DECISION**

Fashion Nova, LLC v. DAVID GIRE

Case No. D2022-2427

### **1. The Parties**

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

The Respondent is c/o WHOISt trustee.com Limited, Registrant of fashionnovasshop.com, United Kingdom / DAVID GIRE, France.

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

The disputed domain name <fashionnovasshop.com> (the “Disputed Domain Name”) is registered with 1API GmbH (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 5, 2022. On July 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 6, 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 July 7, 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 July 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 the Respondent of the Complaint, and the proceedings commenced on July 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 11, 2022. The Respondent did not submit any response. On July 26, 2022, the Center received an email from a third party stating that the Respondent has used its postal address and that it does not manage the Disputed Domain Name. The Center informed the Parties about the Commencement of Panel Appointment Process on August 15, 2022.

The Center appointed Nicholas Weston as the sole panelist in this matter on August 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 a company incorporated in the United States founded in 2006 that operates a fashion business in retail stores and online. The Complainant holds a number of registrations for the mark FASHION NOVA including, for example, United States Trademark No. 4,785,854, registered on August 4, 2015.

The Complainant owns the domain name <fashionnova.com>, where its e-commerce website is located.

The Disputed Domain Name <fashionnovasshop.com> was registered on April 29, 2022. The Disputed Domain Name resolved to a website impersonating the Complainant's official e-commerce website and offering the Complainant's products for sale.

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

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

The Complainant cites its trademark registrations for FASHION NOVA in various countries as *prima facie* evidence of ownership.

The Complainant submits that the trademark FASHION NOVA is well-known and that its rights in that trademark predate the Respondent's registration of the Disputed Domain Name <fashionnovasshop.com>. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates in its entirety the FASHION NOVA trademark and that the similarity is not removed by the addition of the additional letter "s" or the word "shop".

The Complainant contends that the Respondent has no authorized rights or legitimate interests in respect of the Disputed Domain Name and that "(t)he site at the Disputed Domain Name displays the exact FASHION NOVA mark on the site with a similar appearance to Complainant's own legitimate ecommerce website, www.fashionnova.com, including using many of the same photos and style elements of Fashion Nova's site." The Complainant submits that due to the "wholesale copying of Complainant's website, Respondent has no rights or legitimate interests in the disputed domain name."

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and the Rules. It submits that in view of the Respondent registering the Disputed Domain Name then using it to resolve to "a reproduction of the appearance of Complainant's legitimate e-commerce website, it is clear that Respondent is using the Disputed Domain Name in an intentional attempt to attract Internet users to their website for commercial gain, by creating a likelihood of confusion with the FASHION NOVA Mark as to the source, sponsorship, affiliation, and/or endorsement of the website accessible at the Disputed Domain Name" and is registration and use of the Disputed Domain Name in bad faith.

##### **B. Respondent**

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

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

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

### A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark FASHION NOVA. The mark FASHION NOVA was registered as a trademark in the United States on August 4, 2015 (No. 4,785,854). The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected URDP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the FASHION NOVA trademark, the Panel observes that the Disputed Domain Name comprises: (a) an exact reproduction of the Complainant’s FASHION NOVA trademark; (b) followed by the letter “s”; (c) followed by the word “shop”; and (d) followed by the generic Top-Level Domain (“gTLD”) “.com”.

It is well established that the gTLD used as technical part of a domain name may be disregarded (see section 1.11.1 of the [WIPO Overview 3.0](#)). The relevant comparison to be made is with the second-level portion of the Disputed Domain Name, specifically: “fashionnovasshop”.

It is also well-established that 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 UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

This Panel accepts that the addition of the letter “s” and the word “shop” does not preclude a finding of confusing similarity to the Complainant’s trademark (see, for example: *Daimler AG v. William Wood*, WIPO Case No. [D2008-1712](#)).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden of proof on the Complainant to establish the absence of the Respondent’s rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1)

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it has not licensed, permitted or authorized the Respondent to use the Complainant’s trademark or to sell its products and for those reasons, the Respondent is not making a *bona fide* offering of goods or services. The Complainant submits that “using a web site that features hundreds of Fashion Nova’s photos cannot constitute a *bona fide* offering of goods and services.”

This Panel accepts that the Respondent is not an authorized reseller with a legitimate interest in a domain name incorporating a Complainant's mark, and there is no disclaimer on the website the Disputed Domain Name resolve to, therefore it cannot meet the tests set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). Nor, alternatively, is the Respondent commonly known by either of the Disputed Domain Name.

The composition of the Disputed Domain Name consists of the Complainant's trademark and terms connoting some kind of affiliation with the Complainant's retail business. In this Panel's view, the conduct indicates an awareness of the Complainant and its mark and intent to take unfair advantage of such, which does not support a finding of any rights or legitimate interests.

This Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it is engaging in an illegitimate commercial use of the Disputed Domain Name by suggesting some association with the Complainant and misleading consumers who are seeking out the Complainant's mark FASHION NOVA to opportunistically divert Internet traffic to its web page.

The Panel finds for the Complainant on the second element of the Policy.

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

The third element of the Policy that a complainant must also demonstrate is that the disputed domain name in question has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both.

The evidence that the Respondent has registered and used the Disputed Domain Name in bad faith is overwhelming. This Panel finds it most unlikely that the Respondent might have registered the Disputed Domain Name without knowing of the trademark (see *Fashion Nova, LLC c. shen lin*, WIPO Case No. [D2021-3690](#) (“(t)he FASHION NOVA brand is well known”); and *Fashion Nova, LLC v. Blue Face*, WIPO Case No. [D2021-3741](#) (“Complainant's FASHION NOVA mark and related services are widely known and recognized”). This Panel finds that the Respondent is, or should have been, aware of the Complainant's reputation and trademark when registering the Disputed Domain Name (see [WIPO Overview 3.0](#), section 3.2.2).

On the issue of use, the uncontradicted evidence of record is that the Disputed Domain Name was used to resolve to a website bearing images, products and artwork from the Complainant's genuine online store, and offering the same FASHION NOVA goods for sale. In line with prior UDRP panel decisions, the Panel finds that this misconduct is an intentional attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (see [WIPO Overview 3.0](#), section 3.1.4).

This Panel finds that the Respondent has taken the Complainant's trademark FASHION NOVA and incorporated it in the Disputed Domain Name without the Complainant's consent or authorization, along with the letter “s” and the word “shop”, for the very purpose of capitalizing on the reputation of the trademark by diverting Internet users for commercial gain to its website which falls into the meaning of bad faith under paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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 Disputed Domain Name <fashionnovasshop.com> be transferred to the Complainant.

*/Nicholas Weston/*

**Nicholas Weston**

Sole Panelist

Date: August 24, 2022