

## **ADMINISTRATIVE PANEL DECISION**

Fashion Nova, LLC v. xi wei

Case No. D2022-3625

### **1. The Parties**

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

The Respondent is xi wei, China.

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

The disputed domain name <thefashionnov.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 September 29, 2022. On September 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 3, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 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 October 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 October 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 1, 2022.

The Center appointed Peter Wild as the sole panelist in this matter on November 7, 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 owns a number of trademarks for FASHION NOVA and variations, in the United States, mainly for goods class 25, e.g., US Registration Number 4785854 (registered on August 4, 2015) and FASHIONNOVA.COM US Registration Number 5892024 (registered on October 22, 2019). The Complainant is active and well-known as a producer of young, body positive apparel, fashion and clothing. "www.fashionnova.com" is its main Internet address.

The Disputed Domain Name was registered on September 2, 2022. The Disputed Domain Name used to resolve to a website appearing to offer clothing for sale. It no longer resolves to an active page.

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

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

The Complainant contends that it is the owner of a number of trademarks consisting of the element "FASHIONNOVA" and that it has a strong reputation for the products under this trademark. It has a strong presence on the Internet, in particular with social media and related influencers. The Complainant asserts that the Disputed Domain Name <thefashionnov.com> is confusingly similar to the above-mentioned FASHION NOVA and FASHIONNOVA.COM trademarks. The Complainant alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Name which was registered and used in bad faith. Finally, the Complainant refers to a number of previous Panel decisions where the well known status of its trademark was confirmed.

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

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

#### **6. Discussion and Findings**

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

The Complainant owns registered rights in the trademark FASHION NOVA and FASHIONNOVA.COM. These trademarks are almost fully integrated in the Disputed Domain Name. The element FASHION NOV stands prominently in the Disputed Domain Name. There are however two elements in the Disputed Domain Name which differ from the Complainant's trademark:

-the word "the" is added at the beginning of the Disputed Domain Name. This Panel finds that the element "the" is a word in the English language, and does not prevent a finding of confusing similarity with the Disputed Domain Name.

-The letter "A" at the end of FASHION NOVA is omitted. Also here, this Panel sees no significant influence on the overall appearance of the Disputed Domain name which remains confusingly similar with the Complainant's trademarks.

Therefore, the Panel is satisfied that the first element of the Policy is met.

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

The Complainant must establish a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating its rights or legitimate interests in the Disputed Domain Name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Respondent is not known under the Disputed Domain Name and claims no connection with or authorization from the Complainant. The Respondent seemed to offer clothing goods on the website under the Disputed Domain Name, goods which had a similar characteristic as the goods which the Complainant sells on its website under “fashionnova.com”. The Respondent therefore used the Disputed Domain Name to attract customers to its own website, making them believe that the site is the same as the Complainant's official site or affiliated with it.

In the absence of any explanation by the Respondent, the Complainant's establishment of the *prima facie* case is sufficient.

With the evidence on file, this Panel is satisfied that the second element of the Policy is met.

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

The Disputed Domain Name was used to attract Internet user to a website on which various clothing and apparel goods were offered for sale. On that website, there is a certain graphic similarity with the Complainant's landing page, especially with discount banners and the way the fashion pictures are arranged. The displaced goods are very similar to the goods which are advertised and sold on the Complainant's website. Taking into account the strength of the Complainant's trademark FASHIONNOVA, which was confirmed by a number of previous UDRP panels in recent UDRP cases, e.g. *Fashion Nova, LLC 诉 薛荧坤 (Xue Ying Kun)*, WIPO Case No. [D2022-2426](#), and the Respondent's use of the Disputed Domain Name, the Panel is convinced that the Respondent was and is aware of the Complainant's trademark. In this Panel's view, this establishes bad faith registration of the Disputed Domain Name.

Using a well-known trademark in a domain name which refers to the Complainant's products will attract Internet users who are interested in the Complainant's products. This is especially so where the domain name is almost identical to the Complainant's trademark. This in turn may, among other commercial benefits, generate traffic to the website the Disputed Domain Name resolves to. The use of the Complainant's trademark in the Disputed Domain Name and the linked website must therefore be seen as the Respondent's intentional attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark 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 (paragraph 4(b)(iv) of the Policy). This establishes bad faith use of the Disputed Domain Name.

This Panel therefore comes to the conclusion that the third element of the Policy is met.

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

/Peter Wild/

**Peter Wild**

Sole Panelist

Date: November 17, 2022