

## **ADMINISTRATIVE PANEL DECISION**

Fashion Nova, LLC v. Bai Xiqing  
Case No. D2023-2553

### **1. The Parties**

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

The Respondent is Bai Xiqing, China.

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

The disputed domain name <fashionnova.shop> is registered with NETIM SARL (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 13, 2023. On June 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 15, 2023, 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 (NETIM) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 20, 2023, 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 the same day.

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 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 12, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on July 17, 2023. 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**

According to information in the Complaint, the Complainant is a Los Angeles-based apparel company established in 2006 and known for its apparel goods. The Complainant has registered various trademarks consisting of or including FASHION NOVA, such as the United States trademark No. 4,785,854 registered on August 4, 2015 for FASHION NOVA (word trademark).

The disputed domain name was registered on June 15, 2021, and is offered for sale through <sedo.com> platform for EUR 7,999.

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

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

The Complainant argues that the disputed domain name is identical to the Complainant's trademark FASHION NOVA, because it contains a reproduction of the said trademark.

As regards the second element, the Complainant argues that neither the Complainant, nor anyone acting on its behalf, has ever authorized the Respondent to use the FASHION NOVA trademark in connection with the sale or promotion of any goods or services. The Respondent's registration of the disputed domain name is not legitimate, because it hinders the Complainant from exploiting the rights in its FASHION NOVA trademark through operation of the disputed domain name. The offer for sale of the disputed domain name is not legitimate, as the Respondent has no rights in the FASHION NOVA trademark.

With respect to the third element, the Complainant argues that the disputed domain name was registered in bad faith, namely to sell it back to the Complainant, as evidenced in the correspondence submitted in the case file. Moreover, the Respondent is a repeat offender, as the Complainant has initiated other UDRP proceedings against him.

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

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

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

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

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

Under paragraph 4(a)(i) of the Policy, the Complainant must prove that it has rights to a trademark, and that the disputed domain name is identical or confusingly similar to that trademark. This first element under the Policy functions primarily as a standing requirement. [WIPO Overview 3.0](#), section 1.7.

The Complainant has provided evidence of its rights in the FASHION NOVA trademark by providing evidence of its trademark registrations.

As regards the second limb of the first element, the test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name. It is well established that the Top-Level Domain may be ignored when assessing the confusing similarity between the disputed domain name and the Complainant's trademarks as they are viewed as a standard registration requirement. See section 1.11.1 of the [WIPO Overview 3.0](#).

The disputed domain name incorporates the FASHION NOVA trademark in its entirety without any addition. It is, therefore, identical to the FASHION NOVA trademark in which the Complainant has rights.

The Panel finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

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

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name.

As established by previous UDRP panels, it is sufficient for the complainant to make a *prima facie* case demonstrating that the respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the respondent (see section 2.1 of the [WIPO Overview 3.0](#)). In the present case, the Complainant has proved it holds rights over the trademark FASHION NOVA, and claims that the Respondent has no legitimate reason to register or acquire the disputed domain name. There is no evidence that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor does the Respondent appear to engage in any legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraphs 4(c)(i) and (iii) of the Policy.

Also, there is no evidence that the Respondent is commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy.

The Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because the Respondent did not respond to the Complainant's contentions.

Furthermore, the nature of the disputed domain name carries a high risk of implied affiliation and cannot constitute a fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied.

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

Under paragraph 4(a)(ii) of the Policy, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

According to the un rebutted assertions of the Complainant, its FASHION NOVA trademarks were used in commerce well before the registration of the disputed domain name. The disputed domain name is identical to the Complainant's trademarks. Under these circumstances, it is most likely that the Respondent was aware of the Complainant's trademarks at the registration date of the disputed domain name.

As regards the use, according to the evidence in the case file, the disputed domain name is offered for sale through <sedo.com> for EUR 7,999. This sustains in the Panel's view the conclusion of bad faith registration and use of the disputed domain name, primarily for the purpose of selling it to the Complainant under paragraph 4(b)(i) of the Policy. Also, there appears to be a pattern of abusive registrations by the Respondent, as the un rebutted evidence in the case file shows that the Respondent was involved in previous UDRP proceeding where similar factual situations caused the concerned UDRP panels to decide in favor of the Complainant (See *Delivery Hero SE v. Xiqing Bai*, WIPO Case No. [DCO2021-0070](#)). This fact also supports a finding grounded on paragraph 4(b)(ii) of the Policy, referring to a respondent registering "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".

With the evidence on file, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are satisfied.

## **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, <fashionnova.shop>, be transferred to the Complainant.

*/Mihaela Maravela*

**Mihaela Maravela**

Sole Panelist

Date: July 28, 2023