

## **ADMINISTRATIVE PANEL DECISION**

Fashion Nova, LLC v. sophia liu  
Case No. D2022-2010

### **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 sophia liu, China.

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

The disputed domain name <fashionnovafashion.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 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 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 9, 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 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 4, 2022.

The Center appointed Dr. Clive N.A. Trotman as the sole panelist in this matter on July 15, 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, established in 2006, is a Los Angeles based apparel and e-commerce company. It has a prominent Internet presence including a website displaying its products, and also advertises in magazines and at trade shows, and through social media including Instagram, Facebook, Tik Tok, and Twitter. The Complainant receives the endorsement of social media influencers including a number of well-known celebrities, and is popular on YouTube.

The Complainant holds a number of registered trademarks, of which the following are representative for the purposes of this proceeding:

FASHION NOVA, United States Patent and Trademark Office (“USPTO”) principal register, registered August 4, 2015, registration number 4785854, in class 25;

FASHION NOVA, USPTO, principal register, registered November 7, 2017, registration number 5328984, in class 25;

FASHIONNOVA, USPTO, principal register, registered October 15, 2019, registration number 5886070, in class 35.

The Complainant states that it also has a number of registered international trademarks. Its main website is located at “www.fashionnova.com”.

Nothing of significance is known about the Respondent except for the contact details provided at the time of registration of the disputed domain name on December 15, 2021. The disputed domain name resolves to a website (the “Respondent’s website”) headed prominently FASHIONNOVA followed by several pages displaying models wearing fashion clothing, with prices.

#### **5. Parties’ Contentions**

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

The Complainant contends that the disputed domain name is confusingly similar to a trademark and service mark (hereafter, “trademark”) in which the Complainant has rights. The disputed domain name includes the Complainant’s trademark in full, with the additional descriptive term “fashion”, which is a slight variation that does not detract from the confusing similarity with the trademark.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The registration date of the disputed domain name is some years later than that of the Complainant’s trademarks. The Respondent has never been authorised by or on behalf of the Complainant to use the Complainant’s trademark. The Respondent cannot claim to be commonly known by the disputed domain name, which has been used in an attempt by the Respondent to pass itself off as the Complainant and not for any purpose qualifying as fair use.

The Complainant says much of the illustrative material appearing on the Respondent’s website, comprising models and clothing, has been copied from the Complainant’s website and reproduced without permission. This cannot qualify as a *bona fide* offering of goods or services by the Respondent.

The Complainant says the disputed domain name was registered and is being used in bad faith. Screen captures of the Respondent's website display the Complainant's trademark and a number of photographs of models and clothing that the Complainant states are copies of its own photographs. The Respondent's website has a payment facility that gives the impression the website is owned by the Complainant whereas it is owned by the Respondent. The use of the disputed domain name is commercial and is intended to attract Internet users by confusing them into believing it to be connected with or to have the endorsement of the Complainant.

The Complainant has cited references to previous decisions under the Policy that it considers to be relevant to the Complaint.

The Complainant requests the transfer of the disputed domain name.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy states that the Respondent is required to submit to a mandatory administrative proceeding in the event that the Complainant asserts to the applicable dispute-resolution provider, in compliance with the Rules, that:

"(i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) you have no rights or legitimate interests in respect of the domain name; and

(iii) your domain name has been registered and is being used in bad faith".

The Complainant has made the relevant assertions as required by the Policy. The dispute is properly within the scope of the Policy and the Panel has jurisdiction to decide the dispute.

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

The Panel is satisfied by the evidence that the Complainant has rights in the registered trademarks listed in section 4 above.

The disputed domain name <fashionnovafashion.com>, omitting the generic Top-Level Domain ("gTLD") ".com", may be read as "fashion", "nova", "fashion", the first two words of which, taking into account the limited character set permitted in a domain name, are identical or similar to the Complainant's trademark in either of the registered forms FASHION NOVA or FASHIONNOVA, constituting confusing similarity. The third word, "fashion", does not prevent the Complainant's trademark from being recognizable within the disputed domain name (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Accordingly the Panel finds for the Complainant under paragraph 4(a)(i) of the Policy.

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

The Complainant has established a *prima facie* case to the effect that the Respondent has never been authorised by or on behalf of the Complainant to use the Complainant's trademark and has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy provides for the Respondent to contest the Complainant's *prima facie* case under paragraph 4(a)(ii) of the Policy and to establish rights or legitimate interests in a disputed domain name by demonstrating, without limitation:

- “(i) before any notice to you of the dispute, your 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
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are 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”.

The Respondent has not responded and has not asserted rights or legitimate interests in the disputed domain name. There is no evidence that could lead the Panel to anticipate that the Respondent might prevail under any of the provisions of paragraphs 4(c)(i), (ii) or (iii) of the Policy, or otherwise. The Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name and finds for the Complainant under paragraph 4(a)(ii) of the Policy.

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

The Complainant must prove under paragraph 4(a)(iii) of the Policy that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

- “(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration 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 your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location”.

The provisions of paragraph 4(b) of the Policy are without limitation and bad faith may be found alternatively by the Panel.

The Panel has examined the screen captures, produced in evidence, showing the content of the Respondent's website to which the disputed domain name has resolved. The website pages are typically headed FASHIONNOVA, being the Complainant's trademark, with all subsequent content dedicated to the sale of fashion clothing. The Complainant has also produced a copy of part of one of its own website pages, the example having a prominent placard heading proclaiming, among other things, “40% OFF” (in very large banner type) then “THE ENTIRE SITE”, all of which lettering is in gold on a black background, centre screen. One of the Respondent's website pages is placarded similarly, stating “ALL MATCHING SETS / 40% OFF”, the “40% OFF” also being in very large banner type, the whole in gold lettering on a mainly dark background, and also centre screen. The style of the Respondent's discount announcement projects a clear impression

of having been inspired by the Complainant's website. The rest of the Respondent's website pages display models exhibiting fashion clothing with prices, as does the Complainant's page.

The Respondent's website has a box referring to payment, with a selection of payment card logos and an option for changing the price currency. A shopping cart facility is provided, as are links including "My Account", "shipping", and "return policies", making clear that the Respondent's website is a commercial operation. At the bottom of this box are a number of references to the Complainant's trademark, such as FASHION NOVA CURVE, FASHION NOVA WOMEN FASHION, FASHION NOVA STORE, and others.

The website to which the disputed domain name has resolved shows a marked similarity in style and content to the Complainant's website and displays the Complainant's registered trademark. In the terms of paragraph 4(b)(iv) of the Policy, the Panel finds, on the evidence and on the balance of probabilities, that the disputed domain name has been used with intent to attract Internet users by confusion with the Complainant's trademark for the Respondent's commercial gain, constituting use in bad faith. The Panel also finds, on the balance of probabilities, that the disputed domain name was registered for the bad faith purpose for which it has been used. Registration and use of the disputed domain name in bad faith are found in the terms 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, <fashionnovafashion.com> be transferred to the Complainant.

*/Dr. Clive N.A. Trotman/*

**Dr. Clive N.A. Trotman**

Sole Panelist

Date: July 27, 2022