

EXPERT DECISION

Fashion Nova, LLC v. B. X.
Case No. DLI2022-0001

1. The Parties

The Claimant is Fashion Nova, LLC, United States of America ("United States"), represented by Ferdinand IP, LLC, United States.

The Respondent is B. X., China.

2. The Disputed Domain Name

The dispute concerns the disputed domain name <fashionnova.li>. The Registrar of the disputed domain name is NETIM.

3. Procedural History

The Request was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 21, 2022. On July 22, 2022, the Center transmitted by email to SWITCH, the ".ch" and ".li" registry, a request for verification in connection with the disputed domain name. In response to a notification by the Center that the Request was administratively deficient, the Claimant filed a first amended Request on August 8, 2022. On July 23, 2022, SWITCH transmitted by email to the Center its verification response disclosing the registrant information details. On August 9, 2022, the Center sent to the Claimant the Registry disclosed information, to which the Claimant sent a second amended Request on the same date. The Center verified that the Request together with the amended Requests satisfied the formal requirements of the Rules of procedure for dispute resolution procedures for ".ch" and ".li" domain names (the "Rules of Procedure"), adopted by SWITCH on January 1, 2020.

In accordance with the Rules of Procedure, paragraph 14, the Center formally notified the Respondent of the Request, and the dispute resolution procedure commenced on August 10, 2022. In accordance with the Rules of Procedure, paragraph 15(a), the due date for Response was August 30, 2022.

The Respondent has neither filed a Response nor expressed his readiness to participate in a Conciliation in accordance with paragraph 15(d) of the Rules of Procedure.

On September 9, 2022, the Center notified the Claimant accordingly, who on the same date made an application for the continuation of the Dispute resolution proceedings in accordance with paragraph 19 of the Rules of Procedure and paid the required fees.

On October 31, 2022, the Center appointed Tobias Zuberbühler as Expert in this case. The Expert finds that he was properly appointed. In accordance with the Rules of Procedure, paragraph 4, the above Expert has declared his independence of the parties.

4. Factual Background

The Claimant is one of the leading fashion companies in the United States and worldwide, established in Los Angeles in 2006.

The Claimant owns trademark registrations in various jurisdictions, including:

- the United States trademark FASHION NOVA (Reg. No. 4785854, registered on August 4, 2015); and
- the International Registration designating Liechtenstein FASHION NOVA (Reg. No. 1377383, registered on October 24, 2017).

The Claimant further holds the domain name <fashionnova.com> under which the official website of the Claimant is available. The Claimant advertises and sells its services through its <fashionnova.com> domain name.

The disputed domain name was registered on June 8, 2022, and resolves to an inactive page where the disputed domain name is offered for sale.

Before the Claimant initiated the present proceedings, a domain name reseller sent an email to the Claimant offering the disputed domain name together with other domain names incorporating the Claimant's trademark for sale.

5. Parties' Contentions

A. The Claimant

The Claimant is the owner of the FASHION NOVA mark in various countries, including Liechtenstein. The disputed domain name is confusingly similar to the Claimant's trademark.

The Respondent's allocation and use of the disputed domain name is a violation of trademark law, right to name, and unfair competition under Liechtenstein law.

The Claimant alleges that it has satisfied all elements of paragraph 24 of the Rules of Procedure.

B. The Respondent

The Respondent did not reply to the Claimant's contentions. Pursuant to paragraph 23(b) of the Rules of Procedure, the Expert is therefore entitled to draw such inferences as he considers appropriate.

6. Discussion and Findings

According to paragraph 24 of the Rules of Procedure, the Expert shall grant the Request if the allocation or use of the disputed domain name constitutes a clear infringement of a Right in a distinctive sign which the Claimant owns under the law of Liechtenstein (in disputes over a domain name under the ccTLD ".LI").

Paragraph 24(d) of the Rules of Procedure specifies that such clear infringement of an intellectual property right exists when:

- both the existence and the infringement of the claimed right in a distinctive sign clearly result from the wording of the law or from an acknowledged interpretation of the law and from the presented facts and are proven by the evidence submitted; and
- the Respondent has not conclusively pleaded and proven any relevant grounds for defence; and
- the infringement of the right justifies the transfer or revocation of the disputed domain name, depending on the remedy requested in the request.

A. The Claimant has a Right in a distinctive sign under the law of Liechtenstein

As outlined above, the Claimant owns various trademark registrations designating Lichtenstein for its trademark FASHION NOVA.

Due to the use of its trademark FASHION NOVA in business transactions, the Claimant can also invoke the unfair competition use of its protected sign under the Liechtenstein Unfair Competition Act.

Thus, the Expert holds that the Claimant established its Right in a distinctive sign in Liechtenstein.

B. The allocation or use of the disputed domain name constitutes a clear infringement of a right in a distinctive sign which the Claimant owns under the law of Liechtenstein

The owner of a trademark has the exclusive right to use the trademark to designate the goods and/or services for which it is registered. In particular, the trademark owner may prohibit others from using a sign that is similar to its trademark and is used for the same or similar goods, so that a likelihood of confusion arises (Art. 13(1) and (2) in conjunction with Art. 3(1)(c) of the Liechtenstein Trademark Act).

The disputed domain name is identical to the Claimant's trademark. The disputed domain name is offered for sale. This commercial use is therefore affirmed and a likelihood of confusion is given between the disputed domain name and the Claimant's trademark, resulting in an infringement of the Claimant's trademark in accordance with Art. 13 2) b) of the Liechtenstein Trademark Act.

Based on the facts of the case, the Expert additionally has no doubt that the disputed domain name was registered by the Respondent to merely prevent the Claimant from using the disputed domain name, which, as a result, suffered an impairment of its economic interests. The Respondent's behavior shows the typical pattern of cybersquatting. Such behavior constitutes bad faith and has to be qualified as unfair and in breach of Art. 2 1) of the Liechtenstein Unfair Competition Act.

The Respondent did not provide any reasonable explanation why he registered the disputed domain name and to the Expert's best knowledge, no such grounds can be seen. On the other hand, the registration of the disputed domain name puts the Claimant at a considerable disadvantage: the disputed domain name cannot be used by the Claimant to offer its services via this domain name as well.

The Expert finds that the Request is well founded and that the Respondent's infringements of the Claimant's rights justify a transfer of the disputed domain name to the Claimant according to paragraph 24(d)(iii) of the Rules of Procedure.

7. Expert Decision

For the above reasons, in accordance with paragraph 24 of the Rules of Procedure, the Expert orders that the disputed domain name <fashionnova.li> be transferred to the Claimant.

/Tobias Zuberbühler/

Tobias Zuberbühler

Expert

Date: November 3, 2022