

ADMINISTRATIVE PANEL DECISION

Fashion Nova, LLC v. Bai Xiqing
Case No. DMD2022-0005

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 Bai Xiqing, China.

2. The Domain Name and Registrar

The disputed domain name <fashionnova.md> is registered with Information Technology and Cyber Security Service (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 26, 2022. On July 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 1, 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 August 4, 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 August 4, 2022.

The Center verified that the Complaint together with 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 August 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 5, 2022.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on September 16, 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 fashion apparel company established in 2006, which sells its products in various stores as well as on a variety of e-commerce web and on social media sites since 2013. The Complainant has over 20 million followers on Instagram, nearly 2.7 million followers on Facebook, 2.3 million followers on TikTok, and 161,000 followers on Twitter. In 2018 and 2019, the Complainant was the topmost searched fashion label on Google, and, in 2020, one of the most popular brands on YouTube.

The Complainant owns numerous trademark registrations for the mark FASHION NOVA, as well as for variations of this mark (such as NOVAKIDS, FASHION NOVA CURVE, NOVA BABE, NOVA SHAPE, NOVA CURVE, NOVA LUXE, NOVA DENIM, NOVA MAN, etc.), including the following registrations:

United States Trademark Registration No. 4,785,854, FASHION NOVA, figurative, registered on August 4, 2015, in Class 25;

International Trademark Registration No. 1575597, FASHION NOVA, word, registered on December 30, 2020, in Class 14, designation among other jurisdictions the Republic of Moldova;

International Trademark Registration No. 1338861, FASHION NOVA, figurative, registered on January 13, 2017, in Class 25, designation among other jurisdictions the Republic of Moldova; and

International Trademark Registration No. 1339288, FASHION NOVA, word, registered on January 13, 2017, in Class 35, designating among other jurisdictions the Republic of Moldova, (collectively the “FASHION NOVA mark”).

Prior decisions under the Policy have recognized the well known character of the FASHION NOVA mark.¹

The Complainant further owns the <fashionnova.com> domain name (registered on March 9, 2006), which resolves to its corporate website where its products are offered and commercialized.

The disputed domain name was registered on January 10, 2022. At the time of the Complaint, the disputed domain name was offered for sale for EUR 3,500. The Panel notes that the disputed domain name is currently inactive.

5. Parties' Contentions

A. Complainant

Key contentions of the Complaint may be summarized as follows:

Through use, extensive promotion and advertising, the Complainant has established enormous goodwill and reputation in the FASHION NOVA mark.

The disputed domain name is identical to the Complainant's trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the terms included in the disputed domain, and has never been

¹ See, e.g., *Fashion Nova, LLC c. shen lin*, WIPO Case No. [D2021-3690](#); *Fashion Nova, LLC v. Blue Face*, WIPO Case No. [D2021-3741](#); or *Fashion Nova, LLC c. Rick Sorentos*, WIPO Case No. [DMX2022-0012](#).

authorized to use the FASHION NOVA mark.

The disputed domain name was registered and is being used in bad faith. The disputed domain name was registered in bad faith to sell it to the Complainant, as evidenced by an email dated June 10, 2022 that was addressed to the Complainant by an individual named Richard Saghian. In this communication, the disputed domain name was offered for sale to the Complainant together with other nine domain names referring to the FASHION NOVA mark.²

The Complainant has cited previous decisions under the Policy that it considers supportive of its position, and requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

A. Identical or Confusingly Similar

The Complainant indisputably has rights in the registered trademark FASHION NOVA, both by virtue of its trademark registrations and as a result of continuous use of this mark since 2006.

The disputed domain name reproduces the FASHION NOVA mark, and the country code Top-Level Domain ("ccTLD") ".md" is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)").

Accordingly, the Panel finds that the disputed domain name is identical to the Complainant's trademark, and the first element of the Policy under paragraph 4(a)(i) has been satisfied.

B. Rights or Legitimate Interests, and Registered and Used in Bad Faith

The Panel considers appropriate to analyze the second and the third elements of the Policy together.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the [WIPO Overview 3.0](#).

The Complainant's assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name, providing the circumstances of paragraph 4(c) of the Policy, without limitation, in order to rebut the Complainant's *prima facie* case.

However, the Respondent has not offered any explanation of any rights or legitimate interests in the disputed domain name, and has not come forward to deny the Complainant's assertions of bad faith, choosing not to

² The domain names offered for sale to the Complainant together with the disputed domain name were the following: <fashionnova.bg>, <fashionnova.by>, <fashionnova.hr>, <fashionnova.li>, <fashionnova.im>, <fashionnova.rs>, <fashionnova.mk>, <fashionnova.com.es>, and <fashionnova.com.se>.

reply to the Complaint.

The Panel notes that, according to the Complainant's allegations and the evidence provided by the Complainant, the disputed domain name is currently inactive, and that it was offered for sale to the Complainant together with other nine domain names targeting the FASHION NOVA mark.

The Panel considers that the use of a domain name in connection with a *bona fide* business of trading in domain names may, in appropriate circumstances, confer rights or legitimate interests under the Policy. However, in this particular case, the circumstances of this case show, on the balance of probabilities, that there has been targeting of the Complainant and its trademarks by the Respondent. This is so considering in particular (i) the well-known character of the FASHION NOVA mark, and its extensive use over the Internet; (ii) the identical nature of the disputed domain name to the Complainant's trademark; (iii) the current passive holding of the disputed domain name; and (iii) the offer for sale of the disputed domain name to the Complainant together with other nine domain names also identical to the FASHION NOVA mark. The Panel further notes that the Respondent has not replied to the Complaint, not providing any evidence related to any legal activity as a dealer in domain names.

In the Panel's view, the use of the disputed domain name under these circumstances cannot be considered a *bona fide* offering of goods, and all these circumstances indicate as well that the Respondent registered and used the disputed domain name in bad faith.

These circumstances indicate, on a balance of probabilities, that the Respondent acquired the disputed domain name knowing of the existence of the Complainant's trademark and targeting this mark, due to the value that it may have for the Complainant, its competitors, or other third parties.

Taking into consideration all cumulative circumstances of this case, on the balance of probabilities, the Panel finds that the disputed domain name was registered and is being used for targeting the Complainant's trademarks, in bad faith, with the intention of obtaining a free ride on the established reputation of the Complainant and its trademarks, and, within the meaning of paragraph 4(b)(i) of the Policy, with the intention of selling it primarily to the Complainant or to its competitors.

Furthermore, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the Respondent does not have any rights or interests in the disputed domain name, and that the Respondent registered and is using the disputed domain name in bad faith.

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.md> be transferred to the Complainant.

/Reyes Campello Estebarez/

Reyes Campello Estebarez

Sole Panelist

Date: September 26, 2022