

ADMINISTRATIVE PANEL DECISION

FN Herstal v. Ndille Brandon and Guide Mail, Guide Mail
Case No. D2023-4410

1. The Parties

The Complainant is FN Herstal, Belgium, represented by Williams Mullen, P.C., United States of America (“U.S.”).

The Respondent is Ndille Brandon, Cameroon, and Guide Mail, Guide Mail, U.S.

2. The Domain Names and Registrars

The disputed domain names <fnfirearmsstore.com> and <fnfirearmsusa.com> are registered with NameCheap, Inc. and NameSilo, LLC, respectively (together the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 23, 2023. On October 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted For Privacy, PrivacyGuardian.org llc and Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center sent an email communication to the Complainant on October 25, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on October 27, 2023.

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 November 2, 2023. In accordance with the Rules,

paragraph 5, the due date for Response was November 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 5, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on December 14, 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

The Complainant is a longstanding manufacturer and supplier of firearms with its registered seat in Belgium.

The Complainant is the owner of the FN trademark. Among others, the Complainant is the owner of the U.S. Trademark No. 4531259, registered on May 20, 2014; and the U.S. Trademark No. 0588170, registered on April 13, 1954, both for FN and covering protection *i.a.* for goods including firearms as protected in class 13.

The Complainant further owns and operates various domain names incorporating its FN trademark, such as <fnherstal.com> and <fnamerica.com>.

The Respondents are reportedly located in Cameroon and the U.S. The Respondent Ndille Brandon has been involved in various UDRP cases as a respondent previously, all of which decided against the Respondent (Annex 6 to the Complaint). As regards the Respondent Guide Mail, the Panel notes that the address provided by the Registrar for the Respondent is identical to (an incorrect) address for a respondent in a previous UDRP case filed by the Complainant (Annex 5 to the Complaint).

The disputed domain name <fnfirearmsusa.com> was registered on November 10, 2022.

The disputed domain name <fnfirearmsstore.com> was registered on December 28, 2022.

The screenshots, as provided by the Complainant, show that the disputed domain names resolve to identical or at least highly similar websites purportedly offering various firearms and related goods. Both websites share multiple identical features, such as the prominent use of the Complainant's FN trademark, as well as identical contact forms (Annex 4 to the Complaint). The associated websites create the appearance of being operated by the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

B. Respondent

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

6. Discussion and Findings

6.1. Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the registrants of the disputed domain names are the same entity or mere alter egos of each other, or that the disputed domain names are at least under common control. The Complainant

requests the consolidation of the Complaint against the multiple disputed domain names' registrants pursuant to paragraph 10(e) of the Rules.

The registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a Complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that the disputed domain names share the same general structure by using the Complainant's FN trademark and the term "firearms" plus another term, namely "usa" or "store". The Panel further notes that both websites have a similar overall design and structure. They are also sharing multiple identical features, such as the prominent use of the Complainant's FN word and figurative trademark as well as identical sub-pages, like the "checkout page".

Under these circumstances, and also taking account of the fact that none of the Respondents has challenged the Complainant's submissions and/or request for consolidation, the Panel sees no reason why consolidation of the disputed domain names would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain names' registrants (referred to below as "the Respondent") in a single proceeding and, for the ease of reference, will jointly refer to the Respondents as "the Respondent" in the following, whenever appropriate.

6.2. Substantial Issues

According to paragraphs 14 and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and based on the Complaint where no substantive response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the [WIPO Overview 3.0](#).

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO 3.0, section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the FN trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the FN mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the FN mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here "firearms" and "usa" respectively "store" may bear on the assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

On the contrary, it is obvious to the Panel that the Respondent is using the disputed domain names to attract customers of the Complainant. Noting that the disputed domain names are confusingly similar to the Complainant's FN trademark in combination with the general look and feel of the associated websites, the Panel has no doubt that the Respondent's main intent is to impersonate the Complainant.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent must have had the Complainant and its FN trademark in mind when registering the disputed domain names. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain names to target and mislead third parties. Consequently, the Panel is convinced that the Respondent has registered the disputed domain names in bad faith.

With respect to the use of the disputed domain names in bad faith, the Panel finds that the Respondent has intentionally registered the disputed domain names in order to generate traffic to its own websites by misleading third parties with a false belief that the associated websites are operated or at least authorized by the Complainant, apparently for illegitimate and probably fraudulent purposes. The Panel notes that the associated websites indicate the Respondent's intention to impersonate the Complainant.

Furthermore, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional indication of bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element 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 names <fnfirearmsstore.com> and <fnfirearmsusa.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: December 28, 2023