

## ADMINISTRATIVE PANEL DECISION

FN Herstal SA v. Name Redacted

Case No. D2023-3511

### 1. The Parties

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

The Respondent is Name Redacted.<sup>1</sup>

### 2. The Domain Names and Registrar

The disputed domain names <californiafnamericaguns.com>, <georgiafngunsshop.com>, and <texasfnamericashop.com> are registered with NameSilo, LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 18, 2023. On August 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 22, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 23, 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 August 25, 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”).

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<sup>1</sup> The Respondent appears to have used the name of a third party when registering the disputed domain names. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain names, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceeding commenced on September 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 29, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on October 3, 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**

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

The Complainant is a company incorporated in Belgium. The Complainant manufactures and sells firearms and related goods under the word and device trade mark FN (the "Trade Mark").

The Complainant is the owner of numerous registrations for the Trade Mark, including United States registration No. 0588170 for the device Trade Mark, registered on April 13, 1954; and United States registration No. 4531259, for the word Trade Mark, registered on May 20, 2014.

The Complainant has operated its business in the United States under the name FN AMERICA since the public announcement of the consolidation of its business interests in the United States in 2014, including via its domain name <fnamerica.com> (registered since 2006), which resolves to the Complainant's website promoting its goods and services under the Trade Mark (the "Complainant's Website").

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

The identity and location of the Respondent is unknown. The Registrar confirmed the Respondent's email, but noted that the remaining disclosed contact information appeared to be fake.

##### **C. The Disputed Domain Names**

The disputed domain names were each registered on June 24, 2023.

##### **D. Use of the Disputed Domain Names**

The disputed domain names resolve to English language websites impersonating an official or authorised website of the Complainant, featuring the word and device Trade Mark and imagery of the Complainant's products taken from the Complainant's Website, and apparently offering the Complainant's firearm products under the Trade Mark (the "Website").

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

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

The Complainant contends that the disputed domain names are identical or confusingly similar to the Trade Mark; the Respondent has no rights or legitimate interests in respect of the disputed domain names; and the disputed domain names have been registered and are being used in bad faith.

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

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

## 6. Discussion and Findings

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

### A. Identical or Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark; and that the Complainant has common law rights in respect of the name FN AMERICA.

Each of the disputed domain names incorporates the entirety of the Trade Mark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7), together with additional words; and, in addition, the disputed domain names <californiafnamericaguns.com>, and <texasfnamericashop.com> incorporate the entirety of the name FN AMERICA, together with additional words.

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain names are confusingly similar to the Trade Mark and, in the case of the disputed domain names <californiafnamericaguns.com> and <texasfnamericashop.com>, the disputed domain names are, in addition, confusingly similar to the name FN AMERICA.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent’s use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Mark or the name FN AMERICA. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden of production is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain names or that they have been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain names have been used in respect of the Websites, in order to impersonate the Complainant and pass off the Websites as websites of, or authorised by, the Complainant; including by using images copied from the Complainant’s Website; and purportedly to sell the Complainant’s gun products at discounted prices. The Websites are likely used to deceive and defraud the public as (1) the sale of firearms is closely regulated in most jurisdictions and firearms may only be shipped to authorized stores for customers to pick up, while the Websites purport to ship firearms and similar products directly to customers; (2) the firearms listed for sale at the Websites are offered for prices that do not align with the Complainant’s prices sold via its authorized distributors; and (3) payment may only be made on the Websites via Zelle™ or cryptocurrency.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain names.

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

In light of the manner of use of the disputed domain names highlighted in section 6.2.B above, the Panel concludes that the disputed domain names have been registered and are being used in bad faith pursuant to paragraph 4(b)(iv) 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 <californiafnamericaguns.com>, <georgiafngunssshop.com>, and <texasfnamericashop.com> be transferred to the Complainant.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Dated: October 17, 2023