

ADMINISTRATIVE PANEL DECISION

FN Herstal SA v. Kerry Roland
Case No. D2023-3649

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 Kerry Roland, United States.

2. The Domain Name and Registrar

The disputed domain name <fnamericaguns.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 30, 2023. On August 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 31, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details information for the disputed domain name.

The Center verified that the 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 proceeding commenced on September 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 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 Respondent is located in the United States.

C. The Disputed Domain Name

The disputed domain name was registered on February 26, 2022.

D. Use of the Disputed Domain Name

The disputed domain name is resolved to an English language website impersonating an official or authorised website of the Complainant, featuring the 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 name is identical or confusingly similar to the Trade Mark; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the disputed domain name has been registered and is 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.

The disputed domain name 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), followed by the terms "america" and "guns"; and it incorporates the entirety of the name FN AMERICA, followed by the word "guns".

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 name is confusingly similar to the Trade Mark and 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 name 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 name, 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 name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain name has been used in respect of the Website, in order to impersonate the Complainant and pass off the Website as a website of, or authorised by, the Complainant; including by using images copied from the Complainant's Website.

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

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 name. The Panel therefore finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In light of the manner of use of the disputed domain name highlighted in section 6.2.B above, the Panel concludes that the disputed domain name has been registered and 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 name, <fnamericaguns.com>, be transferred to the Complainant.

/Sebastian M.W. Hughes/

Sebastian M.W. Hughes

Sole Panelist

Dated: October 17, 2023