

ADMINISTRATIVE PANEL DECISION

FN Browning Group SA v. A. Vanderlinden
Case No. D2024-2771

1. The Parties

The Complainant is FN Browning Group SA, Belgium, represented by AWA Sweden AB, Sweden.

The Respondent is A. Vanderlinden, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <fnbrowning.com> is registered with Network Solutions, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 12, 2024. On July 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 15, 2024, 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 (Perfect Privacy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 16, 2024 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 amendment to the Complaint on July 17, 2024. The Respondent sent an informal email on July 19, 2024.

The Center verified that the Complaint together with the amendment to 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 proceedings commenced on July 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 12, 2024. The Response was filed with the Center on August 11, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on August 15, 2024. 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 the parent company of the small arms manufacturers FN Herstal SA and Browning International SA, which market the BROWNING, WINCHESTER and FN brands.

The Complainant's subsidiary FN Herstal SA is the owner of the International trademark FN with registration No. 1154081, registered on February 4, 2013 for goods in International Classes 13 and 28 (the "FN trademark").

The Complainant's subsidiary Browning International SA is the owner of the International trademark BROWNING with registration No. 414551, registered on April 1, 1975 for goods in International Classes 2, 4, 8, 9, 12, 13, 16, 18, 21, 22, 25, 28, and 34 (the "BROWNING trademark").

The Complainant is the owner of the domain name <fnbrowninggroup.com>, which resolves to its official website.

The disputed domain name was registered on December 12, 2015. It redirects to the website at "www.wetdogbooks.com" of Wet Dog Publications, a book publication company that offers for sale books about firearms produced by the Complainant and by other arms manufacturers. The website includes the header "-Official website of- Wet Dog Publications **", and the footer "** Wet Dog Publications, and its domain name fnbrowning.com, is not affiliated with the Herstal Group".

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 name.

The Complainant states that the disputed domain name is confusingly similar to its FN and BROWNING trademarks, because it incorporates them.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it has not acquired any trademark rights for FN or BROWNING. In the Complainant's submission, the disputed domain name was registered to create the false impression of a commercial relationship between the Respondent and the Complainant, and it carries a risk of an implied affiliation with the Complainant. According to the Complainant, the annotation "Wet Dog Publications, and its domain name fnbrowning.com, is not affiliated with the Herstal Group" placed at the bottom of the website at the disputed domain name, does not suffice to eliminate the risk of association with the Complainant.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It submits that the associated website reproduces the Complainant's trademarks and copyrighted text, pictures, and marketing materials about the Complainant's products. In the Complainant's submission, the Respondent has deliberately used the FN and BROWNING trademarks as part of the disputed domain name to mislead Internet users that the website at the disputed domain name is an official website of the Complainant, in order to sell them the goods of the Respondent. According to the Complainant, the placement of the disclaimer at the bottom of the Respondent's website cannot cure the bad faith conduct of the Respondent, but should instead be considered as an admission by the same that Internet users may be confused by the disputed domain name.

B. Respondent

The Respondent submits that the Complainant adopted the name “FN Browning Group SA” only recently in June 2024 and had never used the combination “FN Browning” in the past, when the Complainant’s companies were known as “The Herstal Group”, and “FN Herstal”. The Respondent states that it acquired the disputed domain name on the open market in 2015 and used it with the knowledge of the Complainant’s group, including directors at the corporate offices of FN Herstal and FN America and without complaints from them. The Respondent states that it has worked for more than 20 years with these offices of the Complainant, which have been willing contributors to the Respondent’s publications. The Respondent adds that the Complainant had never contacted it directly about the disputed domain name prior to the submission of the Complaint.

The Respondent points out that no part of its website at the disputed domain name claims any affiliation with the Complainant, and that it is a book publisher, while the Complainant is an arms manufacturer. The Respondent adds that its company name “Wet Dog Publications” has no resemblance with the Complainant’s trademarks, and that the word “fnbrowning” has not been registered as a trademark in the United States.

The Respondent states that it has initiated steps and changed the domain name for its company in good faith and will continue to transition away from disputed domain name.

6. Discussion and Findings

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 Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

According to the information provided by the Complainant, it is the parent company of the companies FN Herstal SA and Browning International SA, which are the owners of the FN trademark and of the BROWNING trademark. As discussed in section 1.4.1 of the [WIPO Overview 3.0](#), a trademark owner’s affiliate such as a subsidiary of a holding company is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint. The Panel considers that a similar reasoning is applicable here by analogy, and finds that the Complainant has shown rights in respect of the FN and BROWNING trademarks for the purposes of the Policy by virtue of its being the parent company of the respective trademark owners.

The entirety of each of the FN and BROWNING trademarks is reproduced within the disputed domain name without the addition of any other elements. Accordingly, for the purposes of the Policy, the disputed domain name is confusingly similar to each of these trademarks and is identical to their combination. [WIPO Overview 3.0](#), section 1.7.

The Panel therefore finds that 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 name. The Respondent has not overcome this prima facie case.

As discussed in section 2.5 of the [WIPO Overview 3.0](#), fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant's mark is often central to this inquiry. Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

Here, the disputed domain name represents a combination of the FN and BROWNING trademarks of the Complainant's group without any other elements. This makes the disputed domain name identical to the combination of these two trademarks and to the corporate name of the Complainant, which creates a high risk of implied affiliation with the Complainant. The Respondent submits that it has used the disputed domain name with the consent and support of representatives or officers of the Complainant, but there is no evidence to support this allegation. Moreover, the disputed domain name is being used for a website that offers not only books related to the Complainant's products, but also publications related to third party products that compete with the Complainant's offerings. Through the books offered on the Respondent's website, it at least indirectly advertises the products of the Complainant and of its competitors. Taking the above into account, the Panel finds no basis for a finding that Respondent's use of the disputed domain name should be considered "fair" for the purposes of the Policy, and such use can also not be considered noncommercial.

The Panel therefore 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.

In the present case, the Panel notes that the disputed domain name is identical to the combination of the Complainant's FN and BROWNING trademarks, and the Respondent uses the disputed domain name for a website that offers for sale books related to the Complainant's arms bearing these trademarks and to the arms of third-party competitors of the Complainant. Whatever the primary goal of such a book may be, it at least indirectly advertises the products featured in it. The Respondent has provided no evidence in support of its allegation that the use of the disputed domain name was made with the consent and support of the Complainant or any of its directors and other officers, so the Panel is not convinced of this allegation. The Respondent has also not explained why he registered the disputed domain name incorporating only the Complainant's trademarks, and not incorporating any elements associated with his own company name, "Wet Dog Publications". This leads the Panel to the conclusion that by registering and using the disputed domain name, the Respondent has attempted to attract, for commercial gain, Internet users to the website at the disputed domain name by creating a likelihood of confusion with the Complainant's FN and BROWNING trademarks as to the affiliation or endorsement by the Complainant of the Respondent's website and of the publications offered for sale on it. This supports a finding of bad faith registration and use of the disputed domain name under paragraph 4(b)(iv) of the Policy. Moreover, the Complainant's clear trademark rights

and the Respondent's explicit statement that his company is transitioning away from the disputed domain name, apparently in reaction to the contentions in the Complaint, further support the Panel's determination that transfer of the disputed domain name is appropriate in this case.

The Panel therefore 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 name <fnbrowning.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: August 23, 2024