

ADMINISTRATIVE PANEL DECISION

FN Herstal SA v. Super Privacy Service LTD c/o Dynadot / Paul Harry / Jones Neville, Dre Henry / Active User6424, and Domain Administrator, See PrivacyGuardian.org / Brown Skirth / Mason Green, CEO
Case No. D2022-0758

1. The Parties

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

The Respondents are Super Privacy Service LTD c/o Dynadot, United States / Paul Harry, United States / Jones Neville, Dre Henry, United States/ Active User6424, Cameroon; and Domain Administrator, See PrivacyGuardian.org, United States / Brown Skirth, United States / Mason Green, CEO, United States.

2. The Domain Names and Registrars

The disputed domain names <fnherstalarms.com>, <fnherstalguns.com>, and <fnweaponry.com> are registered with Dynadot, LLC (the “First Registrar”).

The disputed domain names <fnherstalfirearms.com>, and <fnherstalusa.com> are registered with NameSilo, LLC (the “Second Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 3, 2022. On March 4, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On March 4, 2022, the Second Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names <fnherstalfirearms.com>, and <fnherstalusa.com>. On March 7, 2022, the First Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names <fnherstalarms.com>, <fnherstalguns.com>, and <fnweaponry.com>.

The Center sent an email communication to the Complainant on March 7, 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 March 11, 2022.

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 Respondents of the Complaint, and the proceedings commenced on March 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 11, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondent’s default on April 12, 2022.

The Center appointed Steven A. Maier as the sole panelist in this matter on April 14, 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. Consolidation of Proceedings

While the disputed domain names are registered in the names of five different registrants, the Complainant requests consolidation of the proceedings on the grounds that (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties: see section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). Section 4.11.2 provides examples of the factors that Panels may consider in assessing whether consolidation is appropriate. Based on that guidance and the Complainant’s submissions and evidence in the proceeding, the Panel finds that consolidation of the proceedings is appropriate for the following reasons:

- (1) The disputed domain names <fnherstalguns.com> and <fnweaponry.com> appear to be under common control, because the websites to which these disputed domain names resolve include checkout and contact details which utilize an almost identical design.
- (2) The disputed domain names <fnherstalarms.com> and <fnweaponry.com> appear to be under common control, because the websites to which these disputed domain names resolve use order forms containing virtually identical language, e.g. in the first case: “CLICK HERE TO INPUT YOUR FFL SHIPPING DETAILS - Order Notes (optional) – Notes about your order, e.g. special notes for delivery” and in the second case: “CLICK HERE TO FILL-IN YOUR FFL SHIPPING DETAILS - Order Notes (optional) – Notes about your order, e.g. special notes for delivery.”
- (3) The disputed domain names <fnherstalarms.com> and <fnherstalusa.com> appear to be under common control because the registrant details for both of the disputed domain names include the same street address, namely “333 Fremont Street”, which appears to be a false address in both cases.
- (4) The disputed domain names <fnherstalfirearms.com> and <fnherstalusa.com> appear to be under common control because the registrant details for both of the disputed domain names include the same zip code, namely 85014, which appears to be a false zip code in both cases.
- (5) By reason of the matters described above, all of the disputed domain names appear to be interlinked with one another. In addition, all five of the disputed domain names appear to involve false registration details and all five resolve to websites purporting to offer arms for sale and offering payment only by Zelle or by way of cryptocurrency.

In the circumstances, and also taking account of the fact that none of the named Respondents has challenged the Complainant’s submissions or request for consolidation, the Panel finds that (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. The proceedings will therefore be consolidated in respect of all five of the disputed domain names.

5. Factual Background

The Complainant is a company registered in Belgium. It is a longstanding manufacturer and supplier of firearms.

The Complainant is the owner of various registrations for the trademarks FN and FN HERSTAL. Those registrations include, for example:

- United States trademark registration number 4531259 for the word mark FN, registered on May 20, 2014, for goods including firearms in International Class 13; and
- United States trademark registration number 3359918 for the word mark FN HERSTAL, registered on December 25, 2007, for goods including firearms in International Class 13.

The disputed domain names were registered on the following dates;

- <fnherstalguns.com> on February 27, 2021;
- <fnherstalarms.com> on July 15, 2021;
- <fnweaponry.com> on August 25, 2020;
- <fnherstalfirearms.com> on October 4, 2021; and
- <fnherstalusa.com> on July 25, 2021.

According to evidence submitted by the Complainant, all the disputed domain names have resolved to websites which purport to offer the Complainant's products for sale online.

6. Parties' Contentions

A. Complainant

The Complainant submits that it was founded in 1889 and is a leading firearms manufacturer. It provides evidence of its history and commercial profile, including 3,000 employees worldwide and facilities in the United States and United Kingdom. It registered the domain name <fnherstal.com> in 1996 and has used the same for the purpose of its principal website. The Complainant states that it markets its products via print media, on the Internet and via social media and that as a result of its business activities over numerous decades, its trademarks FN and FN HERSTAL have become widely known as designating its products.

The Complainant submits that all the disputed domain names are confusingly similar to its FN and/or FN HERSTAL trademarks. It contends that all the disputed domain names incorporate one or both of those trademarks in full, together in four cases with the descriptive words "guns", "arms", "weaponry" and "firearms", all of which are suggestive of the Complainant's business sector, and in the case of the final disputed domain name a geographical term "usa". The Complainant submits that none of these additional terms prevent a finding of confusing similarity between the disputed domain names and the Complainant's trademarks.

The Complainant contends that the Respondents have no rights or legitimate interests in respect of any of the disputed domain names. It states that it has never licensed or authorized any of the Respondents to use its FN or FN HERSTAL trademarks, that the Respondents have not been known by names corresponding to the disputed domain names and that the Respondents are making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain names.

The Complainant submits that the disputed domain names have been registered and are being used in bad faith. The Complainant contends that all of the disputed domain names are in themselves misleading, as suggesting to Internet users by their similarity to the Complainant's trademarks and its domain name <fnherstal.com> that they must be operated or authorized by the Complainant.

Furthermore, the Complainant contends that the Respondents' websites linked to the disputed domain names impersonate the Complainant by using its trademarks, logos, photographs and other images taken from its own website in an attempt to represent that they are authorized websites offering the Complainant's goods for sale. The Complainant adds that the sale of firearms is closely controlled and they could not simply be offered for direct delivery as the Respondents' websites suggest. Further, the products purport to be offered at artificially low prices. The Complainant states that, in fact, the Respondents' websites are fraudulent and that when customers attempt to make purchases from those websites, which accept payments only by Zelle or cryptocurrency, they receive nothing in return. The Complainant exhibits correspondence from Internet users querying the *bona fides* of one of the websites in question.

The Complainant submits therefore, that by using the disputed domain names, the Respondents have intentionally attempted to attract, for commercial gain, Internet users to their websites by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of their websites or of products services on their websites.

The Complainant requests the transfer of the disputed domain names.

B. Respondents

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

7. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondents have 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.

A. Identical or Confusingly Similar

The Complainant has demonstrated that it is the owner of registered trademark rights for the marks FN and FN HERSTAL. All of the disputed domain names incorporate one or both of those trademarks in full, together with the additional terms "guns", "arms", "weaponry", "firearms" and "usa", none of which prevent the Complainant's trademarks from being recognizable within the disputed domain names. The Panel therefore finds that the disputed domain names are confusingly similar to a trademark or trademarks in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant's submissions set out above give rise to a *prima facie* case that the Respondents have no rights or legitimate interests in respect of the disputed domain names. However, the Respondents have not filed any Response in this proceeding and have not submitted any explanation for their registration and use of the disputed domain names, or evidence of rights or legitimate interests on their part in the disputed domain names, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise. There being no other evidence of rights or legitimate interests on the part of the Respondents, the Panel finds that the Respondents have no rights or legitimate interests in respect of the disputed domain names.

C. Registered and Used in Bad Faith

The Panel finds that the Complainant's trademarks FN and FN HERSTAL are both distinctive and widely known within the firearms sector to designate the Complainant and its products. The Panel also notes the Complainant's use for many years of the domain name <fnherstal.com> in connection with its own website. The Panel finds in the circumstances that each of the disputed domain names are inherently misleading, as inevitably suggesting to Internet users by its similarity to the Complainant's trademarks and domain name that it is owned or operated by, or otherwise affiliated with, the Complainant or its authorized distributors.

The Panel finds further that the Respondents have used the disputed domain names in the furtherance of a possible fraudulent scheme which impersonates the Complainant's own website. In particular, the websites appropriate the Complainant's names and trademarks as well as logos, photographs and other images taken from its own website and purport to offer the Complainant's goods for sale. The Panel accepts the Complainant's assertion, which is not disputed by the Respondents, that the websites are possibly used for the purposes of a scam, whereby customers who attempt to make purchases using Zelle or cryptocurrency receive nothing in return.

The Panel finds in the circumstances that, by using the disputed domain names, the Respondents have intentionally attempted to attract, for commercial gain, Internet users to their websites by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of their websites or of products services on their websites (paragraph 4(b)(iv) of the Policy). Therefore, the Respondents have registered and used the disputed domain names in bad faith.

8. 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 <fnherstalarms.com>, <fnherstalfirearms.com>, <fnherstalguns.com>, <fnherstalusa.com>, and <fnweaponry.com> be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: April 28, 2022