

ADMINISTRATIVE PANEL DECISION

FN HERSTAL v. Lucas Harper, aretesteroids / Charls Carl, palais de lux /
AMAH ENGOH, CEO / Nkemzi Nobatel / Lucas Harper, CEO / Poliano Agbor,
420 weed / Nathan Manton
Case No. D2022-3471

1. The Parties

The Complainant is FN HERSTAL, Belgium, represented by Williams Mullen, United States of America (“United States”).

The Respondent Lucas Harper, aretesteroids / Charls Carl, palais de lux / AMAH ENGOH, CEO / Nkemzi Nobatel / Lucas Harper, CEO / Poliano Agbor, 420 weed / Nathan Manton, United States

2. The Domain Names and Registrars

The disputed domain names <buyfnamerica.com> and <fnherstalgunshop.com> are registered with NameCheap, Inc.

The disputed domain names <fnamericafirearms.com>, <fngunstore.com>, <fnherstalgunstore.com>, <fnherstalgunstoreusa.com>, and <usafnherstalshop.com> are registered with NameSilo, LLC

The disputed domain name <usafnherstalguns.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 19, 2022. On September 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 20, 2022, the Registrars transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (See PrivacyGuardian.org and Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 23, 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 September 28, 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 September 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on October 20, 2022.

The Center appointed John Swinson as the sole panelist in this matter on October 27, 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. Factual Background

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

The Complainant’s website, from which it advertises firearms, is located at <fnherstal.com>.

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:

- <buyfnamerica.com> - March 3, 2022
- <fnherstalgunshop.com> - February 1, 2022
- <fnamericafirearms.com> - November 29, 2021
- <fngunstore.com> - January 16, 2022
- <fnherstalgunstore.com> - November 25, 2021
- <fnherstalgunstoreusa.com> - March 24, 2022
- <usafnherstalshop.com> - March 9, 2022
- <usafnherstalguns.com> - March 7, 2022

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. The Panel confirmed this by viewing each website at each of the disputed domain names. All resolved to similar websites that offered or advertised the Complainant’s firearms for sale. Some of the websites included the Complainant’s logo in the header of the website. The websites had shopping carts, allowed for coupon codes, and accepted only Zelle and cryptocurrency as payment. Some websites were not fully complete, for example, on at least two of the websites, the privacy policy was blank. One website included the text in an “about us” field nonsense text as follows: “Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed diam nonummy nibh euismod tincidunt.” The disputed domain names <usafnherstalshop.com> and <usafnherstalguns.com> resolved to WordPress websites that were clearly under development.

There are multiple named Respondents. No Respondent submitted a Response, so little is known of the Respondents. According to the Registrars' records, all Respondents have addresses in the United States. The Complainant believes that due to certain similarities, the disputed domain names are all under the common control of the same respondent in a case under the Policy that was recently decided: *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, WIPO Case No. D2022-0758*.

5. Parties' Contentions

A. Complainant

In summary, the Complainant makes the following submissions:

The Complainant was founded in 1889 and is a leading firearms manufacturer. The Complainant has 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 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.

All the disputed domain names are confusingly similar to its FN and FN HERSTAL trademarks. All the disputed domain names incorporate one or both of those trademarks in full, sometimes together with the descriptive words which are suggestive of the Complainant's business sector. None of these additional terms prevent a finding of confusing similarity between the disputed domain names and the Complainant's trademarks.

The Respondents have no rights or legitimate interests in respect of any of the disputed domain names. The Complainant has never licensed or authorized any of the Respondents to use its FN or FN HERSTAL trademarks. 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 Respondents' websites do not purport to legally resell the Complainant's products, nor do the websites offer any legal sales of Complainant's products.

The disputed domain names have been registered and are being used in bad faith. 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.

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 sale of firearms is closely controlled and they could not simply be offered for direct delivery as the Respondents' websites suggest. 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 has received consumer complaints regarding the fraudulent websites at the disputed domain names. Actual consumers are encountering the websites at the disputed domain names and are expiring confusion as to whether the websites originate from Complainant.

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.

B. Respondents

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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.

The onus of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Procedural Issue: Consolidation

The Complaint relates to multiple domain names and names multiple Respondents.

The disputed domain names are registered in the names of seven 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.

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

Additionally, paragraph 10(e) of the Rules grants a panel the power to consolidate multiple domain name disputes where it would be equitable and procedurally efficient to permit the consolidation.

The Complainant has provided evidence and arguments that demonstrate that the websites at the disputed domain names are under common control. For example, some of the websites at the disputed domain names are similar in style, and the shipping and payment options are the same, the check-out pages are similar or the same. The Registrars' records have the same address for some domain names; moreover, the addresses appear to be fake but follow a similar pattern. Compare *Taojing International Ltd. and Zenni Optical, Inc. v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Domain Admin, TotalDomain Privacy Ltd*, WIPO Case No. [D2022-2599](#).

In the circumstances, and 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 disputed domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. *Insured Aircraft Title Service, LLC v. Privacy service provided by Withheld for Privacy ehf / Noah Josh, Sergio Manny, Karl Anderson, Eve Manesh, Regina Hank, Knight Carl*, WIPO Case No. [D2022-2011](#).

The proceedings will therefore be consolidated in respect of all eight of the disputed domain names.

In the decision below, unless stated otherwise, the Panel will use the term “Respondent” to refer to all named Respondents.

B. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant owns trademark registrations for FN HERSTAL and FN.

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain names include the trademark, or a confusingly similar approximation. See, for example, *Consumer Reports, Inc. v. Wu Yan, Common Results, Inc.*, WIPO Case No. [D2017-0371](#); and *Captain Fin Co. LLC v. Private Registration, NameBrightPrivacy.com / Adam Grunweg*, WIPO Case No. [D2021-3279](#).

Five of the disputed domain names include FN HERSTAL, and all of the disputed domain names include FN.

The additional terms in the disputed domain names, such as “buy”, “gun”, “shop” and “usa”, do not prevent the Complainant’s trademarks from being recognizable within the disputed domain names.

The Panel concludes that the disputed domain names are confusingly similar to the Complainant’s trademarks.

The Complainants succeed on the first element of the Policy.

C. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain names.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the disputed domain names:

- (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 trademark 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 trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The *onus* of proving this requirement, like each element, falls on the Complainant.

UDRP panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is sufficient for a complainant to raise a *prima facie* case against the respondent

under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case.

None of the circumstances listed in paragraph 4(c) apply in the present circumstances.

The Complainant alleges that the Respondent does not have any license or permission to use the Complainant's trademarks, and that the Respondent's websites are infringing the Complainant's trademark rights and are therefore not *bona fide*.

The Complainant has rights in the FN HERSTAL and FN trademarks which precedes the Respondent's registration of the disputed domain names.

There is no evidence that the Respondent is commonly known by the disputed domain names.

The Complainant has established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain names and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain names.

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the disputed domain names. Accordingly, there being no other evidence, the Panel finds the Respondent has no rights or any legitimate interests in the disputed domain names.

The Complainant succeeds on the second element of the Policy in relation to the disputed domain names.

D. 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. See also *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*, WIPO Case No. [D2022-0758](#).

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 Respondent has used the disputed domain names in the furtherance of a possible fraudulent scheme which impersonates the Complainant's own website. *Elliott Investment Management L.P. v. Domains By Proxy, LLC, DomainsByProxy.com / Murat Akbala*, WIPO Case No. [D2022-2699](#). 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 Respondent, 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 Respondent has 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 Respondent has registered and used the disputed domain names in bad faith.

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 <buyfnamerica.com>, <fnherstalgunshop.com>, <fnamericafirearms.com>, <fngunstore.com>, <fnherstalgunstore.com>, <fnherstalgunstoreusa.com>, <usafnherstalguns.com>, and <usafnherstalshop.com> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: November 10, 2022