

ADMINISTRATIVE PANEL DECISION

Minerva S.A. v. Domain Administrator, See PrivacyGuardian.org Ilc
Case No. D2023-3986

1. The Parties

The Complainant is Minerva S.A., Brazil, represented by Salusse, Marangoni, Parente e Jabur Advogados, Brazil.

The Respondent is Domain Administrator, See PrivacyGuardian.org Ilc, United States of America.

2. The Domain Name and Registrar

The disputed domain name <minevarfoods.com> ("Disputed Domain Name") is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 22, 2023. On September 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 25, 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.

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 proceedings commenced on September 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 19, 2023.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on October 24, 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

The Complainant is a company engaging mainly in the global production, sale, export and processing of cattle and beef-related products. The Complainant owns various word and figurative trademarks for or containing the terms MINERVA FOODS (the “Complainant’s Trademark”) and MINERVA around the globe.

The relevant trademark registrations include, *inter alia*, Brazilian Trademark No. 840373821  for registered on May 7, 2019 in Class 35, Brazilian Trademark Nos. 925343730, 925343749, 925343781, 925343811, and 925343820 for **minervafoods** registered on February 28, 2023 in Classes 18, 29, 30, 35, and 40 respectively, and Brazilian Trademark Nos. 925343889, 925343927, 925344389, 925344435, and 925344451 for  registered on February 28, 2023 in Classes 18, 29, 30, 35, and 40 respectively.

The Complainant’s Trademark is also fully incorporated in the domain name <minervafoods.com> registered on June 20, 2012, which resolves to the Complainant’s website. Apart from this, the Complainant also owns the domain name <minervafoods.com.br> registered on June 19, 2012, which features the Complainant’s Trademark.

The Disputed Domain Name was registered by the Respondent on September 8, 2023. At the time of filing of the Complaint, the Disputed Domain Name resolved to a website comprising pay-per-click (“PPC”) advertising links to “Pós Graduação Alimentos”, “Compra Supermercado Online”, and “Nutricao Clinica”. At the time the Panel was rendering its decision, the Disputed Domain Name resolved to a webpage comprising PPC advertising links to “Mining”, “Nutritional Supplements” and “Mining Companies” with the browser tab labelling the website as “not secure” (the “Respondent’s Website”). Moreover, the Complainant has provided evidence that the Respondent impersonated the Complainant’s employees by using the Disputed Domain Name to send fraudulent emails to one of the Complainant’s customers.

5. Parties’ Contentions

A. Complainant

(a) The Disputed Domain Name is confusingly similar to the Complainant’s Trademark. The only difference between the Disputed Domain Name and the Complainant’s Trademark is the misplacing of the letter “r” in “minerva” to form the word “minevar”. The presence of intentional typosquatting does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant’s Trademark.

(b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has not obtained any authorization from the Complainant to use the Complainant’s Trademark as part of a domain name or otherwise. The Respondent is not known by the Disputed Domain Name. Moreover, the Disputed Domain Name appears to be registered by the Respondent for the purpose of defrauding the Complainant’s customers by causing confusion, especially when neither “minerva” nor “minevar” is a generic or descriptive term of the Complainant’s business. The Respondent’s Website is also being used to divert Internet traffic to PPC websites to generate financial gain from the Complainant.

(c) Both the Respondent’s registration and use of the Disputed Domain Name establish the Respondent’s bad faith. Such use demonstrates bad faith where PPC links on the Respondent’s Website capitalize on the reputation and goodwill of the Complainant’s Trademark. Given the publicity of the Complainant’s brand and the reputation that the Complainant has acquired in the Complainant’s Trademark and how it was used, the Respondent must have been fully aware of the existence of the Complainant’s rights in the Complainant’s Trademark when the Respondent has registered and used the Disputed Domain Name. The Disputed Domain Name was registered as a clear variation of the Complainant’s Trademark and does not have any relation with the Complainant whatsoever. The Respondent has used the Disputed Domain Name to perpetrate a fraudulent scheme against the Complainant’s customers. Lastly, the Respondent used a privacy protection service to mask its identity. Therefore, the Respondent has registered and used the Disputed Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) The Disputed Domain Name has been registered and is being used by the Respondent in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark, based on its various trademark registrations such as those listed in Section 4.

The Disputed Domain Name incorporates the Complainant's Trademark with the misplacement of the letter "r" in "minerva" to form the word "minevar". The intentional misspelling of the word "minerva" does not alter the fact that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, due to the fact that the Complainant's Trademark remains sufficiently recognizable in the Disputed Domain Name. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Panel therefore agrees with the Complainant that the misplacement does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's Trademark.

As such, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark. There is no relationship between the Complainant and the Respondent which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent did not submit any Response. The fact that the Respondent did not submit any Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

- (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 name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent 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.

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a *bona fide* offering of goods or services or be regarded as legitimate noncommercial or fair use. The Respondent would likely not have adopted the Complainant's Trademark (or its misspelling) if not for the purpose of creating an impression that the Disputed Domain Name or any communication using the Disputed Domain Name is associated with, or originates from, the Complainant, particularly considering that the Respondent has impersonated the Complainant's employees for sending fraudulent emails in this case. Further, the Panel also notes that the typosquatting nature of the Disputed Domain Name itself highlights the Respondent's intention to confuse Internet users, which cannot constitute fair use. The PPC links on the Respondent's Website also do not represent a *bona fide* offering since such links are being used to capitalize on the reputation and goodwill of the Complainant's Trademark. See section 2.9 of the [WIPO Overview 3.0](#).

The un rebutted evidence in the Complaint indicates that the Disputed Domain Name is also being used to perpetrate a fraudulent email scheme, aimed to defraud the Complainant's consumers. The use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent. See section 2.13.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

After reviewing the evidence submitted by the Complainant, the Panel agrees that the Complainant's Trademark appears to be well known. A quick Internet search conducted by the Panel shows that the top search results returned for the Complainant's Trademark relate to the Complainant's business and/or third-party websites providing information relating to the Complainant's business. Along with the fact that the Disputed Domain Name incorporates an intentional misspelling of the Complainant's Trademark, the Panel agrees with the Complainant that the Respondent must have been aware of the Complainant and its rights in the Complainant's Trademark when registering and using the Disputed Domain Name.

In addition, the Panel finds that the following factors support a finding that the Disputed Domain Name was registered and has been used by the Respondent in bad faith:

- (i) The Respondent has used email addresses associated with the Disputed Domain Name to impersonate the Complainant's employees and send fraudulent emails to one of the Complainant's customers, asking the customer to advise on the status of a payment.

(ii) Even putting aside the fraudulent emails, it is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that it is virtually incorporated the Complainant's Trademark in its entirety. It can be inferred that the Respondent has been using the Disputed Domain Name to earn click through revenue from the misdirection of Internet users to the Respondent's Website caused by the confusing similarity of the Disputed Domain Name to the Complainant's Trademark (see *Société Louis Delhaize Financière et de Participation (DELFIPAR) v. Privacy service provided by Withheld for Privacy ehf /Vallee Virginie*, WIPO Case No. [D2021-4126](#)). Such circumstances are evidence of registration and use of the Disputed Domain Name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. Also, as discussed above, the Respondent lacks any rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)).

(iii) The Disputed Domain Name has been registered using a privacy service. Noting the use of the Disputed Domain Name for a fraudulent email scheme, it is most likely that the Respondent had the intention to conceal its identity when registering the Disputed Domain Name (see *Primonial v. Domain Administrator, <PrivacyGuardian.org> / Parla Turkmenoglu*, WIPO Case No. [D2019-0193](#)).

(iv) The Respondent failed to respond to the Complainant's contentions and has provided no evidence of its actual or contemplated good faith use of the Disputed Domain Name.

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

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 <minevarfoods.com> be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: November 7, 2023