

ADMINISTRATIVE PANEL DECISION

Minerva S.A. v. Ngwenya Primrose, Nicole Magennis
Case No. D2023-1177

1. The Parties

The Complainant is Minerva S.A., Brazil, represented by Opice Blum, Brazil.

The Respondent is Ngwenya Primrose, South Africa, and Nicole Magennis, Germany.

2. The Domain Names and Registrars

The disputed domain name <minervafood.com> is registered with GoDaddy.com, LLC, and the disputed domain name <minervafoods.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (collectively the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2023. On March 16, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On March 17, 2023, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (GoDaddy.Com, LLC and PDR Ltd. d/b/a Publicdomainregistry.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 20, 2023, providing the registrant and contact information for the underlying registrants disclosed by the Registrars, and inviting the Complainant to either amend the Complaint adding the Registrar-disclosed registrants as formal Respondents and provide relevant arguments or evidence demonstrating that all named Respondents are, in fact, the same entity and/or that all of the disputed domain names are under common control; and/or to file a separate complaint for any disputed domain name for which it is not possible to demonstrate that all named Respondents are in fact the same entity. The Complainant filed an amended Complaint on March 22, 2023, including arguments for consolidation.

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 Respondent of the Complaint, and the proceedings commenced on March 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 21, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on May 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

The Complainant has supplied meat and derivative products in South America under the mark MINERVA since 1992.

The Complainant owns a number of Brazilian MINERVA-related trade marks including the Brazilian combined trade mark No. 826080120 for MINERVA, filed on January 21, 2004, registered on December 5, 2017, and the Brazilian trade mark No. 840405863 for MINERVA FINE FOODS, filed on January 30, 2013, registered on September 10, 2019, both in class 29.

The Complainant operates a website at "www.minervafoods.com".

The disputed domain name <minervafood.com> was registered on January 28, 2023, and the disputed domain name <minervafoods.com> was registered on February 14, 2023.

For reasons explained in section 6A below, the Respondents are collectively referred to hereafter as "the Respondent", unless it is necessary to refer to them separately.

On March 3, 2023, the Respondent used the disputed domain name <minervafood.com> to send a fraudulent email impersonating the Complainant's Chief Operating Officer and purporting to offer the Complainant's products for sale to a customer of the Complainant.

MX records have been configured enabling use of the disputed domain name <minervafoods.com> for email.

On March 9, 2023, neither disputed domain name resolved to a website. When reviewed by the Panel on May 17, 2023, the <minervafood.com> redirected to the Complainant's own website.

5. Parties' Contentions

A. Complainant

The following is a summary of the Complainant's contentions.

The disputed domain names are confusingly similar to the Complainant's trade marks.

The disputed domain name <minervafood.com> consists of the entirety of the Complainant's MINERVA mark, together with the word "food", similar to the word "foods" used in the Complainant's MINERVA FINE FOODS mark.

The disputed domain name <minervafoods.com> consists of a typo-squatting version of the Complainant's MINERVA mark, together with the word "foods" used in the Complainant's MINERVA FINE FOODS mark.

The Respondent lacks rights or legitimate interests in the disputed domain names.

The Complainant has not authorised the Respondent to use its trade mark.

There is no evidence that the Respondent is using, or has made demonstrable preparations to use, the disputed domain names for a *bona fide* offering of goods or services, or that the Respondent has been commonly known by the disputed domain names, or that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

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

The disputed domain names long post-date the Complainant's world-famous and long-standing mark.

The disputed domain name <minervafood.com> has been used in bad faith to send fraudulent emails impersonating the Complainant.

The disputed domain name <minervafoods.com> constitutes a passive holding in bad faith. It is impossible to conceive of a plausible good faith use of this domain name, which consists of a typo-squatting variation of the Complainant's mark and has MX records configured, meaning that it can be used to send fraudulent emails.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain names are identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- the disputed domain name have been registered and is being used in bad faith.

A. Consolidation - Preliminary Issue

The principles governing the question of whether a complaint may be brought multiple respondents are set out in section 4.11 of [WIPO Overview 3.0](#).

The Panel is satisfied that the disputed domain names are subject to common control on the grounds put forward by the Complainant including that the registrants of both disputed domain names have used purported registrant personal email addresses that bear no resemblance to the person's actual name, as well as the similar format of the disputed domain names and the likelihood that both disputed domain names were registered with a similar fraudulent intent. The Panel further notes that the disputed domain names were registered within approximately two weeks of each other and that neither registrant has filed a Response to disputing the connection between them. In these circumstances, the Panel considers that consolidation is fair and equitable to all parties, and also procedurally efficient.

B. Identical or Confusingly Similar

The Complainant has established registered rights in the marks MINERVA and MINERVA FINE FOODS.

Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") makes clear that, where the relevant trade mark is recognisable within the disputed domain name, the addition of other terms, whether descriptive, or otherwise, would not prevent a finding of confusing similarity under the first element.

Here, the disputed domain name <minervafood.com> consists of the Complainant's distinctive MINERVA trade mark plus the additional term "food", which does not prevent a finding of confusing similarity as explained above.

The disputed domain name <rminervafoods.com> consists of an obvious misspelling of the Complainant's mark (substitution of "m" for similar-appearing characters "r" and "n" – see section 1.9 of [WIPO Overview 3.0](#)), which remains readily recognisable within the disputed domain name, plus the additional term "foods", which again does not prevent a finding of confusing similarity.

For the above reasons, the Panel concludes that the disputed domain names are confusingly similar to the Complainant's trade mark and that the Complainant has therefore established the first element of paragraph 4(a) of the Policy.

C. Rights or Legitimate Interests

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, as explained below the Panel considers that the Respondent has used the disputed domain name <minervafood.com> to impersonate the Complainant for fraudulent purposes. Such use of the disputed domain name could not be said to be *bona fide*. And there is no evidence of any active use of the disputed domain name <rminervafoods.com>, let alone *bona fide* use.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

D. Registered and Used in Bad Faith

The Complainant has produced evidence that the disputed domain name <minervafood.com> has been used for an email address from which fraudulent emails were sent impersonating the Complainant. In these circumstances, the Panel readily concludes that the disputed domain name <minervafood.com> was registered and is being used in bad faith by the Respondent. The fact that this disputed domain name has been redirected to the Complainant's own website reinforces the likelihood that it is being used for email fraud.

As regards the disputed domain name <rminervafoods.com>, the Panel considers that the following cumulative circumstances are indicative of passive holding in bad faith:

1. the distinctiveness of the Complainant's mark;
2. the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use;

3. the fact that this disputed domain name consists of an obvious misspelling of the Complainant's mark plus use of the word "foods" which is directly related to the Complainant's field of operation;
4. the activation of MX records and the fraudulent use of the other disputed domain name in these proceedings, indicating the likelihood that the disputed domain name has been, or will be used, to send fraudulent emails impersonating the Complainant; and
5. the implausibility of any good faith use to which the disputed domain name may be put.

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) 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 names, <minervafood.com> and <minervafoods.com>, be transferred to the Complainant.

/Adam Taylor/
Adam Taylor
Sole Panelist
Date: May 17, 2023