

ADMINISTRATIVE PANEL DECISION

Minerva S.A. v. Duke Odili

Case No. D2023-1980

1. The Parties

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

The Respondent is Duke Odili, United States of America.

2. The Domain Name and Registrar

The disputed domain name <minervasa-br.com> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 3, 2023. On May 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 5, 2023, 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 (HOSTINGER, UAB.) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 5, 2023, 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 May 8, 2023.

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 May 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 31, 2023.

The Center appointed Halvor Manshaus as the sole panelist in this matter on June 9, 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 one of the leading companies in South America in the production and sale of meat products. The Complainant is the owner of several trademarks for MINERVA and MINERVA FINE FOODS, including the following:

The Brazilian trademark registration No. 826080120, MINERVA registered on December 5, 2017.

The Brazilian trademark registration No. 830052283, MINERVA logo registered on May 2, 2018.

The Brazilian trademark registration No. 840373805, MINERVA logo registered on January 2, 2019.

The Complainant holds the domain name <minervafoods.com> registered June 20, 2012.

The disputed domain name was registered on July 11, 2022, and resolves to a website offering meat products and utilizing the Complainant's logo. The disputed domain name was used to send fraudulent emails.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is identical or confusingly similar to the Complainant's trademarks and service marks in which the Complainant has rights. The Complainant holds that the disputed domain name incorporates the MINERVA trademark, with the inclusion of the terms "sa" and "br". According to the Complainant, the term "sa" refer to the Complainant's corporate name, while the term "br" refers to the official Brazilian country code top-level domain ("ccTLD"), indicating that the disputed domain name was deliberately created to be similar to the Complainant's trademark, corporate name and official website. Furthermore, the Complainant asserts that the disputed domain name has been used to contact customers for the purpose of marketing and selling similar products to what the Complainant offers, resulting in confusion among Internet users.

The Complainant contends that the Respondent lacks rights or legitimate interests in respect of the disputed domain name, as the Complainant holds that it has never licensed, permitted, or authorized the Respondent to use the MINERVA trademark. According to the Complainant, the Respondent uses the disputed domain name to create false email addresses to contact the Complainant's customers to offer products. Further, the Complainant argues that the Respondent's use of the disputed domain name was intended to mislead customers for commercial gain.

The Complainant argues that the disputed domain name was registered and is being used in bad faith, as the Respondent registered the disputed domain name eighteen years after the Complainant filed a trademark application for MINERVA and after the Complainant had become well-known within the food sector. Further, the Complainant holds that the Respondent registered the disputed domain name to create email addresses simulating the Complainant's email addresses to send fraudulent emails to the Internet users.

B. Respondent

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

6. Discussion and Findings

The Complainant has, in accordance with paragraph 4(a) of the Policy, requested that the disputed domain name be transferred to the Complainant.

In accordance with paragraph 4(a) of the Policy, in order to succeed in this proceeding and have the disputed domain name transferred, the Complainant must establish that the three following elements are satisfied for the disputed domain name:

- (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 in bad faith.

Pursuant to paragraph 15 (a) of the Rules, the Panel shall decide the Complaint based on the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Furthermore, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

On the basis of the evidence submitted by the Complainant and, in particular, with regards to the content of the relevant provisions of the Policy (paragraph 4(a), (b), and (c)), the Panel concludes as follows:

A. Identical or Confusingly Similar

Under the first element of paragraph 4 (a) of the Policy, the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Based on the evidence submitted by the Complainant, describing the Complainant's trademark registrations, the Panel finds that the Complainant holds several trademark registrations of MINERVA.

The disputed domain name comprises the Complainant's trademark entirely together with the terms "sa", "br" and the generic Top-Level Domain ("gTLD") ".com". The gTLD part of a domain name is not taken into consideration when examining the identity or similarity between a complainant's trademark and a disputed domain name.

The Panel finds that the addition of the terms "sa" and "br" do not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Based on the above, the Panel finds that the Complainant has satisfied the requirements under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

In order for the Complainant to succeed under paragraph 4(a)(ii) of the Policy, the Complainant must establish a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. If the Complainant establishes a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, the evidentiary burden of production shifts to the Respondent. See section 2.1 of the [WIPO Overview 3.0](#).

The disputed domain name features a website using the Complainant's trademark, thereby creating the false impression that it is the official website associated with the Complainant. The Panel finds it likely that the Respondent intends to use the disputed domain name for deceptive purposes and to defraud Internet users by taking advantage of the goodwill and reputation associated with the Complainant's brand. As held in *Houghton Mifflin Co. v. The Weatherman, Inc.*, WIPO Case No. [D2001-0211](#), such commercial use cannot be considered legitimate.

In the Panel's view, the presented evidence referred to by the Complainant is sufficient to establish *prima facie* case that the Respondent has no rights or legitimate interest in the disputed domain name. The Panel has not been presented with, or discovered, any evidence that i) the Respondent has received a license or other permission to use the Complainant's trademark or any domain name incorporating this mark; (ii) the Respondent is commonly known by the disputed domain name; (iii) the Respondent has acquired trademark rights to use the disputed domain name; or (iv) the Respondent is making legitimate noncommercial or fair use of the disputed domain name.

Furthermore, the Panel notes that the disputed domain name incorporates the Complainant's trademark with the addition of the terms "sa" and "br", which can be interpreted as referencing the Complainant's corporate name and country of Brazil, respectively.

The Panel concludes that the conditions in paragraph 4(a)(ii) of the Policy have been met.

C. Registered and Used in Bad Faith

For the Complainant to prevail under the third element of paragraph 4(a) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Considering the Respondent's use of the Complainant's logo and the fact that the Complainant's registration of the MINERVA trademark predates the registration of the disputed domain name, it is unlikely that the Respondent was unaware of the Complainant's right to the MINERVA mark at the time of registering the disputed domain name. Therefore, the Panel concludes that the Respondent had or should have had knowledge of the Complainant's trademark registrations.

Furthermore, the Panel finds that the creation of email addresses impersonating the Complainant, sending fraudulent emails to customers as well as a website where the Complainant's MINERVA mark and logo are used to market the same products as the Complainant offers, evidence that the Respondent uses the disputed domain name in bad faith. Taken together with the fact that the Respondent has not filed any Response in these proceedings, the Panel finds that the Complainant has established that the Respondent registered and used the disputed domain name in bad faith.

Therefore, the Panel concludes that the disputed domain name has been registered and is being used in bad faith. Thus, the third element of paragraph 4(a) 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 <minervasa-br.com> be transferred to the Complainant.

/Halvor Manshaus/

Halvor Manshaus

Sole Panelist

Date: June 23, 2023