

ADMINISTRATIVE PANEL DECISION

Minerva S.A. v. Franklin Richards, KAREN CERCIO
Case No. D2023-5292

1. The Parties

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

The Respondent is Franklin Richards, KAREN CERCIO, United States of America.

2. The Domain Name and Registrar

The disputed domain name <exportminervafoods.com> is registered with PSI-USA, Inc. dba Domain Robot (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 18, 2023. On December 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 21, 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 January 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 25, 2024.

The Center appointed Ada L. Redondo Aguilera as the sole panelist in this matter on February 2, 2024. 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, Minerva SA, is a Brazilian corporation listed on the stock exchange, which was established in 1992 and is active in the production and export of meat products through the world.

The Complainant owns numerous trademark registrations for MINERVA, in stylized forms in many jurisdictions throughout the world, including:

- Brazil Trademark Registration No. 826080120, MINERVA in stylized, registered on December 5, 2017;
- Brazil Trademark Registration No. 909630798, MINERVA, registered on October 2, 2018;
- Brazil Trademark Registration No. 840373821, MINERVA FOODS in stylized, registered on May 7, 2019;
- International Trademark Registration No. 1756839, MINERVA FOODS, registered on June 13, 2023.

Since June 20, 2012, the Complainant holds the domain name <minervafoods.com> which resolves to its official website and since June 19, 2012, the Complainant is the owner of the domain name <minervafoods.com.br>.

The disputed domain name <exportminervafoods.com> was registered on November 16, 2023. The record shows that the disputed domain name resolves to a non-active webpage and that it was used to send fraudulent emails impersonating the Complainant.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the MINERVA and MINERVA FOODS trademarks in which the Complainant has rights, due to the fact it incorporates these trademarks in their entirety, and the inversion and the inclusion of the term "export" at the beginning of the element "MINERVA" is not sufficient to avoid confusing similarity. It is also well established that the generic Top-Level Domain ("gTLD"), such as ".com," in a disputed domain name is disregarded. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The MINERVA and MINERVA FOODS trademarks are associated with the Complainant, since the MINERVA and MINERVA FOODS trademarks have been extensively used to identify the Complainant, its products and its services.

According to the Complaint, the Respondent has not been authorized by the Complainant to use its trademarks, is not commonly known by the disputed domain name, and there is no evidence of the Respondent's use, or demonstrable preparation to use, the disputed domain name in connection with a bona fide offering of goods and services due to the fact that it is not an active website. To the contrary, the Respondent used the disputed domain name to send fraudulent emails to potential customers of the Complainant attempting to deceive them into believing that they were interacting with the Complainant and sending them fraudulent invoices and wrong banking information. The disputed domain name was registered and is being used in bad faith due to the fact that it is evident that the Respondent had knowledge of both the Complainant and its well-known trademarks at the time of registering the disputed domain name and due to the fact that the use of the disputed domain name to send fraudulent emails attempting to deceive potential customers into believing that they were interacting with the Complainant constitutes use in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Accordingly, the Panel is satisfied that the Complainant has trademark rights by virtue of the registrations it owns for its MINERVA and MINERVA FOODS trademarks.

The entirety of the marks is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The only difference between the disputed domain name and the Complainant's prior trademark registrations is the addition of the term "export".

The inclusion of the term "export" before the Complainant's trademarks MINERVA and MINERVA FOODS does not prevent a finding of confusing similarity under the Policy, paragraph 4(a)(i). See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.8. The addition of the gTLD ".com" in the disputed domain name is a standard registration requirement and is therefore disregarded under the confusing similarity test under the Policy, paragraph 4(a)(i). See [WIPO Overview 3.0](#), section 1.11.1.

In conclusion, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademarks.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In conclusion in the this case, 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 trademarks or any domain name incorporating these marks; (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 trademarks with the addition of the term "export" which can be interpreted as referencing one the Complainant's main business activities.

It is in the view of the Panel that the Complainant has succeeded in raising a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. For its part, the Respondent did not provide a response and thus failed to provide any explanations as to any rights or legitimate interests. Furthermore, the nature of the disputed domain name, comprising the Complainant's trademarks carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1. Also, the Panel notes that even though the disputed domain name does not direct Internet users to an active webpage it has active mail servers associated to it and the Complainant presented evidence that proves that the disputed domain name has been actively used in connection with fraudulent emails impersonating the Complainant and using the details per pertaining to one of the Complainant's related companies in an attempt to make the Complainant's customer pay for invoices with wrong banking details. Consequently, the Respondent is not making legitimate noncommercial or fair use of the disputed domain name.

Therefore, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name 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 fact that the disputed domain name is confusingly similar to the Complainant's trademarks and that the Complainant's registration of the MINERVA and MINERVA FOODS trademarks predates the registration of the disputed domain name, it is unlikely that the Respondent was unaware of the Complainant's right to the MINERVA and MINERVA FOODS trademarks at the time of registering the disputed domain name.

Therefore, the Panel concludes and agrees with the Complainant that the disputed domain name was registered in bad faith.

Also, the Panel finds that the creation of email addresses impersonating the Complainant, sending fraudulent emails to customers is 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.

The Panel finds that the Complainant has established the third element 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 name <exportminervafoods.com> be transferred to the Complainant.

/Ada L. Redondo Aguilera/

Ada L. Redondo Aguilera

Sole Panelist

Date: February 16, 2024