

ADMINISTRATIVE PANEL DECISION

Minerva S.A. v. Chang Choi and gang xu
Case No. D2022-4942

1. The Parties

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

The Respondents are Chang Choi and gang xu, China.

2. The Domain Names and Registrars

The disputed domain name <minervafoods.com> (“Domain Name 1”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (“the Registrar 1”); the disputed domain name <minrevafoods.com> (“Domain Name 2”) is registered with DropCatch.com 620 LLC (the “Registrar 2”). Domain Name 1 and Domain Name 2 are collectively referred to as the “Domain Names”.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 22, 2022. On December 23, 2022, the Center transmitted by email to the Registrars a request for registrar verification in connection with the Domain Names. On December 24, 2022, the Registrar 1 transmitted by email to the Center its verification disclosing registrant and contact information for Domain Name 1, which differed from the named Respondent and contact information in the Complaint. On January 2, 2023, the Registrar 2 transmitted by email to the Center its verification disclosing registrant and contact information for the Domain Name 2, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 3, 2023, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 5, 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 Respondents of the Complaint, and the proceedings commenced on January 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2023. The Respondents did not submit any response.

Accordingly, the Center notified the Respondents' default on February 1, 2023.

The Center appointed Karen Fong as the sole panelist in this matter on February 10, 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, based in Brazil, is a producer and exporter of meat and its derivatives since 1992. The Complainant exports its products all over the world including China where both Respondents are *prima facie* based. The Complainant's products and services are sold and marketed under the trademarks MINERVA and MINERVA FINE FOODS. The Complainant has a number of trade mark registrations for MINERVA and MINERVA FINE FOODS including Brazil Trade Mark Number 826080120 for MINERVA filed on January 21, 2004 and registered on December 5, 2017, and Brazil Trade Mark Registration Number 840405880 for MINERVA FINE FOODS filed on January 30, 2013, and registered on May 7, 2019 (individually and/or collectively the "Trade Mark").

The Complainant's main website is at "www.minervafoods.com".

Domain Name 1, registered on February 6, 2022, resolves to an inactive website. It is listed in three email blacklists suggesting that the Domain Name has likely been used to create email addresses to send spam or phishing emails ("Website 1"). Domain Name 2, registered on June 11, 2022, resolves to a website with pay-per-click links to third party websites. The home page displays adverts relating to betting sites in Chinese. These adverts redirect to online betting houses ("Website 2"). Domain Name 2 has a mail exchanger record activated. Website 1 and Website 2 are collectively referred to as the Websites.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Names are identical or confusingly similar to the Trade Mark, the Respondents have no rights or legitimate interests with respect to the Domain Names, and that the Domain Names were registered and are being used in bad faith. The Complainant requests transfer of the Domain Names, all of which it believes are related and under management and common control of a single entity or network. The basis of its belief that the registrants are related and under management and common control of a single network are set out in section 6 below.

B. Respondents

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

6. Preliminary Procedural Issue – Consolidation of the Proceeding

Paragraph 4(f) of the Policy allows a panel to consolidate multiple disputes between parties at its sole discretion and paragraph 10(e) of the Rules empowers a panel to consolidate multiple domain name disputes in accordance with the Policy and the Rules. Neither the Policy nor the Rules expressly provide for the consolidation of multiple respondents in a single administrative proceeding. In fact, paragraph 3(c) of the Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. The panel in *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#) reviewed the relevant UDRP decisions in relation to consolidation in multiple respondents' cases and extracted the following general principles:

(1) Consolidation of multiple registrants as respondents in a single administrative proceeding may in certain circumstances be appropriate under paragraphs 3(c) or 10(e) of the Rules provided the complainant can demonstrate that the disputed domain names or the websites to which they resolve are subject to common control, and the panel having regard to all of the relevant circumstances, determines that consolidation would be procedurally efficient and fair and equitable to all parties.

(2) The administrative provider should act as a preliminary gatekeeper in such cases by determining whether or not such complaints fulfil the requisite criteria. Once a case is admitted on a *prima facie* basis, the respondent has the opportunity to make its submissions on the validity of the consolidation together with its substantive arguments. In the event that the panel makes a finding that the complaint has not satisfied the requisite criteria, the complainant is not precluded from filing the complaint against the individual named respondents.

In this case, the Complainant has submitted a request for consolidation of multiple Respondents, mainly based on the following reasons:

- Both Respondents are located in China;
- The Domain Names target the same trade mark MINERVA and MINERVA FINE FOODS;
- Both Domain Names are connected to Websites which are unrelated to the Trade Mark or the Domain Names with one being inactive, and the other connected to third party pay-per-click links;
- Both Domain Names comprise of misspellings of the Trade Mark;
- Domain Name 1 is likely to have been used as an email address for phishing and spam emails as it appears on a few email black lists, while Domain Name 2 is set up to do the same as it has a mail exchanger record which has been activated.

The Complainant has provided good evidence referred to above to substantiate its case that the Respondents are somehow connected to each other and under common control aimed at intentionally using the Trade Mark in the Domain Names in bad faith. The Respondents did not file a response and so has not challenged any of these allegations.

Accordingly, applying the principles to the facts in this case, the Panel finds that the Complainant has established more likely than not that the Domain Names are subject to common ownership or control. The Panel finds such common control to justify consolidation of the claims against the registrants of the Domain Names in this proceeding. The Panel further concludes in the circumstances of this case that consolidation would be fair and equitable to all Parties and procedurally efficient, and therefore will allow the consolidation as requested by the Complainant pursuant to paragraph 10(e) of the Rules. The Respondents may therefore be referred to as the "Respondent".

7. Discussion and Findings

A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Names, the Complainant must prove each of the following, namely that:

- (i) The Domain Names are identical or confusingly similar to trade marks or service marks in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the Domain Names; and
- (iii) The Domain Names were registered and are being used in bad faith.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has established that it has registered rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the Domain Names consist of misspellings of the Complainant's Trade Mark. Section 1.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is considered by panels to be confusingly similar to the relevant mark for the purposes of the first element.

Domain Name 1 comprises of the Complainant's trade Mark MINERVA together with a misspelling of the descriptive word "foods" by having an additional "f" or a misspelling of the Complainant's trade mark MINERVA FINE FOODS by the deletion of the letters "ine" in "fine". Domain Name 2 comprises of a misspelling of the Complainant's Trade Mark MINERVA in that letters "r" and "e" are reversed and the addition of the word "foods" or a misspelling of the Complainant's trade mark MINERVA FINE FOODS by the reversal of the letters "r" and "e" in MINERVA and the deletion of the word "fine".

Section 1.8 of the [WIPO Overview 3.0](#) states that where a trademark is recognizable within the disputed domain name the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. In this case, the Trade Mark is clearly recognizable in all the Domain Names. For the purposes of assessing identity and confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain ("gTLD") which in this case is ".com". It is viewed as a standard registration requirement (section 1.11.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Domain Names are confusingly similar to the Trade Marks in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

C. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such a *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with some allegations of evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that the Respondent is not commonly known by the Domain Names. It has not authorised, licensed or otherwise permitted the Respondent to use the Trade Mark in the Domain Names or for any other purpose. The display of pay-per-click links in relation to Domain Name 2 does not constitute a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the Domain Names. There is a risk that Domain Name 1 is being used for phishing and spam emails and a possibility that Domain Name 2 may be used in the same way. Such uses do not amount to a *bona fide* offering of goods or services, and is not making any legitimate noncommercial or fair use of the Domain Names.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for a reply from the Respondent. The Respondent has not provided any reasons why it chose to register the Domain Names comprising the Trade Mark which it has no connection to. The Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Names. Moreover, given the nature of the Domain Names, reflecting typographical errors of the Complainant's Trade Mark, the Domain Names reflect the intent of the Respondent to mislead unsuspecting Internet users expecting to find the Complainant and unaware of the typographical errors in the Domain Names, which cannot confer rights or legitimate interests upon the Respondent.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Names.

D. Registered and Used in Bad Faith

To succeed under the Policy, the Complainant must show that the Domain Names have been both registered and used in bad faith. It is a double requirement.

The Panel is satisfied that the Respondent must have been aware of the Trade Mark when it registered the Domain Names. The Trade Mark predates the registration of the Domain Names. The fact that both Domain Names comprise of a deliberate misspelling of the Trade Mark confirms its awareness and knowledge of the Trade Mark. It is implausible that the Respondent was unaware of the Complainant when it registered the Domain Names.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with no explanation for the Respondent's choice of the Domain Names is also a significant factor to consider (as stated in section 3.2.1 of [WIPO Overview 3.0](#)). In light of the above, the Panel finds that registration is in bad faith.

The Domain Names are also used in bad faith. Website 2 is a pay-per-click site which has been set up for the commercial benefit of the Respondent. It is highly likely that web users when typing Domain Name 2 into their browser, or finding them through a search engine, would have been looking for a site operated by the Complainant rather than the Respondent. Domain Name 2 is likely to confuse Internet users trying to find the Complainant's official website. Such confusion will inevitably result due to the incorporation of the Trade Mark or misspellings thereof as the most prominent element of the Domain Name.

The Respondent employs the fame of the Trade Mark to mislead users into visiting the Website 2 instead of the Complainant's. From the above, the Panel concludes that the Respondent intentionally attempted to

attract for commercial gain, by misleading Internet users into believing that the Website 2 is authorized, endorsed or somehow connected to the Complainant.

As for Domain Name 1, the fact that it is inactive does not prevent a finding of bad faith given that both Domain Names are likely controlled by the same registrant and also there is also evidence that both Domain Names may be used as an email address for phishing and scam emails and the Respondent has failed to file a Response.

The Panel therefore also concludes that the Domain Names were registered and are being used in bad faith under paragraph 4(b)(iv) of the Policy.

8. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Names, <minervaffoods.com> and <minrevafoods.com>, be transferred to the Complainant.

/Karen Fong/

Karen Fong

Sole Panelist

Date: February 27, 2023