

## **ADMINISTRATIVE PANEL DECISION**

Minerva S.A. v. droid zdx / cnixinyu wood / Carolina Rodrigues  
Case No. D2023-3991

### **1. The Parties**

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

The Respondents are droid zdx and cnixinyu wood, United States of America (“United States”), and Carolina Rodrigues, Panama.

### **2. The Domain Names and Registrar**

The disputed domain names <minarvafoods.com>, <minerevafoods.com>, and <minervafoods.com> are registered with NameCheap, Inc. (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 names. On September 25, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 27, 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 amendment to the Complaint on September 28, 2023.

The Center verified that the Complaint together with the amendment to 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 Respondents of the Complaint, and the proceedings commenced on October 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 25, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on October 26, 2023.

The Center appointed Edoardo Fano as the sole panelist in this matter on November 7, 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.

The Panel has not received any requests from the Complainant or the Respondents regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to [the] Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a response from the Respondents.

The language of the proceeding is English, being the language of the Registration Agreements, as per paragraph 11(a) of the Rules.

#### **4. Factual Background**

The Complainant is Minerva S.A., a Brazilian company operating in the field of production and sale of fresh beef, leather, live cattle exports, and meat products, and owning several trademark registrations for MINERVA and MINERVA FOODS in many countries, among which:

- Brazilian Trademark Registration No. 826080120 for MINERVA and design, registered on December 5, 2017;
- Brazilian Trademark Registration No. 840373821 MINERVA FOODS and design, registered on May 7, 2019;
- Chinese Trademark Registration No. 36913732 MINERVA, registered on January 7, 2021;
- Chinese Trademark Registration No. 53320460 MINERVA FOODS and design, registered on September 14, 2021;
- Swiss Trademark Registration No. 628524 for MINERVA and design, registered on January 5, 2012;
- Thailand Trademark Registration No. 181119323 for MINERVA and design, registered on August 21, 2018.

The Complainant also operates on the Internet, owning several domain name registrations for MINERVA and MINERVA FOODS, among which <minervafoods.com> and <minervafoods.com.br>.

The Complainant provided evidence in support of the above.

According to the WhoIs records, the disputed domain names were registered on the following dates: <minarvafoods.com> on June 22, 2023, <minerevafoods.com> on August 9, 2023, and <minervafoods.com> on July 19, 2023. The disputed domain names <minarvafoods.com> and <minerevafoods.com> are both inactive, while the disputed domain name <minervafoods.com> resolves to a parking page with pay-per-click ("PPC") links and online gambling.

#### **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 names.

Notably, the Complainant states that the disputed domain names are confusingly similar to its trademarks MINERVA and MINERVA FOODS, as the latter is visually and phonetically recognizable in all three disputed domain names, the only differences being the addition/deletion/substitution of letters, in an intent of deliberate typosquatting.

Further to section 6.1 below, the Complainant argues that the disputed domain names are under common control and thus addresses the Respondents in the singular. The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain names since it has not been authorized by the Complainant to register the disputed domain names or to use its trademark within the disputed domain names, it is not commonly known by the disputed domain names and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain names. The disputed domain names <minarvafoods.com> and <minerevafoods.com> are both inactive, while the disputed domain name <minervafoods.com> resolves to a parking page with PPC links and online gambling.

The Complainant submits that the Respondent has registered the disputed domain names in bad faith, since the Complainant's trademarks MINERVA and MINERVA FOODS are well known in the field of production and sale of fresh beef, leather, live cattle exports, and meat products. Therefore, the Respondent targeted the Complainant's trademarks at the time of registration of the disputed domain names and the Complainant contends that, as regards the disputed domain names <minarvafoods.com> and <minerevafoods.com> being inactive, the passive holding of both disputed domain names qualifies as bad faith registration and use, while as regards the disputed domain name <minervafoods.com> resolving to a parking page with PPC links and online gambling, the use of the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website, creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, also qualifies as bad faith registration and use.

Finally, the Complainant suspects that the Respondent might also use the disputed domain names in connection with phishing or fraudulent email communications, since the mail exchanger (MX) records attached to the disputed domain names have been activated.

## **B. Respondents**

The Respondents have made no reply to the Complainant's contentions and are in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

## **6. Discussion and Findings**

### **6.1 Procedural issue - Consolidation of Multiple Respondents**

The Complainant has requested consolidation of the Respondents and stated that all the disputed domain names belong to the same person or organization. No objection to this request was made by the Respondents.

Pursuant to the [WIPO Overview 3.0](#), section 4.11.2, "[w]here a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario". The Panel may consider a range of factors

to determine whether consolidation is appropriate, such as examining relevant registrant contact information, and any naming patterns in the disputed domain names, or other evidence of respondent affiliation that indicate common control of the disputed domain names.

The Panel notes that all the disputed domain names follow the same naming pattern (all of them being misspelled versions of the Complainant's trademark MINERVA FOODS), they have been registered in the same short period of time, namely between June 22 and August 9, 2023, and they use the same Registrar and privacy service. The Panel finds that there is plausible evidence that the disputed domain names are subject to common control, and that it would be procedurally efficient, fair, and equitable to all Parties to accept the Complainant's consolidation request. The Panel further notes that the Respondents did not object to the consolidation request. The Panel therefore accepts the Complainant's consolidation request. Hereinafter, the Panel will refer to the Respondents in the singular, *i.e.*, "the Respondent".

## 6.2 Substantive Issues

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

### 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 names. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds 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.

The Panel finds that the disputed domain names are confusingly similar to the trademarks MINERVA and MINERVA FOODS, by adding/deleting/substituting letters.

The Panel notes that this is a typical case of a deliberate misspelling of a mark (so-called "typosquatting"), by adding, deleting, substituting or reversing the order of letters in a mark, where numerous UDRP panels in the past have found confusing similarity to be present. [WIPO Overview 3.0](#), section 1.9.

It is also well accepted that a generic Top-Level Domain, in this case ".com", is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, 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.

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible 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. 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 present record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise. The disputed domain names <minarvafoods.com> and <minerevafoods.com> are both inactive, while the disputed domain name <minervafoods.com> resolves to a parking page with PPC links and online gambling. The use of a disputed domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the Complainant's trademark. [WIPO Overview 3.0](#), section 2.9.

Based on the available record, 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, regarding the registration in bad faith of the disputed domain names, the reputation of the Complainant's trademarks MINERVA and MINERVA FOODS in the field of production and sale of fresh beef, leather, live cattle exports, and meat products is clearly established, and the Panel finds that the Respondent likely knew of the Complainant and deliberately registered the confusingly similar disputed domain names, all of them being misspelled versions of the Complainant's trademark MINERVA FOODS.

As regards the use in bad faith of the disputed domain names <minarvafoods.com> and <minerevafoods.com>, which are both inactive, Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. While UDRP panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the distinctiveness and reputation of the Complainant's trademarks in the field of production and sale of fresh beef, leather, live cattle exports, and meat products, and the composition of the disputed domain names, and finds that in the circumstances of this case the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

The Panel further notes that the disputed domain name <minervafoods.com> is also being used in bad faith since the Respondent is trying to attract Internet users to its website by creating likelihood of confusion with the Complainant's trademarks as to the disputed domain name's source, sponsorship, affiliation or endorsement.

The above suggests to the Panel that the Respondent intentionally registered and is using the disputed domain name <minervafoods.com> in order both to disrupt the Complainant's business, in accordance with

paragraph 4(b)(iii) of the Policy, and to attract, for commercial gain, Internet users to its website in accordance with paragraph 4(b)(iv) of the Policy.

Finally, since the MX records attached to all the disputed domain names have been activated, noting the nature of the disputed domain names (being all of them misspelled versions of the Complainant's trademark MINERVA FOODS as well as of the Complainant's official websites), the Panel deems that there is a risk that the disputed domain names could be used for phishing activities.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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 <minarvafoods.com>, <minerevafoods.com>, and <minervafoods.com> be transferred to the Complainant.

*/Edoardo Fano/*

**Edoardo Fano**

Sole Panelist

Date: November 21, 2023