

## **ADMINISTRATIVE PANEL DECISION**

MINERVA S.A. v. Allison Broster

Case No. D2024-3104

### **1. The Parties**

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

The Respondent is Allison Broster, South Africa.

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

The disputed domain name <minervasa.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 30, 2024. On July 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 31, 2024, 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 (Registration Private, Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 8, 2024, 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 August 9, 2024.

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 Respondent of the Complaint, and the proceedings commenced on August 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 3, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 11, 2024.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on September 24, 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 listed on the Brazilian stock exchange since 2007, and it is active in the production and export of meat and its byproducts since 1992 under the brand MINERVA. Per the Complaint, currently the Complainant has 33 industrial units, 14 distribution centers, and 17 international offices located in Algeria, Argentina, Australia, Brazil, Chile, China, Colombia, Egypt, United Kingdom, Italy, Lebanon, Paraguay, Russian Federation, Taiwan Province of China, United Arab Emirates, United States of America, and Uruguay, to serve customers in more than 100 countries around the world.

The Complainant operates under the MINERVA brand, as well as other marks including the term “Minerva”, including MINERVA FOODS, MINERVA FINE FOODS, MINERVA BEEF SHOP, MINERVA LEATHER, MINERVA CASINGS, MINERVA LIVE CATTLE EXPORTS, MINERVA INGREDIENTS, MINERVA LOGISTICS, MINERVA PRIME, NOVA MESA MINERVA, MINERVA ENERGIA, BEM-ESTAR ANIMAL MINERVA FOODS, MINERVA SELEÇÃO, BEEF ART MINERVA FOODS, and ANIMAL WELFARE MINERVA FOODS.

The Complainant owns numerous trademark registrations for its brands in many jurisdictions, including:

- Swiss Trademark Registration No. 628254, MINERVA, figurative, registered on April 16, 2012, in Class 29;
- Brazilian Trademark Registration No. 901436941, MINERVA, figurative, registered on June 11, 2013, in Class 18;
- Brazilian Trademark Registration No. 826080120, MINERVA, figurative, registered on December 5, 2017, in Class 29;
- Brazilian Trademark Registration No. 909630798, MINERVA, word, registered on October 2, 2018, in Class 29;
- Brazilian Trademark Registration No. 840373821, MINERVA FOODS, figurative, registered on May 7, 2019, in Class 35; and
- International Trademark Registration No. 1756839, MINERVA FOODS, word, registered on June 13, 2023, in Classes 29, and 35.

(Collectively hereinafter referred as the “MINERVA mark” or the “MINERVA FOODS mark”, respectively).

Prior decisions under the Policy have recognized the international reputation within its field of the MINERVA and the MINERVA FOODS marks.<sup>1</sup>

The Complainant further owns various domain names corresponding to its trademarks, including <minervafoods.com> (registered on June 20, 2012) and <minervafoods.com.br> (registered on June 19, 2012), which resolve to its corporate website.

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<sup>1</sup>See, among others, *Minerva S.A. v. droid zdx / cnixinyu wood / Carolina Rodrigues*, WIPO Case No. [D2023-3991](#); or *Minerva S.A. v. peter paul*, WIPO Case No. [D2023-3580](#).

The disputed domain name was registered on March 10, 2005, and it is currently apparently inactive resolving to an Internet browser error message that indicates, "Page not found. The page you are looking for doesn't exist or has been moved." According to the evidence provided by the Complainant, the disputed domain name has active mail servers or MX records associated with it.

## **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 its MINERVA mark, as it reproduces in its entirety this mark adding the letters "sa", which are the abbreviation, in Portuguese language, of "sociedade anônima" (equivalent to "joint-stock company"), which refers to the Complainant's company name.

The Complainant further contends the Respondent has no rights or legitimate interests in respect of the disputed domain name, as she is not commonly known by the term "Minerva" or "Minervasa" and owns no trademark registrations for such terms; further the Respondent has no business relationship with the Complainant and no authorization to use the MINERVA mark. The disputed domain name does not resolve to any active website, but has active mail servers associated with it that could be used fraudulently.

The Complainant finally contends the disputed domain name has been registered and has been used in bad faith targeting the Complainant and its trademarks. The Respondent's intention is either to offer the disputed domain name to the Complainant, or to profit from the Complainant's reputation by creating a likelihood of confusion amongst Internet users, and potentially to be used to impersonate the Complainant in any type of fraud or phishing scam. Due to the reputation of the MINERVA mark, the Respondent must have had knowledge of it, and any search over the Internet reveals the Complainant, its trademark and its corporate website. The present inactive use of the disputed domain name amounts to the fact that the Respondent has no rights or legitimate interests over the disputed domain name.

### **B. Respondent**

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

## **6. Discussion and Findings**

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, inter alia, in paragraph 10 of the Rules.

### **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.

The entirety of the MINERVA mark is reproduced within the disputed domain name, with the addition of the letters “sa” after the mark. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, the letters “sa”, may bear on assessment of the second and third elements, the Panel finds the addition of such letters do not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Therefore, the Panel finds the first element of the Policy has been established.

### **B. Second and Third Elements: Rights or Legitimate Interests. Registered and Used in Bad Faith.**

Due to the circumstances of this case, the Panel considers appropriate to examine the second and third elements of the Policy in the same section.

Regarding the second element of the Policy, 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.

The Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the Respondent has not replied to the Complaint. Therefore, 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. However, the Respondent’s failure to respond to the Complainant’s contentions does not automatically result in the Complaint succeeding. [WIPO Overview 3.0](#), section 4.3.

In the assessment of the case merits, the Panel may perform independent research and undertake limited factual research into matters of public record if it considers such information useful to assessing the case merits and reaching a decision. This may include visiting the website linked to the disputed domain name, consulting historical resources such as the Internet Archive ([www.archive.org](http://www.archive.org)) in order to obtain an indication of how a domain name may have been used in the relevant past, reviewing dictionaries or encyclopedias (e.g., Wikipedia), or accessing trademark registration databases; and, in some circumstances, the Panel may also rely on personal knowledge. [WIPO Overview 3.0](#), section 4.8.

The Panel notes that the disputed domain name is composed of “Minerva” and the letters “sa”. The Panel notes that “Minerva” is a female name that is found in Roman mythology, where she was the goddess of wisdom and art.

The Panel further notes the letters “sa” could be not only the abbreviation in Portuguese language, of “sociedade anônima” (equivalent to “joint-stock company”), but also the abbreviation of “South Africa”, country where the Respondent is located according to the Registrar’s verification.

During the Panel’s assessment of the evidence in the record, the Panel has noted that the Complainant’s submission of a search over the Internet for the Respondent’s name and the term “minervasa” (Exhibit 17 of the Complaint) was in fact referring not to the Respondent’s name (provided at a subsequent time by the

Registrar verification), but to the terms “minervasa” and “Domains by Proxy” (the privacy service originally masking the publicly-available WhoIs). The Panel notes that a search including the Respondent’s name and the term “minervasa”, produce results referring to the Respondent and her social media pages (in Facebook, Instagram, etc.); and, according to these social media pages, the Respondent is apparently an experienced translator and a writing revision professional in various languages. These pages further inform the Respondent owns (or owned) a small business in Durban, South Africa, under the name “Minerva Professional Writing Services”, which apparently operates in her field of expertise. Furthermore, from a review of the archived screenshots of the disputed domain name found on the “Wayback Machine”, the Panel notes that the disputed domain name had been used at various points of times to host a website for “MINERVA Writing Skills for Business” and alluded to the Roman mythological divinity from which the name was derived. Such use apparently came to an end in May 2024.

The Panel further notes that the disputed domain name is not currently used in connection to any active website, albeit, according to the evidence provided by the Complainant, there are active mail servers or MX records associated with it, which may still be used in connection to the said Respondent’s business. In this respect, the Panel notes that there is no evidence on record that supports the use of the disputed domain name for sending emails to the Complainant’s customers or to any other person in any type of fraud or phishing scam that may support a finding that the Respondent lacks rights or legitimate interests.

Therefore, the assessment of this case and the evidence on record leads the Panel to consider the disputed domain name was used in connection to an activity disconnected from the Complainant and its trademarks, which may potentially be considered a bona fide offering of services under the Policy and could confer rights or legitimate interests on the Respondent. [WIPO Overview 3.0](#), section 2.2.

Nevertheless, the Panel does not consider necessary to reach a conclusion on the second element of the Policy, due to the Panel’s decision on the third element.

Regarding the third element of the Policy, 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.

In the present case, the Panel notes that, although the Complainant’s use of the MINERVA mark started in 1992, the registration of the disputed domain name in 2005 predates, in various years, all the Complainant’s trademark registrations. According to the list of trademarks provided by the Complainant (Exhibit 7 of the Complaint), the oldest trademark registrations owned by the Complainant were registered in 2012. The Panel has further corroborated this list of trademark registrations with a search over the Global Brand Database, finding no trademark registration for the Complainant’s MINERVA mark that predates the registration of the disputed domain name.

This circumstance does not (in itself) prevent a finding of bad faith under the Policy but does require other circumstances that may point to bad faith. Certain circumstances indicating the Respondent knew about the Complainant and its MINERVA mark (that was used and not yet registered at the time of the registration of the disputed domain name), and targeted those unregistered rights with the registration and use of the disputed domain name would be required in order to consider the Respondent acted in bad faith. [WIPO Overview 3.0](#), section 3.8.

However, in this respect, the Panel finds no evidence on the record available that may lead to conclude the Respondent acted in bad faith under the Policy.

The Panel notes the MINERVA mark has been considered internationally used and reputed within the food industry by various prior decisions under the Policy. The Complaint cites *Minerva S.A. v. Domain Administrator*, See *PrivacyGuardian.org Ilc*, WIPO Case No. [D2023-3986](#); and *Minerva S.A. v. droid zdx / cnixinyu wood / Carolina Rodrigues*, WIPO Case No. [D2023-3991](#); and the Panel has also saw other decisions finding the MINERVA and MINERVA FOODS marks are reputed within its sector. However, none

of these decisions predates the registration of the disputed domain name, all have been issued after 2005, and none of these decisions specifically refers to South Africa, where the Respondent is located.

The Panel further notes South Africa is not specifically mentioned in the Complaint as one of the countries in which the Complainant has international offices or as a country where it exports its products, and the list of the Complainant's trademarks (Exhibit 7 of the Complaint) does not include any trademark registration for this jurisdiction.

Following the invitation in the Complaint, the Panel has consulted the Complainant's corporate website at "www.minervafoods.com", where no results for "South Africa" could be found. This website further includes a timeline of the Complainant's business and its evolution over the years at its "About Minerva" section, in which South Africa is not mentioned, and it is indicated, in 2008, "[...] we acquired our first unit outside Brazil [...]".

Therefore, the Panel notes the Parties are located in different countries and continents, and there is no evidence in the record that indicates the Complainant's MINERVA mark was reputed, or even used, in the country where the Respondent is located, at the time of the registration of the disputed domain name (in 2005).

The Complainant has further alleged the Respondent must have been aware of its rights over the MINERVA mark due to the use of this mark over the Internet and, particularly, in its corporate website at "www.minervafoods.com", indicating that any search over the Internet reveals this trademark and this site. However, the Panel notes that this allegation is currently true, but the Complainant has not provided any evidence supporting its trademark and its website were used and active, respectively, over the Internet, at the time of the registration of the disputed domain name in 2005. The Panel further notes the Complainant's domain names were registered well after this year, in 2012.

Therefore, the Panel finds there is no evidence on the record that justifies the Respondent must have been aware of the MINERVA mark at the time of the registration of the disputed domain name.

Regarding the use of the disputed domain name, as reflected above, the Panel's assessment of the case and the evidence on the record leads to consider that the disputed domain name has been used in connection to a business unrelated to the Complainant or its trademark, and nothing on the record indicates the Respondent has used the disputed domain name in bad faith to target the Complainant.

The Panel further notes the Complainant has not provided any evidence that indicates the disputed domain name has been used in connection to any fraud or phishing scam. Nothing on the record indicates the causes why the disputed domain name is not currently apparently connected to an active website; however, as it has still mail servers or MX records, the Panel finds the disputed domain name may still be used for sending emails or as a contact email for the Respondent's business in translation and writing services.

The Panel further finds the fact that the disputed domain name shows no active website may be motivated by numerous reasons, i.e., a restyling of the website, or even a temporary or permanent closure, but this fact alone does not constitute bad faith under the Policy.

Therefore, the Panel finds the evidence in the case file as presented is not sufficient to indicate that the Respondent's aim in registering and using the disputed domain name was to target the Complainant and its MINERVA mark to profit from or exploit this trademark.

Given that the burden of proof is on the Complainant, the Panel finds the third element of the Policy has not been sufficiently established.

The Panel wishes to clarify this decision is taken within the narrow scope of the Policy, which is restricted to cybersquatting cases, and would not prevent the Complainant to file any other type of action before the competent courts, e.g., if, in the future, the use of the disputed domain name infringes its rights over the reputed MINERVA mark. Furthermore, if in the future the disputed domain name is transferred to a third party who targets the Complainant's reputed mark, the Panel considers that the Complainant may file a different Complaint under the UDRP Policy.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Reyes Campello Estebaranz/*

**Reyes Campello Estebaranz**

Sole Panelist

Date: October 8, 2024