

ADMINISTRATIVE PANEL DECISION

Minerva S.A. v. Name Redacted
Case No. D2023-4525

1. The Parties

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

The Respondent is Name Redacted¹.

2. The Domain Name and Registrar

The disputed domain name <mlnervafoods.com> is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 30, 2023. On October 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 1, 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 (N/A) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 13, 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 November 14, 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”).

¹ The Respondent appears to have used the name and/or contact details of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this Decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this Decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST 12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2023. On November 29, 2023, a third party sent an email communication to the Center. The Respondent did not submit any response. On December 11, 2023, the Center informed the Parties that it would proceed to panel appointment.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on December 26, 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 following facts are undisputed.

The Complainant was acquired in 1992 by the Vilela de Queiroz family, which started exploiting cattle raising and related activities in 1957 in Brazil. The Complainant claims that its official website can be found at the domain name <minervafoods.com>.

The Complainant is one of the leaders in the production and sale of fresh beef and its byproducts, live cattle exports and beef processing in South America. Through its 32 industrial units, the Complainant offers products which are sold to customers in more than 100 countries around the world by its 14 distribution centers and 12 international offices, located in Algeria, Argentina, Australia, 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 from all over the world.

The Complainant is the owner of various trademark registrations for MINERVA and MINERVA FOODS in several of the afore-mentioned countries, including the Brazilian trademark registration for the combined word / device mark MINERVA FOODS, with registration number 925343730, applied for on December 30, 2021 and registered on February 28, 2023, for goods in class 18.

The disputed domain name was registered on October 11, 2023. At the time of filing the Complaint and at the time of the Decision the disputed domain name did not resolve to an active website.

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 only difference between the disputed domain name and the Complainant's prior domain names and trademark registrations is that the letter "i" in the Complainant's trademark is replaced by the letter "l", thus characterizing a typical typosquatting case.

The Complainant alleges that even though the disputed domain name does not direct users to an active webpage, it has active mail servers associated to it. It is therefore very likely that the Respondent has registered the disputed domain name to pass off as the Complainant in connection with fraudulent scams. The Respondent, furthermore, has no rights or legitimate interests in the disputed domain name given that: (i) the Respondent is not entitled to any trademark, trade name or any other right relating to the disputed domain name; (ii) the Respondent has not been authorized by the Complainant to use its trademarks and there is no business relationship between the Complainant and the Respondent; and (iii) the Respondent is not known by the disputed domain name.

The Complainant furthermore alleges that the Respondent evidently knew of the existence of the Complainant's prior trademark rights and domain name, which were matters of public record, before registering the disputed domain name. Thus, the Respondent must have had knowledge of the Complainant's pre-existing rights.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However, a third party, informed the Center on November 29, 2023 that on October 24, 2023, she filed a complaint with Microsoft that some unknown person had managed to create several domains using her email address and charging it to her personal credit card. She stated that she has also taken immediate action to change her password and reported to her bank to cancel her credit card. Microsoft investigated her complaint. She confirmed that the disputed domain name was disabled.

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.

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 the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. Here the situation is that the letter "i" is replaced by the similar-appearing letter "l". [WIPO Overview 3.0](#), section 1.9.

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.

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.

On a balance of probabilities and also lacking a response, the Panel considers that there could not have been any other probable reason for registering the disputed domain name which includes this intentional misspelling, than for the purpose of phishing or committing any other form of fraud. Panels have held that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 refers to its consideration under section 6.B and 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.

In the present case, the Panel notes, lacking a response, that mail servers have been activated, and taking into account the message the Center received from a third party alleging identity fraud, that this is a clear case of typo-grabbing with the likely intention to defraud third parties, and the Respondent must therefore have registered and used the disputed domain name for the purposes of intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant's mark. Panels have held that the use of a domain name for such illegal activity constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name, beyond the use for email, does not prevent a finding of bad faith in the circumstances of this proceeding. Although 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, 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 <mlnervafoods.com> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: January 4, 2023