

## **ADMINISTRATIVE PANEL DECISION**

Minerva S.A. v. Mack Lazarus and cnixinyu wood  
Case No. D2024-2467

### **1. The Parties**

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

The Respondents are Mack Lazarus, United State of America and Cnixinyu Wood, United States of America.

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

The disputed domain names <minervafoodss.com> and <minrervafoods.com> are both registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 18, 2024. On June 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 18, 2024, 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 Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint.

The Center sent an email communication to the Complainant on June 19, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amendment to the Complaint on June 21, 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 Respondents of the Complaint, and the proceedings commenced on June 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 15, 2024. The Respondents did not submit any formal response. The Respondent Mack Lazarus sent informal communications on June 24, 28, July 1 and 16, 2024. Accordingly, the Center notified the commencement of the Panel's appoint process on July 16, 2024.

The Center appointed Iris Quadrio as the sole panelist in this matter on July 31, 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 was acquired in 1992 by the Vilela de Queiroz family and is one of the leaders in the production and sale of fresh beef and its byproducts and in live cattle exports and beef processing in South America. Through its 33 industrial units, it offers products that are sold to customers in more than 100 countries around the world. The Complainant has 14 distribution centers and 17 international offices, strategically located in Algeria, Argentina, Australia, Brazil, Chile, China, Colombia, Egypt, United Kingdom, Italy, Lebanon, Paraguay, the Russian Federation, United Arab Emirates, United States of America and Uruguay.

Additionally, as evidenced by the Complainant in Annex 6, the Complainant has won the "Chico Mendes Award" four times in a row since 2014, highlighting its Sustainable Livestock Program.

The Complainant is the owner of trademark registrations for MINERVA and MINERVA FOODS in many jurisdictions, including Brazilian Instituto Nacional da Propriedade Industrial ("INPI") Reg. No. 826080120, for class 29, registered on December 5, 2017, Reg. No. 922128189, for class 29, registered on January 11, 2022, and Reg. No. 925344435, for class 35, registered on February 28, 2023; and China Trademark and Patent Office ("CTPO") Reg. No. 36913731, for class 29, registered on February 28, 2021, and Reg. No. 53320458, for class 30, registered on December 14, 2021.

Likewise, the Complainant claims to own an important domain names portfolio, including, among others, the one redirecting to its primary website <minervafoods.com> registered since June 20, 2012.

The first disputed domain name <minervafoodss.com> was registered on April 8, 2024, while the second disputed domain name <minrervafoods.com> was registered earlier on March 20, 2024. Both disputed domain names resolve to inactive webpages.

#### **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.

The Complainant states that the disputed domain names are confusingly similar to its trademarks MINERVA and MINERVA FOODS, and to its associated domain names.

The Complainant contends that the Respondents have no rights or legitimate interests in respect of the disputed domain names, nor are related in any way to the Complainant. No license nor authorization have been granted to the Respondents to make any use of the Complainant's trademarks MINERVA and MINERVA FOODS or apply for the registration of the disputed domain names.

More specifically, the Complainant alleged that the Respondents have not used and/or have no demonstrable intention to use the disputed domain names in good faith except to create a likelihood of confusion with the Complainant's trademark. In fact, the Complainant claims that the Respondents have selected the disputed domain names only to intentionally lead Internet users to believe they are accessing the Complainant's website.

Finally, the Complainant has requested the Panel to issue a decision ordering the transfer of the disputed domain names to the Complainant.

## **B. Respondents**

The Respondents did not formally reply to the Complainant's contentions. On its communications of June 25 and 28, July 1 and 16, 2024, the Respondent Mack Lazarus wrote "Please you have to refund the funds use in purchasing the domain", "I will be selling the name back since this is going cost me a lot of stress", "There was no threat there they can't say we should stop use of a domain that doesn't have any content that belong to them, they have to buy it from us because there was not use of illegal content or complaints of us so you want the domain please we are willing to let go on a price", "Whats is the shipment all about ", "Please whats the conclusion??" and "They didn't accept the terms".

## **6. Discussion and Findings**

### **6.1. Consolidation: Multiple Respondents**

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the disputed domain names registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that, as seen above: (i) both disputed domain names share a similar naming pattern incorporating the Complainant's MINERVA and MINERVA FOODS trademarks with intentional misspellings; (ii) both disputed domain names were registered within a relatively short period of time (less than 20 days); (iii) both disputed domain names were registered through the same Registrar (NameCheap, Inc.); and (iv) both disputed domain names currently resolve to inactive websites.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants in a single proceeding.

### **6.2. Substantive matter**

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

- (i) the disputed domain names are identical or confusingly similar with a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondents have no rights or legitimate interest in respect of the disputed domain names; and
- (iii) the disputed domain names were 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 name. [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 Panel finds the mark is recognizable within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The typosquatting practice of adding a letter "s" in the first disputed domain name and a letter "r" in the second disputed domain name, does not prevent this Panel to conclude that the disputed domain names are confusingly similar to the Complainant's trademark under [WIPO Overview 3.0](#), section 1.9.

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 Respondents 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 Complainant has claimed not to have authorized, licensed, or permitted the Respondents to register or use the disputed domain names or to use the MINERVA and MINERVA FOODS trademarks nor is there any other evidence in the file suggesting that the Respondents have or could have rights or legitimate interests in the disputed domain names.

Even more, it does not seem that the Respondents made nor are making a legitimate noncommercial or fair use of the disputed domain names. On the contrary, both disputed domain names are currently being passively held. In particular, <minrervafoods.com> has associated active mail servers and has been used in connection with fraudulent emails impersonating the Complainant, as evidenced in annexes 13 and 14. Panels have held that the use of a domain name for illegal activity as impersonating or passing off can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

According to the evidence submitted by the Complainant, the disputed domain name <minrervafoods.com> also used to resolve to a parking page displaying Pay-Per-Click ("PPC") links. The use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links capitalize on the reputation and goodwill of the complainant's mark. See section 2.9 of the [WIPO Overview 3.0](#).

Having reviewed the available records, the Panel finds the Complainant has established a prima facie case that the Respondents lack rights or legitimate interests in the disputed domain names. The Respondents have not rebutted the Complainant's prima facie showing and have 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 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.

In such connection, the Complainant has submitted evidence to support that the trademarks MINERVA and MINERVA FOODS are widely known and were registered and used many years before the Respondents registered the disputed domain names. When registering the disputed domain names, the Respondents have targeted the Complainant's trademarks to generate confusion among Internet users and benefit from the Complainant's reputation under paragraph 4(b)(iv) of the Policy.

The Panel notes that the first disputed domain name <minervafoodss.com> is being passively held. 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. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel 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.

Likewise, as evidenced by the Complainant in annexes 13 and 14, the second disputed domain name <minrervafoods.com> is being used in connection with a fraudulent scheme impersonating the Complainant and seeking to defraud the Complainant and its customers. Panels have held that the use of a domain name for illegal as impersonation or passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Moreover, the Respondent Mack Lazarus, registrant of the first disputed domain name (<minervafoodss.com>), has also sent emails threatening the Complainant with the sale of the disputed domain name. Panels have found bad faith on the part of the respondent when circumstances indicate that the respondent's intent in registering the disputed domain name was in fact to profit in some fashion or otherwise exploit the complainant's trademark. [WIPO Overview 3.0](#), section 3.1.1.

Having reviewed the record, the Panel finds that the registration and use of the disputed domain names by the Respondents constitute bad faith under the Policy.

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 names <minervafoodss.com> and <minrervafoods.com> be transferred to the Complainant.

*/Iris Quadrio/*

**Iris Quadrio**

Sole Panelist

Date: August 14, 2024