

ADMINISTRATIVE PANEL DECISION

MINERVA S.A. v. Marcel Tembe

Case No. D2024-2489

1. The Parties

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

The Respondent is Marcel Tembe, Spain.

2. The Domain Name and Registrar

The disputed domain name <minervasfoods.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 19, 2024. On June 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 20, 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 (GDPR Masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 24, 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 June 25, 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 June 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 18, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on July 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, acquired in 1992 by the Vilela de Queiroz family, is active in the industry of production and sale of fresh beef and its byproducts, live cattle exports and beef processing. Currently, the Complainant has 33 industrial units, 14 distribution centers reaching customers from more than 100 countries around the world, and 17 international offices located in numerous strategic countries, including Italy, Australia, China, the United States of America and the United Arab Emirates.

The Complainant holds trademark registrations for or including MINERVA, as well as MINERVA FOODS, such as the following:

- the Brazilian registration number 901436941 for the mark MINERVA (figurative), filed on February 4, 2009, registered on June 11, 2013, covering goods in Class 18; and
- the Uruguayan Trademark Registration number 458056 for the mark MINERVA FOODS (figurative), filed on August 27, 2014, registered on March 10, 2017, covering services in International Classes 35, 40 and 44.

The Complainant holds, since June 20, 2012, and uses the domain name <minervafoods.com>.

The disputed domain name <minervasfoods.com> was registered on May 2, 2023, and at the time of filing the Complaint, it resolved to an inactive page.

According to Annex 13 to the Complaint, Mail exchange (“MX”) servers have been configured at the disputed domain name and thus, there may be a risk that the Respondent is engaged in a phishing scheme.

The Complainant claims the actual use of the disputed domain name to send fraudulent emails in an attempt to cause its potential customers to pay for invoices with wrong banking details. However, the Panel notes that the evidence provided to support such claims, in particular Annex 14 to the Complaint, are related to other domain names reproducing the Complainant’s MINERVA mark, and not email addresses associated with the disputed domain name.

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 MINERVA trademark is distinctive and well-known internationally in the production of beef, leather, export of live cattle and meat products as well as processing of beef, pork and poultry; the disputed domain name is similar to its trademark, trade name and domain name as it incorporates an intentional misspelling, the letter “s” added after the trademark MINERVA; the Respondent has no rights or legitimate interests in the disputed domain name; the Respondent registered and is using the disputed domain name in bad faith for sending emails with the fraudulent intent to impersonate the Complainant and defraud the Complainant and its customers, and submitting false banking details to Complainant’s customers in an attempt to cause customers of the Complainant to pay for invoices with wrong banking details.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is 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 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 mark is reproduced within the disputed domain name, with an additional letter "s" inserted between the words composing the mark MINERVA FOODS. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [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 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.

The Panel notes that the composition of the disputed domain name, which reproduces the Complainant's trademark, company name and domain name with a minor alteration, suggests an affiliation with the trademark owner. Panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

Further, according to the evidence provided in the Complaint, active MX records are associated with the disputed domain name. Although Complainant has not provided evidence that the Respondent has impersonated Complainant in emails associated with the disputed domain name, or engaged in fraudulent activities, the Panel finds that noting the typosquatting nature of the disputed domain name, configuring email addresses under the disputed domain name, demonstrate that most likely, the Respondent's intention is to conduct phishing activities.

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 the present case, the Panel notes that the Respondent registered the disputed domain name in bad faith because it is highly similar to the Complainant's internationally known trademark registered since at least 2013, trade name and domain name.

At the time of filing the Complaint, the disputed domain name directs towards an inactive page.

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. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the international reputation and distinctive character of the Complainant's trademark; the composition of the disputed domain name which incorporates the Complainant's trademark slightly altered; the Respondent's failure to respond to the present proceedings; and the use of inaccurate/incomplete contact details in the WhoIs, 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.

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, <minervasfoods.com>, be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: August 5, 2024