

ADMINISTRATIVE PANEL DECISION

MINERVA S.A. v. Matthew Pena

Case No. D2022-4040

1. The Parties

The Complainant is MINERVA S.A., Brazil, represented by Opice Blum, Brazil.

The Respondent is Matthew Pena (“Mr. Pena”), United States of America.

2. The Domain Name and Registrar

The disputed domain name <mlnervafoods.com> (“Disputed Domain Name”) is registered with Automattic Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 27, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 31, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on November 1, 2022, 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 amended Complaint on November 1, 2022.

The Center verified that the Complaint together with the amended 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 November 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 30, 2022.

The Center appointed Jane Lambert as the sole panelist in this matter on December 12, 2022. 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 a Brazilian company that carries on business as a distributor of meat and other agricultural products. It has subsidiary companies and sales outlets in Brazil and several other countries. It is one of the largest suppliers of such products in South America.

The Complainant is the owner of the Brazilian trade mark registrations No. 826080120 for MINERVA, registered on December 5, 2017 in class 29; and No. 840405863 for MINERVA FINE FOODS, registered on September 10, 2019 in class 29.

Furthermore, the Complainant's corporate name is MINERVA S.A., and it is the owner of the domain name <minervafoods.com>.

The Respondent is Mr. Pena. The Disputed Domain Name was registered on September 16, 2022, and by the time of filing the Complaint, it was used in a fraudulent email scheme.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the Disputed Domain Name on the grounds that:

- The Disputed Domain Name is confusingly similar to a trade mark in which the Complainant has rights; and
- The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- The Disputed Domain Name has been registered and is being used in bad faith.

As to the first of those grounds, the Complainant has adduced evidence that it is the registered proprietor of the following Brazilian trade marks:

- The word MINERVA for beef, pork, goat meat, horse meat, mutton and poultry in class 29 under registration number 826080120 with effect from January 21, 2004; and
- The words MINERVA FINE FOODS for beef, pork, poultry and goat meat in the same class under registration number 840405863 with effect from January 30, 2013.

The Complainant's corporate name is MINERVA S.A., the use of which is restricted by Brazilian law.

Further, the domain name of the Complainant's website is <minervafoods.com>. The Disputed Domain Name differs from the MINERVA trade mark by the substitution of the lower case letter "i" for the letter "l" and the combination of the fragment "mlnerva" with "foods". The Disputed Domain Name differs from the MINERVA FINE FOODS trade mark only in the omission of the term "fine".

The Complainant contends that the similarity of the Disputed Domain Name to the above-mentioned registered trade marks is likely to confuse the public including customers for the Complainant's products. In support of such contention, the Complainant refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 1.7 and to *Pierre & Vacances Center Parcs Group v. Pham Dinh Nhut*, WIPO Case No. [D2017-0605](#).

As to the second ground, the Complainant states that it has never licensed, permitted, or authorized the Respondent to make any use of its trade marks or corporate name. Also, the Complainant has found no evidence that any of the circumstances in paragraph 4 (c) to the Policy applies to this case.

As to the third ground, the Complainant argues that the use of a domain name that is confusingly similar to the trade marks and corporate name of one of the largest meat suppliers in South America is of itself evidence of registration and use of the Disputed Domain Name in bad faith. It also refers to the use of the Disputed Domain Name for emails demanding payments, to which Mr. Pena is not entitled and his use of a privacy service.

B. Respondent

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

6. Discussion and Findings

The agreement for the registration of the Disputed Domain Name incorporated the Policy by reference. Paragraph 4 (a) of the Policy requires the Respondent to submit to a mandatory administrative proceeding in the event that a complainant asserts to the applicable Provider, in compliance with the Rules of Procedure, that:

- (i) the Disputed Domain Name is identical or confusingly similar to a trade mark 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 Name; and
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

In the administrative proceeding, the Complainant must prove that each of these three elements are present.

A. Identical or Confusingly Similar

The Panel finds the first element to be present.

The Complainant is the registered proprietor of the trade mark MINERVA. That trade mark is therefore one in which the Complainant has rights.

The Disputed Domain Name differs from the MINERVA trade mark only in the substitution of the letter "i" for the letter "I" and the addition of the term "foods". The Disputed Domain Name is therefore confusingly similar to the trade mark.

B. Rights or Legitimate Interests

The Panel finds the second element to be present.

Section 2.1 of [WIPO Overview 3.0](#) provides the following guidance:

"While 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 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."

The Complainant has registered the word MINERVA as a trade mark in Brazil and other countries. As it is one of the largest food distributors in South America, it is likely to have acquired goodwill and a reputation in that mark in relation to food distribution in all the countries in which it does business. The Complainant has stated clearly that it has never licensed, permitted, or authorized the Respondent to make any use of its trade marks or corporate name.

Paragraph 4 (c) of the Policy lists a number of circumstances which, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate that the Respondent has rights or legitimate interests to the Disputed Domain Name for purposes of paragraph 4(a)(ii). The Complainant has stated that it has looked for evidence that one or more of those circumstances apply and has found none.

It follows that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The evidential burden therefore shifts to the Respondent. He has been afforded ample opportunity to adduce evidence of a right or legitimate interest in the Disputed Domain Name but has failed to grasp such opportunity. It follows that he has failed to discharge that burden.

C. Registered and Used in Bad Faith Paragraph 4(a)(ii)

The Panel finds the third element to be present.

Paragraph 4 (b) of the Policy lists several circumstances which if found by the Panel to be present, shall be evidence of the registration and use of a Disputed Domain Name in bad faith. One of those circumstances is subparagraph (iv) of that paragraph:

“by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

It appears from Annex 6 to the Complaint that the Disputed Domain Name was used as an email address to demand money to which the Respondent was not entitled. The Panel finds that the Disputed Domain Name suggested a connection with the Complainant that was likely to confuse the Complainant’s customers or potential customers. By sending out such emails the Respondent was attempting to attract the Complainant’s customers to an online location where they would transfer funds to the Respondent that they were not obliged to pay.

The Panel finds the circumstances mentioned in paragraph 4 (b) (iv) to be present and is therefore required to treat such finding as evidence of the registration and use of the Disputed Domain Name in bad faith. In the absence of any countervailing evidence or explanation the Panel makes a finding of registration and use in bad faith.

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.

/Jane Lambert/

Jane Lambert

Sole Panelist

Date: December 26, 2022