Decision for dispute CAC-UDRP-101876

Case number	CAC-UDRP-101876
Time of filing	2018-02-08 09:17:57
Domain names	migrosbkonline.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	MIGROS-GENOSSENSCHAFTS-BUND

Complainant representative

Organization	SILKA Law AB

Respondent

Organization	3mtech

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any legal proceedings which is pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

Complainant owns the following Swiss trademark registrations:

- MIGROS, no. P-405500, registered on September 20, 1993;
- MIGROS, no. 2P-415060, registered on February 13, 1995;
- word and device MIGROSBANK, no. 623618, registered on December 12, 2011;
- MIGROSBANK, no. 414500, registered on January 12, 1995.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Migros Genossenschaftsbund, is the Swiss based organization of the regional Migros Cooperatives. Complainant is known throughout Switzerland as one of the biggest department stores, offering a wide range of food, non-food products and services. The company was founded in 1925 in Zurich. Nowadays, the Migros Group, however, is not only related to the food industry. It consist of 4 travel agencies, Cultural Institutions, Museum, Magazines, Restaurants, Aqua/Fitness/ Golf parks, several pension funds and foundations and a bank.

Migros Bank is a wholly owned subsidiary of the Migros Group. It operates the website www.migrosbank.ch. The bank was founded in 1958. The bank is present in 67 locations in Switzerland. The bank is also active on several famous social media websites.

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The Complainant contends that it owns and maintains the following domain names which resolve to its official websites, which are dedicated to its products and services: <migros.com> (registered in 1998), <migros.ch>, <migrosbank.com> (registered in 1999 by MIGROS Bank AG), <migrosbank.ch> in the name of Migros Bank AG.

The Complainant has previously successfully challenged several MIGROS domain names through the UDRP process, like the following WIPO cases: D2016-2547, D2016-0687, D2015-2375, D2015-1630, D2015-1197, D2015-1012, D2015-0921, D2015-0974, D2015-0564, D2015-0326D2000-1171, D2008-0092, DCH2008-0016, DCH2010-0020, DCH2010-0021, D2015-0564, D2015-0326. Further, FORUM recently took a decision in favor of the Complainant (FA1505001621184, dated on July 8, 2015) where similar facts have been stated.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

IDENTICAL OR CONFUSINGLY SIMILAR

The disputed domain name directly and entirely incorporates the Complainant’s well-known MIGROS and MIGROSBANK trademarks. The most distinctive part of the domain name is “migros”.

The combination with the word “online” and the additional letter “bk” are closely connected to the Complainant’s trademark and business activities. It offers online banking and “bk” stands for banking. The addition of the generic word “online” does not eliminate the confusing similarity.

Complainant relies on the recent WIPO Case Case No. D2017-0647 regarding the domain name <migrosbonline.com> where the Panel held that “The addition of the elements “b” and “online” in the disputed domain name, while not identical to Complainant’s trademark, do not negate their confusing similarity to that trademark”.

NO RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

There is no bona fide offering of goods or services and the Respondent is not known under the name “Migros”.

The combination of “migrosbank” with “online” strengthens the impression of a legitimate connection between the website to which the the disputed domain name resolves and Complainant.

The Complainant has conducted searches on the Respondent’s name and has not found anything that would justify the disputed domain name registration.

Respondent has not provided Complainant with any evidence or arguments of any possible legitimate right or interest.

When conducting a Google search on “Migros”, the first result points to Complainant‘s official website. The Respondent could easily perform a similar search before registering the disputed domain name.

The disputed domain name previously resolved to a website that was a copy of Complainant's official website www.migrosbank.com.

Respondent aimed at misleading the internet users.

REGISTERED AND BEING USED IN BAD FAITH

The disputed domain name was registered in bad faith

Respondent reproduced Complainant’s website by adopting the Complainant’s logo and overall look with the intention to deceive internet users into believing that the website was in fact operated by the Complainant. After it received a cease and desist letter from Complainant, this website was suspended.

Complainant relies on WIPO decision D2017-0066 which ordered the transfer of the domain name <cicbanqhol.com> that resolved to an infringing website dedicated to banking services and offering the Internet users to contact the bank via an e-mail address incorporating the Complainant’s trademark.

The fact that the website at the time of filing the Complaint does not resolve any more to the infringing website does not cure the bad faith use.

RIGHTS

The burden to establish confusing similarity is low. Here, a simple comparison of the respective MIGROS and MIGOSBANK mark and the disputed domain name demonstrates that it is confusingly similar, and almost identical to the MIGROSBANK mark. The disputed domain name consists entirely of the MIGROSBANK trademark with the addition of the term ‘Online’, which is a generic term used to indicate that the banking services are provided online.

The Complainant has, to the satisfaction of the Panel, shown that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The second element of a UDRP claim only requires that the Complainant makes a prima facie showing that the Respondent lacks a right or legitimate interest in the disputed domain name. Once the Complainant has made such a showing, the burden shifts to the Respondent to demonstrate that it has rights or legitimate interest in the disputed domain name. In this case, the Respondent has no rights or legitimate interest in the disputed domain name. The Complainant has demonstrated longstanding, exclusive use of the MIGROS and MIGROSBANK marks, and thus the Complainant’s rights predate any registration or use of the the disputed domain name by the Respondent.

In considering whether a Respondent has a right or legitimate interest in a disputed domain under Paragraph 4(c) the panel may consider:

(i) whether the respondent is using the disputed domain in connection with a bona fide offering of goods or services;

(ii) whether the Respondent is commonly known by the disputed domain; and

(iii) whether the respondent is making a legitimate noncommercial use or fair use of the disputed domain. See Paragraph 4(c). Respondent has no right or legitimate interest in the Disputed Domain and is only using the Disputed Domain to provide access to a website the content of which is clearly misleading.

The use of the disputed domain name to mislead the internet users does not demonstrate any bona fide offering of goods or services.

Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name, within the meaning of paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Respondent has registered and/or used the disputed domain name in bad faith where the purpose of the registration is to confuse consumers as to the source of the website. Under Paragraph 4(b)(iv) of the Policy the Panel may make a finding that the Respondent has registered and used the disputed domain name in bad faith where “by using the Disputed Domain Name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [its] 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 [Respondent’s] web site or location or of a product or service on [registrant’s] web site or location.”

Respondent is clearly attempting to create a likelihood of confusion as to the source, sponsorship, affiliation and/or endorsement of the Infringing website.

The overall look and feel of the Infringing website is very similar to that of Complainant’s own website. Moreover the copyright in the name of MIGROS BANK AG on the infringing website proves that Respondent wants to mislead the Internet users. Given the well-known character of the MIGROS trademark and the existence of the MIGROS BANK, the name of which is protected by the MIGROSBANK trademark, the Respondent could not ignore the MIGROS and MIGROSBANK trademarks when it registered the disputed domain name.

It is clear that the Respondent knowingly registered and used the disputed domain name to not only confuse customers as to the source of the infringing website, but also to disrupt Complainant’s business, evidencing Respondent’s bad faith use and registration of the disputed domain name. Moreover it can be used for phishing practices which are very dangerous for Complainant and for its clients.

The Complainant has, to the satisfaction of the Panel, shown the disputed domain dame has been registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The MIGROS trademark is well-known. The disputed domain name is nearly identical with the MIGROSBANK trademark. It was used to give access to an obviously infringing website. Respondent was well aware of the trademark's rights when it registered the disputed domain name to use it for infringing practices.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **MIGROSBKONLINE.COM**: Transferred

PANELLISTS

Name	**Marie-Emmanuelle Haas, Avocat**

DATE OF PANEL DECISION 2018-03-16

Publish the Decision