

Decision for dispute CAC-UDRP-103846

Case number CAC-UDRP-103846

Time of filing 2021-06-04 11:44:22

Domain names Migroscredit.co

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization MIGROS-GENOSSENSCHAFTS-BUND

Complainant representative

Organization SILKA AB

Respondent

Name Chidiebere Pascal

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant owns several trade mark registrations for or containing the word "Migros" including Swiss trade mark registration 2P-415060 for MIGROS filed on 27 September 1994 and registered on 10 March 1995. It also owns numerous domain name registrations that incorporate its MIGROS mark including: <migros.com>, <migros.credit>, <migros.ch>, <migrosbank.com> and <migrosbank.ch>.

FACTUAL BACKGROUND

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

The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1))

The Complainant is the Swiss based umbrella organization of the regional Migros Cooperatives and operates department stores throughout Switzerland offering a wide range of food, non-food products and services (wellness, travel, catering). The company was founded in 1925 in Zurich and has now evolved into a community of ten regional Cooperatives. The

Complainant's group of companies also operates across a range of sectors including, in particular several pension funds and foundations and a bank. The Complainant's "Migros Bank" was founded in 1958 and is present in 67 locations across Switzerland and through the website at <migrosbank.ch> and has an active social media presence on Facebook, Twitter, Google +, Youtube, Xing and LinkedIn.

The disputed domain name was registered on 8 April 2020 and previously resolved to a website that featured a logo including the MIGROS mark and offered banking services. Following a complaint by the Complainant to the web host for this website, the website was suspended and at the time of filing is inactive.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

RESPONDENT:

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown 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 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 Complainant has, to the satisfaction of the Panel, shown the disputed domain name 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 Complainant has demonstrated that it owns Swiss trade mark registration 2P-415060 for MIGROS filed on 27 September 1994 and registered on 10 March 1995. The disputed domain name wholly contains the Complainant's MIGROS mark and is therefore confusingly similar to it. The inclusion of the common English word "credit" in the disputed domain name does not detract from the Panel's finding of confusing similarity.

The Complainant has submitted that the Respondent is not commonly known by the disputed domain name or by the name "Migros" and that it cannot be making a bona fide offering of goods or services while using the disputed domain name which incorporates the Complainant's MIGROS trade mark without authority. The Complainant further submits that the Respondent has not provided it with any evidence of its use of, or demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services. It notes that the registered owner of the disputed domain name is located in Nigeria and is not known by the name Migros and it is therefore questionable why the Respondent chose the disputed domain name or a .co domain name in these circumstances.

The Complainant has submitted that the use of the word "credit" in the disputed domain name together with the MIGROS mark induce consumers into visiting the website at the disputed domain name under the misapprehension that it is

endorsed by Complainant. In this regard the Complainant has provided evidence that the disputed domain name previously pointed to a website that used without authority the MIGROS trade mark in a logo on the website. The Complainant has submitted that the disputed domain name was used to set up a website in order to deceive members of the public into believing that the website belonged to, or had an affiliation with the Complainant, when this was not the case. The Complainant says that for this reason it managed, through the web host, to have the website suspended which explains why at the time of filing the website was inactive. The Complainant has alleged that the Respondent's use of the disputed domain name for this purpose was not for legitimate non-commercial purposes.

The Panel finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name which has not been rebutted by the Respondent. As a result the Panel finds that the Complaint succeeds under paragraph 4(a)(ii) of the Policy.

The disputed domain name was only registered on 8 April 2020 and previously resolved to a website that featured a logo including the MIGROS mark and from which the Respondent purported to offer banking services. The Complainant's MIGROS mark has a very substantial and established reputation in connection with its various businesses in Switzerland, including in relation to banking and financial services since the "Migros Bank" was founded in 1958. Further it is apparent that by 2020 the Complainant enjoyed a significant web and social media presence in relation to its various businesses and that based on evidence provided by the Complainant a Google search by the Respondent for "migros" and "credit" would have immediately revealed the Complainant's banking activities under the MIGROS mark. As a consequence the Panel finds it most likely that the Respondent was well aware of the Complainant's MIGROS mark when it registered the disputed domain name and that it did so in bad faith.

Under paragraph 4(b)(iv) of the Policy the use of the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 a web site or location or of a product or service on the web site amounts to evidence of registration and use in bad faith.

It is clear that in this case this is precisely the manner in which the Respondent has used the disputed domain name. Not only did it incorporate the Complainant's MIGROS mark and the word "credit" in the disputed domain name but it used to resolve to a website at which it displayed the MIGROS mark in relation to a purported offering of banking or financial services in order to confuse Internet users into thinking that the website was the Complainant's or was by an affiliated or authorised entity when this was not the case. The Respondent's use of a privacy service to mask his identity only reinforces the Panel's view of bad faith in this case.

Accordingly, the Panel finds that the Respondent has both registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. MIGROSCREDIT.CO: Transferred

PANELLISTS

Name	Alistair Payne
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DATE OF PANEL DECISION 2021-07-09

Publish the Decision