

Decision for dispute CAC-UDRP-104076

Case number CAC-UDRP-104076

Time of filing 2021-10-14 08:47:55

Domain names migroschb.com

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization MIGROS-GENOSSENSCHAFTS-BUND (Federation of Migros Cooperatives)

Complainant representative

Organization SILKA AB

Respondent

Organization Ablweb, att: Andrew Nwadishi

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 is the owner of trademark registrations for MIGROS and MIGROSBANK, including but not limited to:

- Swiss Trademark Registration No. 2P-415060, MIGROS, registered on 13 February 1995;
 - Swiss Trademark Registration No. P-405500, MIGROS, registered on 20 September 1993;
 - Swiss Trademark Registration No. 2P-414500, MIGROSBANK, registered on 12 January 1995; and
 - Swiss Trademark Registration No. 623618, MIGROSBANK (stylized), registered on 12 December 2011.
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FACTUAL BACKGROUND

Founded by Gottlieb Duttweiler in 1925, the Complainant, Migros Genossenschaftsbund, is the Swiss-based umbrella organization of the regional Migros Cooperatives. The Complainant operates department stores, offering a wide range of food as well as non food products and services, including wellness, travel, catering. The Complainant also operates cultural

institutions, museums, magazines, restaurants, fitness centers, golf parks, and a bank.

Migros Bank is a wholly-owned subsidiary of the Complainant. Migros Bank is present in 67 locations in Switzerland, and operates a consumer-facing website at "www.migrosbank.ch".

The disputed domain name was registered on 27 September 2021. The disputed domain name resolves to a website that states that the website is coming soon (the "Respondent's website"). The browser tab of the Respondent's website is titled "migroschb – Banking made easy" and makes use of the Complainant's stylized MIGROSBANK trademark as a favicon.

PARTIES CONTENTIONS

Parties' Contentions

Complainant

The Complainant asserts rights in the MIGROS and MIGROSBANK trademarks. The Complainant submits that the disputed domain name is confusingly similar to the Complainant's MIGROS and MIGROSBANK trademarks. The Complainant asserts that the addition of the letters "chb" may be read as a reference to .CH, the Swiss country code Top-Level Domain, and "b" as a reference to banking.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant submits that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, but rather that the disputed domain name is intended to be used in connection with a website that aims to deceive members of the public into believing that they are interacting with the Complainant. The Complainant asserts that the Respondent is not commonly known by the disputed domain name, nor is the Respondent making any legitimate noncommercial or fair use of the disputed domain name.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. The Complainant asserts that the Respondent was aware of the Complainant's trademark rights when registering the disputed domain name, as evidenced by the Respondent's attempt to copy aspects of the Complainant's official Migros Bank website. The Complainant notes that mail exchange ("MX") records have been configured for the disputed domain name, and submits that the disputed domain name poses a real threat of consumer confusion.

The Complainant requests transfer of the disputed domain name.

Respondent

The Respondent did not file a Response to the Complaint.

RIGHTS

The Panel finds that the Complainant has established rights in the MIGROS and MIGROSBANK trademarks, the registration details of which are provided above.

The disputed domain name comprises the Complainant's MIGROS trademark as its leading element, followed by the letters "chb". The Panel finds that the Complainant's MIGROS trademark is recognizable as the leading element of the disputed domain name, and that the addition of the letters "chb" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's MIGROS trademark.

The Panel finds the disputed domain name to be confusingly similar to the Complainant's MIGROS trademark. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

As stated above, the disputed domain name resolves to a page indicating that the website is coming soon, making use of the Complainant's MIGROBANK trademark as a favicon. The Respondent appears to have registered the disputed domain name and taken initial steps to create a website in order to create a misleading impression of association with the Complainant, when in reality there is no relationship between the Complainant and the Respondent whatsoever. The Respondent has not come forward with any evidence of demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services. The Panel finds that the Respondent's current use of the disputed domain name does not amount to a bona fide offering of goods or services as contemplated by paragraph 4(c)(i) of the Policy.

The Respondent registered the disputed domain name using a privacy service, and the underlying registrant has been revealed as "Andrew Nwadishi, Ablweb", whose name bears no resemblance to the disputed domain name whatsoever. The Respondent's use of the disputed domain name does not support any legitimate claim of being commonly known by the disputed domain name pursuant to paragraph 4(c)(ii). Nor is the Respondent making any legitimate noncommercial or fair use of the disputed domain name in accordance with paragraph 4(c)(iii) of the Policy.

For the above reasons, the Panel finds that Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Complainant's rights in the MIGROS and MIGROSBANK trademarks predate the Respondent's registration of the disputed domain name by over 20 years. It can be inferred that the Respondent had knowledge of the Complainant's rights when registering the disputed domain name from the Respondent's use of the Complainant's MIGROSBANK trademark in its stylized form as a favicon. The Respondent has not come forward with evidence of any good faith use of the disputed domain name. The Panel finds that the Respondent, having no relationship with the Complainant and without authorization to make use of its trademarks, in a domain name or otherwise, registered the disputed domain name with knowledge of the Complainant's trademark rights, in bad faith.

The Panel further finds that the Respondent's use of the disputed domain name in connection with a website which, while still under development, appears to target the Complainant's banking activities, poses an inherent risk to the Complainant. There is clear potential for the disputed domain name to be used in the furtherance of a phishing scheme, either as an e-mail address, or as a copycat website (or both), targeting the Complainant's customers. In the circumstances, the Panel cannot conceive of any use of the disputed domain name by the Respondent that would not have the effect of misleading Internet users. In light of the Respondent's use of the disputed domain name which appears to target the Complainant's banking customers, the Panel finds that the Respondent's registration of the disputed domain name using a privacy service to mask the underlying registrant's identity amounts to further evidence of the Respondent's bad faith. The Panel finds that the disputed domain name is being used in bad faith.

The Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under Policy 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 established rights in the MIGROS and MIGROSBANK trademarks. The disputed domain name is confusingly similar to the Complainant's MIGROS trademark. The Complainant has demonstrated that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered and is being used in an attempt to create a misleading impression of association between the Complainant, its MIGROS and MIGROSBANK trademarks, the disputed domain name, and the website to which it resolves, in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. MIGROSCHB.COM: Transferred

PANELLISTS

Name	Jane Seager
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DATE OF PANEL DECISION 2021-11-30

Publish the Decision
