

Decision for dispute CAC-UDRP-105025

Case number CAC-UDRP-105025

Time of filing 2022-11-30 15:56:00

Domain names zurichmigros.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization MIGROS-GENOSSENSCHAFTS-BUND

Complainant representative

Organization SILKA AB

Respondent

Name Nwaka Emmanuel

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, inter alia, a registered owner of the following trademarks containing a word element "MIGROS":

(i) MIGROS (word), EU Trademark, filing (priority) date 26 July 2000, application no. 000744912, registered for goods and services in the int. classes 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 14 - 32, 34, and 35-42;

(ii) MIGROS (word), EU trademark, filing (priority) date 13 May 2005, application no. 003466265, registered for services in the int. class 35.

besides other national and international trademarks consisting of or containing the "MIGROS" wording.

(Collectively referred to as "Complainant's trademarks").

The Complainant has also registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the term „MIGROS" such as <migrosbank.ch> (registered on March 20, 1996) (official website), and others.

FACTUAL BACKGROUND

The Complainant in this proceeding is MIGROS-GENOSSENSCHAFTS-BUND, a Swiss retail company founded in 1925 by Mr. Gottlieb Duttweiler. Today, the Complainant is owned by its more than 2 million cooperative members, organized into ten regional cooperatives.

One of the most relevant ventures of the Complainant is Migros Bank AG, which is a wholly owned subsidiary and consists of the parent company's financial services division. With a total of 67 branches and headquartered in Zurich, Migros Bank AG is one of the largest and most established banks in Switzerland, providing a full range of commercial banking services to both individuals and business customers. For instance, the Bank offers deposits, online banking, loans, mortgages, cards and payments, savings, investments, and insurance.

The disputed domain name was registered on 22 November 2022 and is held by the Respondent.

The domain name website (i.e. website available under internet address containing the disputed domain name) resolves to a website which prominently offers financial services, including a section where Internet users can enter their personal information.

The Complainant seeks transfer of the disputed domain name to the Complainant.

PARTIES CONTENTIONS

The Parties' contentions are the following:

COMPLAINANT:

CONFUSING SIMILARITY

The Complainant states that:

- The disputed domain name contains the "MIGROS" word element of the Complainant's trademarks in its entirety and thus they are almost identical (i.e. confusingly similar) to the Complainant's trademarks since the domain names differ from the Complainant trademarks only by a descriptive expression "ZURICH".

Zurich is a city in Switzerland in which the Complainant has its headquarters and as such it raises association and further confusion with the Complainant and its business.

Thus, according to the Complainant the confusing similarity between Complainant's trademarks and the disputed domain name is clearly established.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant states that:

The Respondent has not been commonly known by the disputed domain name.

The Complainant has not authorized, permitted or licensed the Respondent to use Complainant's trademarks in any manner. The Respondent has no connection or affiliation with the Complainant whatsoever. On this record, Respondent has not been commonly known by the disputed domain name.

Furthermore, the domain name website has not been used for any legitimate or fair purposes.

BAD FAITH REGISTRATION AND USE

The Complainant states that:

Seniority of the Complainant's trademarks predates the disputed domain name's registration and such trademarks are well known in relevant business circles. The Respondent can be considered aware of the Complainant's trademarks when registering the disputed domain name due to well-known character thereof, which should have been checked by the Respondent by performing a simple internet search.

Present circumstances indicate that the Respondent has registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant.

The use of the disputed domain name for banking and financial services indicate that the disputed domain name might be intended for "phishing" purposes. Such practice consists of attracting customers to a web page which imitates the real page of the Complainant (i.e. bank website) with an intention to mislead such users and have them disclosed confidential information.

It is well-founded that registration of the disputed domain names that are confusingly similar to the complainant's trademarks which enjoys strong reputation, plus other facts, such as above-described unfair use of the disputed domain names, are sufficient to establish bad faith under the 4(a)(iii) of the Policy.

The Complainant refers to previous domain name decisions contending that registering a "phishing" website is perhaps the clearest evidence of registration and use of a domain name in bad faith, especially when it concerns trademarks of financial institutions that enjoy high level of notoriety and well-known character.

RESPONDENT:

The Respondent has not provided any response to the Complaint.

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

RIGHTS

The disputed domain name and the Complainant's trademarks are nearly identical since both fully incorporate the word "MIGROS".

Since the disputed domain name and the Complainant's trademarks are not identical, the key element investigated and considered by the Panel is whether the disputed domain name consisting also of a term "ZURICH" is confusingly similar to the Complainant's trademarks.

The threshold test for confusing similarity under the UDRP involves a comparison between the trademark and the disputed domain name itself to determine likelihood of Internet user confusion. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name. An addition of common, dictionary, generic, or other descriptive terms is typically insufficient to prevent threshold Internet user confusion. Confusing similarity test under the UDRP typically involves a straightforward visual and aural comparison of the trademark with the domain name in question.

Applying the principles described above, the Panel contends that incorporation of a dominant "MIGROS" element of Complainant's trademarks (which standalone enjoys high level of distinctiveness) into the disputed domain name constitutes confusing similarity between the Complainant's trademark and the disputed domain name. Addition of a non-distinctive element – incorrect, descriptive term "ZURICH" cannot prevent the association in the eyes of internet consumers between the disputed domain name and the Complainant's trademarks and thus the likelihood of confusion still exists. On the contrary, it may mislead the internet users that the disputed domain name is somehow related to Complainant's business.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity and confusing similarity tests, as it is a necessary technical requirement of registration.

Therefore, the Panel has decided that there is identity in this case, it also concludes that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant's assertions that the Respondent is not commonly known by the disputed domain names and is not affiliated with nor authorised by the Complainant are sufficient to constitute prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent.

Given the facts above and in the absence of the Respondent's response, the Panel concludes that there is no indication that the disputed domain names were intended to be used in connection with a bona fide offering of goods or services as required by UDRP.

Consequently, the evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. However, the Respondent failed to provide any information and evidence that it has relevant 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 Panel finds it grounded that the Respondent registered and used the disputed domain name in bad faith namely by using the disputed domain name to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant, its business and trademarks.

Also, use of the dispute domain name for a website that mimics official banking site indicates that the disputed domain name might have been registered for "phishing" purposes – for hosting a web page imitating a real page of the Complainant (i.e. bank website)

with an intention to mislead customers and have them disclosed confidential information as, for example, passwords, login etc.

For the reasons described above, since (i) there is only a remote chance that the Respondent has registered the disputed domain name just by a chance and without having a knowledge about the existence of the Complainant's rights and business, (ii) the disputed domain is used for the same purposes (banking) as is the legitimate business of the Complainant, (iii) the Respondent has likely used the disputed domain name for fraudulent activities, the Panel contends, on the balance of probabilities, that the disputed domain name has been registered and is being used by the Respondent in bad faith.

Thus, the Panel has taken a view that 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.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **zurichmigros.com**: Transferred

PANELLISTS

Name	Jiří Čermák
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DATE OF PANEL DECISION **2023-01-06**

Publish the Decision
