

## Decision for dispute CAC-UDRP-105433

Case number CAC-UDRP-105433

Time of filing 2023-05-10 10:07:37

Domain names migrosunion.com

### Case administrator

Name Olga Dvořáková (Case admin)

### Complainant

Organization Migros-Genossenschafts-Bund,

### Complainant representative

Organization SILKA AB

### Respondent

Name James Kilton

#### 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 numerous trade mark registrations for its MIGROS trade mark including Swiss trademark registration no. P-405500 registered since 13 February 1993 and the EUIPO trade mark registration number 000744912 for MIGROS registered since 26 July 2000. It also owns United States trade mark registration 6026436 for MIGROS registered on 7 April 2020.

#### FACTUAL BACKGROUND

The Complainant's group includes the Migros Industrie companies, various retail and travel companies, Migros Bank and several foundations. Migros Bank AG, headquartered in Zurich, is a wholly owned subsidiary of the Complainant and was founded in 1958. It ranks among the ten largest banks in Switzerland. Reflecting its global reach. The Complainant owns numerous domain names incorporating the MIGROS trade mark, including <migros.ch> , <migrosbank.ch> and <migros.com> of which the latter was registered in 1998, from which it operates websites for its various operations.

The disputed domain name was registered on January 22, 2023 and redirects to an active website offering financial services.

#### PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

No administratively compliant Response has been filed.

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#### 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).

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#### 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).

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#### 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

The Complainant has submitted and the Panel accepts that the Complainant owns registered trade mark rights for its MIGROS mark and that the disputed domain name wholly incorporates its MIGROS mark together with the addition of the word "union". The Panel finds that as the disputed domain name wholly incorporates the MIGROS mark it is confusingly similar to that mark and that the inclusion of the word "union" in the disputed domain name does not prevent a finding of confusing similarity. Accordingly the Complainant succeeds under paragraph 4(a)(i) of the Policy.

Complainant has provided evidence that the disputed domain name re-directs to an active webpage from which it has submitted the Respondent purports to offer banking services under the "Migro Union" mark for a bank that is allegedly based in Switzerland, however the Complainant says that no bank exists in that country under the name "Migros Union". The Complainant says that this is purely for the Respondent to try to associate itself with the Complainant and its banking operations but that it has no prior association with the Complainant and that the Respondent is not a licensee of the Complainant and has not otherwise been authorised or allowed by the Complainant to make any use of its MIGROS mark, whether in a domain name or otherwise. The Complainant has further asserted that there has been no use of, and/or demonstrable preparations to use, the MIGROS mark or the disputed domain name by the Respondent in connection with a bona fide offering of goods or services before becoming aware of the Complainant's dispute. The Complainant has submitted that the Respondent has registered the disputed domain name only to divert customers of the Complainant to the Respondent by offering competing services and that it has done this intentionally to attract, confuse, and profit from Internet users seeking the Complainant's products and services. Such use of the disputed domain name cannot, says the Complainant, constitute a bona fide offering of goods and services under the Policy as the Respondent is taking unfair advantage of the goodwill in the Complainant's MIGROS Mark to offer identical services and that this is not a non-commercial, or fair use.

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. The Respondent has failed to respond to or to rebut the Complainant's case or to explain its conduct and for these reasons the Panel finds that the Complaint also succeeds under paragraph 4(a)(ii) of the Policy.

The Complainant has submitted that its MIGROS mark is a highly distinctive coined mark which is well known throughout the world and has been continuously and extensively used since at least 1925 in respect of various goods and services and since at least 1958 in connection with banking and financial related goods and services and has rapidly acquired considerable goodwill and renown worldwide. The disputed domain name was only registered in 2023 many years after the Complainant started using its highly distinctive MIGROS mark which the Panel accepts enjoys a very substantial goodwill and reputation in Switzerland. It is most

likely therefore that the Respondent was well aware of the Complainant's mark when it registered the disputed domain name and the fact that it uses the Complainant's mark on the website at the disputed domain name only reinforces this view.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

The Respondent is clearly using the disputed domain name, which features the distinctive MIGROS mark, in an attempt to confuse Internet users and to divert them to its website where it attempts to pass itself off in bad faith as having some connection with the Complainant's banking business that it does not have. The Panel's view of the Respondent's bad faith is only reinforced by its failure to explain itself following the cease and desist letter sent by the Complainant's agents or to explain its conduct in the course of these proceedings. The Respondent's use of a privacy service in an attempt to mask its identity further reinforces the Panel's view of the Respondent's use of the disputed domain name in bad faith. As a consequence the Panel finds that the requirements of paragraph 4(b)(iv) of the Policy are fulfilled which is evidence of registration and use of the disputed domain name in bad faith.

Accordingly, the Panel finds that the disputed domain name has been registered and used in bad faith and that the Complaint also succeeds under paragraph 4(a)(iii) of the Policy.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

**Accepted**

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

1. **migrosunion.com**: Transferred

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## **PANELLISTS**

<b>Name</b>	<b>Mr Alistair Payne</b>
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DATE OF PANEL DECISION **2023-06-17**

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**Publish the Decision**

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