

Decision for dispute CAC-UDRP-105435

Case number	CAC-UDRP-105435
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Time of filing	2023-05-17 11:37:16
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Domain names	migrosbk.com
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Case administrator

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

Organization	Migros-Genossenschafts-Bund
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Complainant representative

Organization	SILKA AB
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Respondent

Name	Mike Harvey
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademarks, amongst others:

- US trademark "MIGROS", registration no. 6026436 on April 7, 2020;
- Swiss trademark "MIGROS", registration no. 2P-415060 on September 27, 1994;
- Swiss trademark "MIGROSBANK", registration no. 2P-414500 on November 2, 1994.

FACTUAL BACKGROUND

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

Migros-Genossenschafts-Bund (in English: Migros Association of Cooperatives), founded in 1925, includes (but is not limited to) Switzerland's largest retailer, various trading and travel companies, several foundations as well as the Migros Bank. Migros Bank was founded in 1958 and is the 5th largest bank in Switzerland providing banking services to both individuals and businesses.

Complainant is the owner of several trademark registrations for the mark MIGROS as well as MIGROSBANK.

These trademark registrations all predate the registration of the disputed domain name. Due to extensive use, advertising and revenue associated with its trademarks, Complainant enjoys a high degree of goodwill.

The Complainant has registered a number of domain names under several different Top-Level Domains ("TLD") containing the term "MIGROS" as well as "MIGROSBANK", for example <migros.com> (created 1998-02-09), <migros.ch> (created before 1996-01-01), <migrosbank.com> (created 1999-01-05) and <migrosbank.ch> (created 1996-03-20) as well as others.

The disputed domain name was registered on March 12, 2023.

PARTIES CONTENTIONS

COMPLAINANT:

1. Identical or confusingly similar

The disputed domain name is intended to visually appear and phonetically sound like a shortened version of "MIGROSBANK". The addition of a generic Top-Level Domain (gTLD) such as ".com" does not add any distinctiveness to the disputed domain name.

Confusing similarity is further highlighted by the fact that the creation of the disputed domain name is clearly targeting the Complainant's "MIGROSBANK" trademark by impersonating the Complainant. Currently there is no active website connected to the disputed domain name but it is connected to Active MX records.

The above-mentioned principle is highly relevant and should be applied accordingly in this present case. Therefore, the disputed domain name should be considered confusingly similar to the registered trademark "MIGROSBANK" in which the Complainant have rights.

2. The Respondent has no rights or legitimate interests in respect of the domain name

Complainant has not found that the Respondent is commonly known by the disputed domain name, nor that the Respondent would have any relevant prior rights of its own. The Respondent according to the Whois information is Mike Harvey. The Complainant believes that the Whois details are fabricated and that the owner of the disputed domain name is not the real owner. The Respondent has never been a licensee of the Complainant and does not have permission or authorization to use the Complainant's trademark. There is no evidence that the Respondent has a history of using, or preparing to use, the disputed domain name in connection with any bona fide offering of goods and services.

It is clear that the intention of the disputed domain name registration is to take advantage of the well-known mark "MIGROSBANK" trademark by making the disputed domain name appear as a shortened version of the mark.

It has been generally held that the use of a domain name for fraudulent activity (such as in this case impersonating an official online banking institution, and extracting sensitive information and money) can never constitute rights or legitimate interest in the domain name, as established in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), paragraph 2.13.1.

Clearly, the Respondent lacks right to the disputed domain name, is not known by the disputed domain name nor have the Respondent made legitimate, non-commercial fair use of the disputed domain name. The Respondent has had ample time to activate a website but failed to do so since its registration. This further supports that the Respondent lacks legitimate interest in the disputed domain name.

3. The domain name was registered and is being used in bad faith

It has to be noted that the Complainant's trademark registrations predate the registration of the disputed domain name and therefore it seems highly unlikely that the Respondent was not aware of the existence of the trademarks and the unlawfulness of the registration of the disputed domain name. Furthermore, the disputed domain name seen together with the content of the website, clearly shows that the Respondent was aware of the Complainant's "MIGROSBANK" trademark.

The Respondent took advantage of the “MIGROSBANK” trademark by using a confusingly similar domain name in order to pass off as the Complainant and deceive Internet users. Past panels have found that the activation of mail exchanger record MX record suggests that the Respondent is using or is preparing to use the disputed domain names to send and receive e-mail. Bearing in mind the composition of the disputed domain name, incorporating in full the Complainant’s “MIGROSBANK” trademark, and that the Respondent has no legitimate connection to the Complainant’s business, these MX Records will amount to a further inference of bad faith.

The website to which the disputed domain name is connected to is currently inactive.

As discussed above, Complainant’s “MIGROSBANK” marks is widely known and the Respondent has not bothered to reply to the Cease & Desist letter sent. Furthermore, the Respondent has activated MX records which suggests the disputed domain name is being used for e-mail services. Considering all the circumstances of this case, the Complainant suggests that the current inactive use of the website by Respondent is in bad faith.

To summarize: the Complainant is the owner of several trademark registrations for the trademarks “MIGROS” and “MIGROSBANK”, it is clear that the Respondent was aware of the right that the Complainant has in the trademark when the disputed domain name was registered. Consequently, the Respondent should be considered to have registered and to be using the disputed domain name in bad faith.

RESPONDENT:

No administratively compliant Response was filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has 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

To the satisfaction of the Panel, the Complainant has 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 have been met, and there is no other reason why it would be unsuitable for providing the Decision.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

First, the Panel is satisfied that the Complainant has shown it owns rights in the “MIGROS” and “MIGROSBANK” trademarks, with registration and evidence provided dating the trademark registration back to at least 1994.

Turning to analyze if there is a confusing similarity between the disputed domain name and the trademark, the Panel notes, based on the record at hand, that the disputed domain name reproduces the trademark in its totality, namely “MIGROS”, with an addition of two letters, “BK”. The addition of these two letters heightens the appearance of confusing similarity with the other trademark “MIGROSBANK”, since although not a total reproduction, the disputed domain name does include the first part of the trademark verbatim, namely “MIGROS” and the two last letters of the second part of the trademark, namely “BK”. The slight difference is immaterial to dispel the confusing similarity between the disputed domain name and the Complainant’s trademarks.

Consequently, the Panel determines that the Complaint has satisfied the Policy’s first element set under paragraph 4(a)(i).

B. Rights or Legitimate Interests

Based on the evidence on record and acknowledging that the Respondent failed to produce any allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name, the Panel must turn to the uncontested facts.

The uncontested facts indicate that a) the Respondent is not commonly known by the disputed domain name; b) the Respondent is not authorized to carry out any business activity for the Complainant and has no license or authorization to use the trademarks; c) the Respondent is not using the disputed domain name and has no demonstratable plans to use the disputed domain name legitimately; d) the Respondent is aware of Complainant’s well-known trademark and e) the Respondent did not respond to the cease and desist letter.

Based on the above, the record at hand, and on the balance of probability, and considering that the Respondent has failed to respond to the Complainant’s contentions, the Respondent has consequently not rebutted the prima facie case, as described in paragraph 2.1 of WIPO 3.0 Overview.

The above fact pattern on the balance of probabilities, and in conjunction with the activation of mail exchanger record MX record suggests that the Respondent is using or is preparing to use the disputed domain name to send and receive e-mail, with a likely intention of confusing Internet users. However, this will be subject of further analysis under the element below.

The evidence on record leads the Panel to conclude that the Respondent did not have rights or legitimate interests in the disputed domain name.

Consequently, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name. Subsequently, the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Per the record and evidence at hand, the Panel finds that the Respondent was likely aware of the Complainant and had the Complainant's trademark in mind when registering the disputed domain name. This is further reinforced by the fact that "MIGROS" and "MIGROSBANK" are a well-known, distinctive trademark worldwide.

Additionally, based on the record at hand and on balance of probability, it appears that the Respondent is using the well-known "MIGROSBANK" and "MIGROS" trademarks to pass off as the Complainant and deceive Internet users. This is reinforced by the activation of mail exchanger record MX record which suggests that the Respondent is likely using or is preparing to use the disputed domain name to send and receive e-mail. As there is no Response or evidence to suggest otherwise, the Panel is left with no other option that arriving at this conclusion on the balance of probability.

The preceding analysis leaves the Panel no other option than to conclude that the most likely intention of the Respondent was to intentionally attempt to attract, for commercial gain, Internet users to its website/disputed domain name by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or disputed domain name, as per illustrated under paragraph 3.1 of WIPO 3.0 Overview.

In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

D. Decision

For the preceding reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. migrosbk.com: Transferred

PANELLISTS

Name	Rodolfo Rivas Rea
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DATE OF PANEL DECISION	2023-07-05
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Publish the Decision