Decision for dispute CAC-UDRP-106075

Case number	CAC-UDRP-106075
Time of filing	2023-12-18 13:11:41
Domain names	banqmigros.com

Case administrator

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

Complainant

Organization	Migros-Genossenschafts-Bund

Complainant representative

Organization	SILKA AB

Respondent

Name	Ezeckiel DOSSOU

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 several trademarks MIGROS and MIGROSBANK registered in several countries, such as international trademark MIGROS, reg. no. 397821, application date 14 March 1973, registered in classes 1-9, 11-12, 14-32 and 34 and international trademark MIGROSBANK, reg. no. 631420, application date 12 January 1995, registered in class 36 ("**Complainant's Trademarks**").

The disputed domain name was registered on 20 October 2023.

FACTUAL BACKGROUND

As the Respondent did not file any response to the complaint, the Panel took into account the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

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

(b) The Complainant is the owner of Complainant's Trademarks which were registered prior to registration of the disputed domain

name by the Respondent;

(c) 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 on 9 February 1998) and <migrosbank.com> (created on 5 January 1999);

(d) The disputed domain name was registered on 20 October 2023 and resolves to a website impersonating the Complainant, frequently using the MIGROS BANK mark as well as displaying the Complainant’s official address and offering fake banking services and contact form in order to extract information from internet users. Also, the MX records of the dispute domain name have been activated and internet users are encouraged to communicate with the website owner through e-mail address contact@banqmigros.com.

PARTIES CONTENTIONS

COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

(a) The disputed domain name comprises the MIGROS term (and the dominant part of the MIGROS Trademarks) in full, only preceded by ‘banq’. Panels have consistently held that, where the relevant trademark is recognisable within a disputed domain name, the addition of other terms (whether descriptive or otherwise) would not prevent a finding of confusing similarity under the first UDRP element (see WIPO Overview 3.0, section 1.8). The MIGROS mark is dominant, distinctive and clearly recognisable in the disputed domain name; the addition of ‘banq’, which connotes the Complainant’s MIGROS BANK financial offerings, does not preclude a finding of confusing similarity;

(b) 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 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. Instead, the Respondent is using the disputed domain name to deceitfully impersonate an official Migros Bank online banking website and collect sensitive personal information. As a result, the Respondent has no rights or legitimate interest in respect of the disputed domain name;

(c) Respondent has intentionally attempted to attract, for commercial gain, internet users by creating a likelihood of confusion with the Complainant’s MIGROS Trademarks. The disputed domain name has been used to resolve to a site which prominently brandishes the Complainant’s MIGROS BANK mark and logo, passing off as the Complainant. The Respondent has attempted to pass off as the Complainant by, among other things, purporting to offer banking services and providing information which directly refers to the Complainant (e.g., Migros Bank AG’s year of establishment). The Respondent’s conduct creates the false and misleading impression that the resolving site is controlled or authorised by the Complainant. Furthermore, the Respondent seeks to extract information from internet users by using the contract form as well as the e-mail address contact@banqmigros.com. This amount to bad faith of the Respondent in registration and use of the disputed domain name.

RESPONDENT:

The Respondent did not provide any response to the complaint.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to the Complainant’s Trademarks within the meaning of paragraph 4(a)(i) of the Uniform Domain Name Dispute Resolution Policy ("UDRP" or "Policy").

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements to obtain an order that the disputed domain name should be transferred or revoked:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this proceeding.

RIGHTS

The Panel fully agrees with Complainant's assertion that the disputed domain name is confusingly similar to Complainant's Trademarks. It comprises the distinctive element MIGROS as well as the entire denomination MIGROS BANK, in the reversed order and with a typo.

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 confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (please see, for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The Complainant has made such prima facie case as it is abundantly clear that the Respondent has been using the disputed domain name to operate a website impersonating an official MIGROS BANK website in order to pass off as the Complainant, deceive internet users and extract information from such users. Such activity is clearly illegal in majority of jurisdictions and certainly cannot establish Complainant's rights or legitimate interest in respect of the disputed domain name. As WIPO Jurisprudential Overview 3.0 concludes in Section 2.13.1 “Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”

Therefore, the Panel concludes that the Respondent has no rights or legitimate interest in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Panel also agrees with the Complainant that the Respondent took advantage of the MIGROS BANK trademark by using a confusingly similar domain name to display a website impersonating an official MIGROS BANK website in order to pass off as the Complainant, deceive internet users and extract information from such users, i.e. registered and used the dispute domain name in furtherance of phishing activities. Similar case was already decided by a WIPO Panel (case no. D2017-0647 Migros-Genossenschafts-Bund v. James Okogb / Micrio <migrosbonline.com>) which has held that:

“The Respondent’s bad faith is particularly evident in creating a website with the same look and feel as the Complainant’s website

devoted to online banking, “www.migrosbank.com”. In this regard, the Panel finds, at the very least, that the Respondent intends to mislead Internet users into accessing its website in the false belief that they were accessing Complainant’s website, and that it did so by registering and using the disputed domain name, which is confusingly similar to Complainant’s trademark, and including Complainant’s trademark MIGROS in the website to which the disputed domain name resolved.”

Also, WIPO Jurisprudential Overview 3.0 states in Section 3.1.4: “As noted in section 2.13.1, given that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith.”

The Panel in the present case fully concurs with such assessment and finds that Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, in the meaning of paragraph 4(b)(iv) of the Policy and thus the disputed domain name has been registered and is being used in bad faith by the Respondent (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. **banqmigros.com**: Transferred

PANELLISTS

Name	**Michal Matějka**

DATE OF PANEL DECISION 2024-01-13

Publish the Decision