Decision for dispute CAC-UDRP-106088

Case number	CAC-UDRP-106088
Time of filing	2023-12-19 11:11:00
Domain names	migros-supermarkt.com

Case administrator

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

Complainant

Organization	Migros-Genossenschafts-Bund

Complainant representative

Organization	SILKA AB

Respondent

Name	Konrad Mäsel

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 registered owner of several trademarks consisting of the term “MIGROS" in particular international trademark “MIGROS" no. 315524 registered on 23 June 1966 for goods and services in classes 3, 7, 8, 9, 11, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 34 and designating many countries including Germany, where the Respondent is located. This mark has duly been renewed and is in force.

FACTUAL BACKGROUND

The Respondent registered the disputed domain name on 18 November 2023. The language of the registration agreement is English.

It results from the Complainant's undisputed allegations that,

1. the disputed domain name has been used to resolve to a website which reproduced the Complainant’s mark, logo, images and other visual indicia taken from the Complainant’s official website;
2. following its suspension request to the Registrar the disputed domain name now resolves to a site which contains pay-per-click (‘PPC’) links, some of which compete with the Complainant by directing users to the sites of other online

supermarkets;
3. the Respondent had configured the disputed domain name with an MX (mail exchange) record, which now (after actions taken by the Registrar) appears to be removed.

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.

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

1.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark.

The trademark “MIGROS" is identically included in the disputed domain name and remains clearly identifiable at the beginning of said domain name.

The fact that the trademark is combined with the further term "-supermarkt" (which is German and means “supermarket ") within the disputed domain name, cannot exclude confusing similarity between said domain name and the Complainant's registered mark.

2.

In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

Firstly, it results from the Complainant’s uncontested evidence that the disputed domain name originally resolved to a website which reproduced the Complainant’s mark, logo, images and other visual indicia taken from the Complainant’s official website. Following its suspension request to the Registrar the disputed domain name now resolves to a site which contains pay-per-click (‘PPC’) links, some of which compete with the Complainant by directing users to the sites of other online supermarkets. Finally, the Respondent had configured the disputed domain name with an MX (mail exchange) record, which now (after actions taken by the Registrar) appears to be removed. In this Panel’s view, such use cannot be qualified as a bona fide offering of goods or services in accordance with paragraph 4(c)(i) of the Policy, since such use is likely to mislead Internet users. In addition, the Respondent did not submit any

evidence of bona fide pre-Complaint preparations to use the disputed domain name. In particular, the Complainant's uncontested allegations demonstrate that it has not authorized or licensed the Respondent's use of the MIGROS-trademark for registering the disputed domain name which is confusingly similar to the Complainant's trademark.

Secondly, the Panel notes that there is no evidence in the record that could lead the Panel to conclude that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Thirdly, the Panel notes that there is no evidence in the record either showing that the Respondent might be making a noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue pursuant to paragraph 4(c)(iii) of the Policy. In particular, the Panel considers it obvious that the disputed domain name which entirely incorporates the trademark MIGROS carries a high risk of implied affiliation.

3.

Finally, the Panel finds that the disputed domain name has been registered and is being used in bad faith according to paragraph 4(a)(iii) of the Policy.

It is the view of this Panel that the Respondent has registered and is using the disputed domain name, which identically includes the Complainant's trademark, in order to intentionally attempt to attract, for commercial gain, Internet users to a web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site (par. 4(b)(iv) of the Policy).

It results from the documented and undisputed evidence provided by the Complainant that the disputed domain name, which contains the Complainant's trademark MIGROS, resolved to a website which reproduced the Complainant's mark, logo, images and other visual indicia taken from the Complainant's official website. Following its suspension request to the Registrar the disputed domain name now resolves to a site which contains pay-per-click ('PPC') links, some of which compete with the Complainant by directing users to the sites of other online supermarkets. Finally, the Respondent had configured the disputed domain name with an MX (mail exchange) record, which now (after actions taken by the Registrar) appears to be removed. In the Panels view, this supports a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark.

Additionally, the Panel also considered the following factors as supporting these findings of bad faith registration and use:

(i) the high degree of intrinsic distinctiveness of the Complainant's mark and the fact that the mark, on which the Complainant relies, has been existing since 1966;

(ii) the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use;

(iii) the Respondent hiding his identity behind a privacy shield;

(iv) the implausibility of any good faith uses to which the disputed domain name may be put.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **migros-supermarkt.com**: Transferred

PANELLISTS

Name	**Tobias Malte Müller**

DATE OF PANEL DECISION 2024-02-06

Publish the Decision