Decision for dispute CAC-UDRP-106234

Case number	CAC-UDRP-106234
Time of filing	2024-02-07 14:01:54
Domain names	migrosb.online

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Migros-Genossenschafts-Bund

Complainant representative

Organization	SILKA AB

Respondent

Name	Johon Dula

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 proved to be the owner of the following MIGROS formative trademarks:

1. MIGROS, IR reg. no. 315524;
2. MIGROS, IR reg. no. 397821;
3. MIGROS, Switzerland reg. no. P-405500;
4. MIGROSBANK, IR reg. no. 631420;
5. MIGROSBANK, Switzerland reg. no. 2P-414500;
6. MIGROSBANK, Switzerland reg. no. 764760.

The Complainant also alleged to be the owner of the domain names <migros.ch> and <migrosbank.ch>.

FACTUAL BACKGROUND

The Complainant is a Swiss company active in the fields of supermarkets and department stores, and provides also services relating to wellness, travel and catering.

The Complainant owns the company MIGROS BANK AG active in the banking / financial fields.

The Respondent is Jahon Dula and registered the disputed domain name, migrosb.online, on December 21st, 2023. the disputed domain name linked to a website which reproduced the MIGROS BANK trademark and which appeared to be active in the banking / financial fields.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant claims that the disputed domain name is confusingly similar to its prior trademarks and domain names it is contains in its entirety the trademark MIGROS. The addition of the letter "B" does not exclude the similarity between the prior trademarks and the disputed domain name.

The Complainant contends that TLD are disregarded when assessing confusing similarity as they are considered as standard registration requirements.

The Complainant claims that the Respondent has no rights nor legitimate interest in registering the disputed domain name. According to the Complainant assertions, there is no evidence that the Respondent is known with the disputed domain name.

Finally, the actual use of the disputed domain name is not considered a "bona fide offering of goods or services" or a "legitimate non-commercial or fair use" for the purposes of the Policy.

As regards registration and use in bad faith, the Complainant claims that since the MIGROS trademarks enjoy reputation and goodwill, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's rights. Moreover, the disputed domain name <migrosb.online> resolved to a website which contained the MIGROS trademark and which could be perceived as associated to the Complainant.

RESPONDENT:

The Respondent did not file an administrative response.

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 disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The Complainant has successfully proved to be the owner of the trademarks MIGROS and MIGROSBANK.

The disputed domain name is composed by the element "migrosb".

The Panel finds that the trademark “MIGROS” is fully recognizable in the disputed domain name and that the addition of the letter "b" at the end of MIGROS has no significant impact in the confusing similarity assessment.

According to a consolidated case law, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in it, the confusing similarity threshold is met.

Furthermore, the addition of “.online” is generally disregarded in view of its technical function.

As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks, for the purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain name.

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests in the domain name. Once such a prima facie case is made, the respondent carries the burden of demonstrating its 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 Policy.

In this case, the Panel finds that the Complainant’s submitted evidence and allegations are sufficient to establish a prima facie case of Respondent’s lack of rights and legitimate interests in the disputed domain name also in the view of the fact that the Respondent did not reply to the Complaint.

On the basis of the information submitted by the Complainant and not contested by the Respondent, the Panel agrees that the Respondent is not commonly known by the disputed domain name nor the Complainant has authorized the Respondent to use and register the disputed domain name.

The Panel agrees with the Complainant that the use of the disputed domain name does not amount to a bona fide offering of goods / services nor a legitimate / fair use of a domain name. In particular the Complainant proved that the disputed domain name linked to a website which could be associated to its own website and business.

For these reasons, the Panel takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name for the purposes of the Policy.

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

The Panel finds the following circumstances as material in order to establish the Respondent's bad faith in the registration of the disputed domain name:

(i) the disputed domain name was registered well after the Complainant acquired rights on the trademarks MIGROS and MIGROSBANK;

(ii) the disputed domain name is a clear and obvious misspelling of the Complainant's trademark (i.e. typo squatting). Previous panels found that typo squatting discloses an intention on the part of the respondent to confuse users seeking or expecting to find a website related to the Complainant;

(iii) given the goodwill of MIGROS and the fact that it is a fanciful word it is improbable that the disputed domain name was registered without having knowledge on the Complainant's prior rights on the trademarks MIGROS and MIGROS BANK.

Furthermore, the Panel agrees that the disputed domain name was used in bad faith. In particular, the disputed domain name <migrosb.online> resolved to a website which could be associated with the Complainant's website. Thus, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his websites (par. 4(b)(iv) of the Policy).

Moreover, this domain name could be used by the Respondent to collect personal information about the Complainant's potential clients. This could be very dangerous as the Complainant is also active in the banking / financial fields.

Moreover, the distinctiveness of the Complainant's trademark which makes it very improbable that the disputed domain name could be used in good faith.

All above considered the Panel finds the evidence submitted as sufficient to prove use and registration in bad faith of the disputed domain name for the purposes of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **migrosb.online**: Transferred

PANELLISTS

Name	**Andrea Mascetti**

DATE OF PANEL DECISION 2024-03-11

Publish the Decision