Anonymized decision for dispute CAC-UDRP-106395

Case number	CAC-UDRP-106395
Time of filing	2024-03-28 09:51:01
Domain names	migros-fr-ch.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	MIGROS-GENOSSENSCHAFTS-BUND

Complainant representative

Organization	SILKA AB

Respondent

Organization	[redacted]

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 has evidenced to be the owner of numerous trademarks relating to its company name and brand MIGROS, including, but not limited to the following:

- Word/device trademark MIGROS, International Registration (World Intellectual Property Organization), registration No.: 315524, registration date: June 23, 1966, status: active;
- Word trademark MIGROS, International Registration (World Intellectual Property Organization), registration No.: 397821, registration date: March 14, 1973, status: active.

Also, the Complainant has substantiated to own since at least 1996 the domain name <migros.ch>, which resolves to the Complainant's main website at "www.migros.ch", used to promote the Complainant's products and related services in the retail industry.

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. However, on April 12, 2024, the CAC Arbitration Center received a letter by a French law firm dated April 11, 2024, stating that the legal entity named as the registrant of the disputed domain name in the respective WhoIs contact information had nothing to do with such domain name registration, but was the victim of an identity theft since numerous months.

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.

The Panel orders the Respondent´s identification is removed from the published version of the decision since there is a claim of identity theft.

PRINCIPAL REASONS FOR THE DECISION

First, as regards the Complainant’s request that the language of proceeding be English, notwithstanding the fact that, as evidenced by the Domain Registrar's Verification, French is the language of the registration agreement of the disputed domain name, under Paragraph 11 of the Rules, the Panel is free to deviate from the language of the registration agreement depending on the particular circumstances of each case. Here, the Panel recognizes that the Respondent was notified by the CAC Arbitration Center in both English and French language about the commencement of proceedings, but did not react upon such communication, neither by filing a Response nor in any other way. Also, the disputed domain name apparently did not in the past, and still does not, connect to any relevant content on the Internet. Finally, the disputed domain name is not registered e.g. under a country-code top level domain, but rather under the most common generic Top-level domain (TLD) .com which has no specific country relation, but rather is most often used in an international context. Against this background, the Panel is willing to accept to lead this proceeding in the world language English, given that the Respondent obviously has no disadvantages arising from doing so and, thus, is still treated equally and fair within the scope of Paragraph 10 of the Rules.

Second, the Panel finds that the disputed domain name <migros-fr-ch.com> is confusingly similar to the Complainant’s MIGROS trademark, as it incorporates the latter in its entirety, simply added by the terms “fr” and “ch” (the country codes for “France” and “Switzerland”) together with a hyphen. Numerous UDRP panels have recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark. Moreover, it has been held in many UDRP decisions and has meanwhile become a consensus view among UDRP panels that the mere addition of descriptive or other terms, such as here e.g. the terms “fr” and “ch” being the country codes for “France” and “Switzerland”, is not capable to dispel the confusing similarity arising from such entire incorporation of the Complainant’s MIGROS trademark in the disputed domain name.

Therefore, the Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

Third, the Complainant contends, and the Respondent has not objected to these contentions, that the Respondent has neither made use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is the Respondent commonly known under the disputed domain name, nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain. The Respondent has not been authorized to use the Complainant’s MIGROS trademark, either as a domain name or in any other way. Also, there is no reason to

believe that the Respondent's name somehow corresponds with the disputed domain name and the Respondent does not appear to have any trademark rights associated with the term "migros" (which apparently has no meaning in the English or the French language) on its own. Finally, the Complainant has demonstrated that the disputed domain name did not in the past, and still does not, connect to any relevant content on the Internet, but is passively held by the Respondent instead. Many UDRP panels, however, have recognized that the mere registration of a domain name may not of itself confer rights or legitimate interests in a disputed domain name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that, therefore, the Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

Finally, the Panel holds that the disputed domain name was registered and is being used by the Respondent in bad faith. There is a consensus view among UDRP panelists that a passive holding of a disputed domain name may, in appropriate circumstances, be consistent with the finding of bad faith, in particular in circumstances in which, for example, a complainant's trademark is well-known, and there is no conceivable use that could be made of the disputed domain name and would not amount to an infringement of the complainant's trademark rights. In the case at hand, in the absence of any other reasonable explanation as to why the Respondent should rely on the disputed domain name which includes the Complainant's undisputedly well-reputed MIGROS trademark (predating the registration of the disputed domain name by decades), and given that the Respondent has brought forward nothing in substance relating to the intended use of the disputed domain name, the Panel finds that the Respondent has registered and is making use of the disputed domain name in a manner which at least takes unjustified and unfair advantage of the Complainant's MIGROS trademark's reputation and must, therefore, be considered as registered and being used in bad faith within the meaning of the Policy. Such finding is also supported by the suspected identity theft, which took place in connection with the registration of the disputed domain name by the Respondent.

Therefore, the Complainant has also satisfied the third element under the Policy as set forth by paragraph 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

PANELLISTS

Name	**Stephanie Hartung**

DATE OF PANEL DECISION 2024-05-06

Publish the Decision