

Decision for dispute CAC-UDRP-106447

Case number **CAC-UDRP-106447**

Time of filing **2024-04-16 10:20:14**

Domain names **hr-portalmigros.net**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **Migros-Genossenschafts-Bund**

Complainant representative

Organization **SILKA AB**

Respondent

Name **John Leed**

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 various trademark registrations for "MIGROS", including the following:

- European Union Trademark No. 000744912, registered on 26 July 2000;
- International Trademark No. 315524, registered on 23 June 1966;
- International Trademark No. 397821, registered on 14 March 1973;
- Swiss Trademark No. 596735, registered on 20 September 1993;
- UK Trademark No. 00001117924, registered on 20 July 1979; and
- S. Trademark No. 6026436, registered on 7 April 2020.

The Complainant registered (amongst others) the domain names <migros.com> on 9 February 1998, <migros.net> on 24 April 1996, and <migros.fr> on 15 March 2006. Its main website from which it advertises offerings to customers is www.migros.ch.

The Respondent registered the disputed domain name on 30 March 2024.

FACTUAL BACKGROUND

The Complainant, a cooperative association based in Switzerland, was founded in 1925. The Complainant is owned by more than two

million cooperative members and has more than 99,000 employees. It is one of Switzerland's largest retailers, operating supermarkets and departments stores. It also provides services relating to wellness and travel. Its group sales in 2023 was in excess of CHF 31 billion.

The Complainant has a strong social media presence, with more than 120,000 on X and over 90,000 followers on LinkedIn.

The Respondent did not file a Response.

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. A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to the owner on record. The Complainant has provided evidence that it owns registered trademark rights in MIGROS, and for many years already.

In this case, the disputed domain name contains the entirety of the Complainant's MIGROS trademark with the addition of the suffix "hr-portal".

It is a well-established principle that where the relevant trademark is recognizable within the disputed domain name, which the Panel finds to be the case here, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. (See WIPO Overview 3.0, section 1.8).

Further, it is well established that the generic Top-level Domain (in this case, ".net") does not feature in the consideration of whether a domain name in dispute is identical or confusingly similar to a complainant's trademark as it is a technical requirement for domain names (see WIPO Overview 3.0, section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

1. B. Rights or Legitimate Interests

Once a complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see WIPO Overview 3.0, section 2.1). This is because whether a respondent has rights or legitimate interests in a domain name is often primarily within the knowledge and control of the respondent. If the respondent fails to proffer relevant evidence after a *prima facie* case has been established by the complainant, the complainant is deemed to have met the requirement of the second element of paragraph 4(a) of the Policy.

In the present case, the Complainant has demonstrated a *prima facie* case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. The Complainant has provided evidence that it owns trademark registrations for the MIGROS mark, and these were registered long before the date that the disputed domain name was registered. The Respondent, on the other hand, does not appear to have any trademark rights in “migros”, “portalmigros”, “hr-portalmigros” or any similar mark. The Respondent is not licensed or otherwise authorised by the Complainant to register domain names featuring the Complainant’s MIGROS trademark. Further, there is no evidence that the Respondent is known by the name “Migros”, “hr-portalmigros” or any similar name.

At the time of filing the Complaint, the disputed domain name resolved to a parked page containing pay-per-click (“PPC”) links to unrelated third-party sites and services under headings such as “Employee payroll” and “HR payroll”. Such use of a domain name containing a third-party’s trademark does not constitute a *bona fide* offering nor a legitimate non-commercial or fair use under the Policy.

The Respondent did not submit a Response in this case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name.

In the absence of any rebuttal evidence, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant must also show that the Respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)).

The Complainant provided evidence that the disputed domain name resolved to a parked page containing PPC links. The Panel agrees that MIGROS is a well-established trademark and notes that in other UDRP cases cited by the Complainant, previous panels have recognised the distinctiveness and worldwide renown of the MIGROS trademark (see Migros-Genossenschafts-Bund v. Ling Li, CAC-UDRP-105532 (2023) and Migros-Genossenschafts-Bund v. Chipper Cash, CAC-UDRP-105745 (2023)). The fact that the Complainant’s well-known trademark has been incorporated into the disputed domain name creates a high risk of implied affiliation. Internet users are likely to perceive that the disputed domain name is connected with the Complainant and signifies the official human resource (HR) portal for its employees. The fact that the MIGROS mark is well known also lends weight to the inference that the Respondent must have been aware of the Complainant and of its trademark when he registered the disputed domain name. The Respondent has not disputed this nor provided evidence to the contrary.

Accordingly, based on the evidence presented to the Panel and given the distinctiveness, length of trademark registration, and reputation of the Complainant’s MIGROS trademark, the Panel concludes that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **hr-portalmigros.net**: Transferred

PANELLISTS

Name	Francine Tan (Presiding Panelist)
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DATE OF PANEL DECISION 2024-05-15

Publish the Decision
