Anonymized decision for dispute CAC-UDRP-106745

Case number	CAC-UDRP-106745
Time of filing	2024-07-29 10:05:03
Domain names	migrosbankinfo.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 unaware of any other pending or decided legal proceedings in respect of the domain name <migrosbankinfo.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

• International trade mark registration no. 315524, filed on 23 June 1966, for the mark MIGROS, in classes 3, 7, 8, 9, 11, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34 of the Nice Classification;

• International trade mark registration no. 631420, filed on 12 January 1995, for the mark MIGROSBANK, in class 36 of the Nice Classification; and

• International trade mark registration no. 623618, filed on 5 December 2011, for the mark MIGROS BANK, in classes 35 and 36 of the Nice Classification.

(Hereinafter referred to as 'the Complainant's trade marks').

The disputed domain name was registered on 19 June 2024. At the time of writing of this decision, it resolves to a landing page headed with the disputed domain name and the message, 'We're under construction. Please check back for an update soon.' (for present purposes, 'the Respondent's website').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant, founded in Zurich in 1925 as a private enterprise by Gottlieb Duttweiler, has become Switzerland's largest retail company and supermarket chain. The Complainant offers food and non-food products, as well as services related to wellness, travel and catering. The Complainant also offers a wide range of banking services through Migros Bank (www.migrosbank.ch), which was founded in 1958.

In addition to the trade mark mentioned above, the Complainant is the owner of numerous domain names bearing the term 'migros' and 'migrosbank', such as <migros.com> (registered in 1998) and <migrosbank.ch> (registered in 1996).

The Complainant seeks to obtain the transfer of the disputed domain name <migrosbankinfo.com > on the grounds set out in the section 'Parties Contentions A. Complainant's Submissions' below.

B. Respondent's Factual Allegations

The Respondent has defaulted in this UDRP administrative proceeding and has therefore made no factual allegations.

PARTIES CONTENTIONS

A. Complainant's Submissions

The Complainant's contentions can be summarised as follows.

A.1 The disputed domain name is identical or confusingly similar to trade marks in which the Complainant has rights

The disputed domain name <migrosbankinfo.com> is confusingly similar to the Complainant's trade marks, to the extent that it incorporates the Complainant's trade marks in their entirety, with the suffix 'info'. Numerous UDRP panels have found that wholly incorporating a trade mark in a domain name is sufficient to meet the confusing similarity text under this UDRP Policy ground (see paragraph 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ('the WIPO Jurisprudential Overview 3.0'). Furthermore, the generic Top-Level Domain ('the gTLD') <.com> does not differentiate the disputed domain name from the Complainant's trade mark (see paragraph 1.7 and paragraph 1.11.1 of WIPO Jurisprudential Overview 3.0).

A.2 The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent lacks rights or legitimate interests in respect of the disputed domain name, owing to the following indicia:

• The Respondent's case does not fall within the reach of any of the circumstances of paragraph 4(c) of the UDRP Policy which demonstrate rights or legitimate interests in the disputed domain name;

• The Complainant's trade marks are not names that a third party would legitimately have chosen as a domain name for a legitimate purpose;

• Any person or entity using the trade mark MIGROS BANK is bound to lead customers and users to infer an association or affiliation with the Complainant;

• The Whois information for the disputed domain name provides the Complainant's details instead, and the MX servers are activated. This indicates that the disputed domain name is being used, or intended to be used, for phishing or other fraudulent purposes; and

• There is prima facie proof of the Respondent's intention to usurp the Complainant's reputation and goodwill and draw financial benefit therefrom.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

A.3 The Respondent registered and is using the disputed domain name in bad faith

A.3.1 Registration

The Complainant states that the disputed domain name was registered in bad faith, owing to the following indicia:

• A simple due diligence would have made the Respondent aware of the Complainant's rights in the globally renowned trade mark MIGROS;

• The registration of a domain name that is confusingly similar to another's trade mark, despite actual or even constructive knowledge of the trade mark holder's rights, constitutes bad faith registration and use pursuant to the UDRP Policy paragraph 4(a)(iii); and

• Given the Complainant's trade marks' immense popularity and goodwill worldwide, it is clear that the Respondent registered the disputed domain name with full knowledge of the existence and reputation of the Complainant and the Complainant's trade marks. Furthermore, the use of the Complainant's details in the Whois on record for the disputed domain name by the Respondent further evidences the bad faith registration and so does the activation of MX records.

A.3.2 Use

Under this UDRP Policy ground, the Complainant avers that the Respondent has configured the disputed domain name with an MX (mail exchange) record and that underscores the Respondent's intention to engage in email phishing or other fraudulent activities by creating a false impression of affiliation with the Complainant.

The Complainant submits that the Respondent's website resolves to the registrar's parking page and is currently inactive. The Complainant maintains that the Respondent registered and is passively using the disputed domain name in bad faith to mislead the public. The present case scenario would consequently have fulfilled the criteria of the passive holding test (see Telstra Corporation Limited v Nuclear Marshmallows, WIPO Case No. D2000-0003; and paragraph 3.3 of the WIPO Jurisprudential Overview 3.0).

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

A.4 Request for Redaction

The Complainant submits that the Respondent has used the Complainant's own details in the Whois information for the disputed domain name, and that this has prevented the service of the Complaint on the Respondent. Accordingly, the Complainant requests that the name of the Respondent (as provided in the Whois record) be redacted in line with the decision in Accenture Global Services Limited v Registration Private, Domains By Proxy, LLC / Name Redacted, WIPO Case No. D2019-1601, failing which the decision would unfairly suggest that it had been made against a Complainant's officer or affiliated.

B. Respondent

The Respondent has defaulted in this UDRP administrative proceeding and, hence, has failed to advance any substantive case on the merits.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to trade marks in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP 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

A. UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint based on the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the grounds which the Complainant must establish to succeed:

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

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 are being used in bad faith.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP administrative proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has UDRP-relevant rights in the registered trade mark MIGROS since at least 1966, and in the trade mark MIGROSBANK since at least 1995.

The disputed domain name <migrosbankinfo.com> was registered in 2024 and it contains the Complainant's trade marks MIGROS and MIGROSBANK in their entirety, together with the term 'info'. The additional noun 'info' has no material impact on the recognisability of the Complainant's trade marks in the disputed domain name string. In addition, the TLDs are typically disregarded by UDRP panels under this UDRP Policy ground.

The Complainant has therefore satisfied the first requirement of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP administrative proceeding and the Panel is empowered to draw adverse inferences therefrom (Rule 14 (b) of the UDRP Rules).

The Panel is convinced that the Respondent (as an individual, business, or other organisation) has not been commonly known by the disputed domain name, and it likewise has not been authorised by the Complainant to make any use of the disputed domain name.

Furthermore, the Panel finds on the undisputed evidence on record that the Respondent has made no use of the disputed domain name whether for a bona fide offering of goods or services, or for a legitimate noncommercial or fair use.

The Complainant has therefore satisfied the second requirement of the UDRP Policy.

D. Registered and Used in Bad Faith

The Panel has no hesitation in finding that the Respondent registered and has used the disputed domain name with full knowledge of, and intention to target, the Complainant. The case's factual matrix largely supports a presumption of bad faith: (i) the Complainant's trade marks' worldwide reputation; (ii) the obvious similarity between the disputed domain name and the Complainant's trade marks; (iii) the Respondent's failure to refute the Complainant's prima facie case; (iv) the Respondent's provision of the Complainant's own information in the Whois for the disputed domain name (in breach of its registration agreement); (v) the Respondent's attempt to gain reputational advantage by redirecting Internet users for a likely fraudulent purpose; and (vi) the implausibility of any good faith use to which the disputed domain name may be put.

In view of the above, the Panel finds that the the Complainant has satisfied the third and final requirement of the UDRP Policy.

E. Request for Redaction

Paragraph 4(j) of the UDRP Policy affords a latitude of discretion for panels to determine, in exceptional cases, that parts of their decisions be redacted.

The Panel considers this case to meet the exceptionality character of the above paragraph and, as a result, accedes to the Complainant's request. The denial of such request would unfairly infer that a decision was made against a Complainant's affiliated whose name was used by the Respondent in the provision of the Whois information.

F. Decision

For the foregoing reasons, in accordance with paragraph 4(a) of the UDRP Policy and Rule 15 of the UDRP Rules, the Panel orders that the disputed domain name <migrosbankinfo.com> be transferred to the Complainant.

The Panel further directs that the Respondent's name (as presented to the Registrar) be redacted from published copies of this decision and related published information.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

PANELLISTS

Name	Yana Zhou

DATE OF PANEL DECISION 2024-09-05

Publish the Decision