Decision for dispute CAC-UDRP-107132

Case number	CAC-UDRP-107132
Time of filing	2024-12-05 12:27:30
Domain names	migrosaffiliate.cc, migrosaffiliate.net, migrosaffiliate.org, migrosaffiliate.shop

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Migros-Genossenschafts-Bund

Complainant representative

Organization	SILKA AB

Respondent

Name	Fulham Fulham

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 names.

IDENTIFICATION OF RIGHTS

The Complainant owns numerous trademark registration for "MIGROS", which cover many jurisdictions around the world. These registrations include the following:

- the international trademark No. 315524 "MIGROS" (figurative), registered since June 23, 1966;
- the international trademark No. 397821 "MIGROS", registered since March 14, 1973;
- the Swiss trademark No. P-405500 "MIGROS", registered since September 20, 1993.

All trademark registrations hereinafter cumulatively referred to as the "Trademark".

FACTUAL BACKGROUND

The Complainant was founded in 1925 and is a cooperative association based in Switzerland. The Complainant is owned by more than two million cooperative members and, with more than 99,000 employees, is one of Switzerland’s largest retailers. The Complainant had group sales in excess of CHF 31 billion in 2023, operates supermarkets and department stores, and provides services relating to wellness, travel and catering.

The Complainant has a strong online presence and owns several domain names containing the Trademark, such as <migros.com>, <migros.net>, <migros.fr>, <migros.at>, <migros.de> and <migros.us>.

The disputed domain names have been registered as follows:

- <migrosaffiliate.net> and <migrosaffiliate.org> have been registered on November 6, 2024;
- <migrosaffiliate.cc> has been registered on November 15, 2024;
- <migrosaffiliate.shop> has been registered on November 26, 2024

Except for the dispute domain name <migrosaffiliate.net> that has not been actively used, the other disputed domain names have been used in connection with an active website displaying the Trademark and a log-in interface.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain names are confusingly similar to the Trademark, as they fully incorporate the Trademark, combining it with the word "affiliate".

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain names. More specifically, it contends that the Respondent does not have trademark rights for, nor is it commonly known by 'migrosaffiliate' or any similar term. The Respondent is not connected to nor affiliated with the Complainant and has not received license or consent to use the MIGROS mark in any way. The Respondent has not used, nor prepared to use, the disputed domain names in connection with a bona fide offering of goods or services, nor a legitimate non-commercial or fair use, since i) there have been attempts to impersonate the Complainant by creating the false impression that the sites represent an official portal of the Complainant (or, indeed, one of its affiliates), and, through such confusion, solicit the personal details of deceived internet users and ii) the lack of use is not consistent with a bona fide offering within the meaning of paragraph 4(c)(i) nor a legitimate non-commercial or fair use within the meaning of paragraph 4(c)(iii) of the Policy.

Finally, the Complainant contends that the disputed domain names were registered and are being used in bad faith, since:

i) the Complainant and its distinctive Trademark are widely known and the Respondent must have been aware of the Complainant at the time of registration; and

ii) the use of <migrosaffiliate.cc>, <migrosaffiliate.shop> and <migrosaffiliate.org> leads to an intentional attempt to attract, for commercial gain, internet users by creating a likelihood of confusion with the Trademark and that in light of the above circumstances there is a high likelihood that <migrosaffiliate.net> may be also used to engage in illegitimate conduct which is the same or similar to the use of the other disputed domain names and that the Respondent's non use of <migrosaffiliate.net> is evidence of bad faith.

RESPONDENT:

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names have been registered and are 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

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

(i) the disputed domain names are identical or confusingly similar to the Complainant's trademark; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and

(iii) the disputed domain names have been registered and are being used in bad faith.

1. The Panel accepts that the disputed domain names are identical or confusingly similar to the Complainant's trademarks.

First, it is well established that a top-level domain names are generally not an element of distinctiveness that can be taken into consideration when evaluating the identity or confusing similarity between the Complainant's trademark and the disputed domain name.

Second, all disputed domain names are a combination of the Trademark and the word "affiliate", which in the view of the Panel enhances the confusing similarity as it naturally suggests an affiliation with the Complainant and the Trademark.

Therefore, the Panel agrees that all the disputed domain names are confusingly similar to the Trademark.

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain names. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy and that the burden of proof has been shifted to the Respondent. The Respondent did not deny any of the Complainant's assertions in any way and therefore failed to prove any rights or legitimate interests in the disputed domain names.

Based on the evidence before the Panel, the Panel cannot find any rights or legitimate interests of the Respondent. Regarding <migrosaffiliate.net>, even if the disputed domain name <migrosaffiliate.net> has not been actively used by the Respondent yet, there cannot be any indication of the Respondent's own rights or legitimate interests.

3. Finally, the Panel is also satisfied that the Respondent registered the disputed domain names with full knowledge of the Complainant and its rights in its well-established Trademark.

Regarding bad faith use, the Complainant makes a compelling case.

The use of the disputed domain names <migrosaffiliate.cc>, <migrosaffiliate.shop> and <migrosaffiliate.org>

The Panel agrees that by using the Trademark (and not just any, but the very distinctive MIGROS international trademark No. 1469883 in orange color) in active pages, the Respondent intentionally attempts to impersonate the Complainant in order to attract, for commercial gain, Internet users to its websites or other online locations, by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation, or endorsement of the websites or online location. By displaying a log-in interface the Respondent may also attempt to gain access to sensitive personal data of the internet users.

The Panel finds that with respect to the disputed domain names <migrosaffiliate.cc>, <migrosaffiliate.shop> and <migrosaffiliate.org> the Complainant has fulfilled its obligations under paragraph 4(a)(iii) of the Policy.

The lack of use of the disputed domain name <migrosaffiliate.net>

It is the consensus view that the lack of active use of a domain name does not as such prevent a finding of bad faith under the Policy. In such cases, the panel must examine all the circumstances of the case to determine whether a respondent is acting in bad faith. Examples of circumstances that can indicate bad faith include a complainant having a well-known trademark, no response to the complaint, respondent's concealment of identity and the impossibility of conceiving a good faith use of the domain name (cf Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; Jupiters Limited v. Aaron Hall, WIPO Case No. D2000-0574; Ladbroke Group Plc v. Sonoma International LDC, WIPO Case No. D2002-0131).

In light of the above and the circumstances of this case, the Panel agrees that there is no evidence of the Respondent having made, or having attempted to make, any good faith, legitimate non-commercial or fair use of <migrosaffiliate.net>. Furthermore, taking into account how the other disputed domain names have been used, it is inconceivable to find that <migrosaffiliate.net> may be used in good faith. The likelihood of the same use pattern is very high.

The Respondent failed to file a Response and therefore did not provide evidence of any actual or contemplated good faith use of the disputed domain name. The Panel is convinced that, even though <migrosaffiliate.net> has not yet been actively used, the

Respondent’s non-use of the disputed domain name equals to use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **migrosaffiliate.cc**: Transferred
2. **migrosaffiliate.net**: Transferred
3. **migrosaffiliate.org**: Transferred
4. **migrosaffiliate.shop**: Transferred

PANELLISTS

Name	**Stefanie Efstathiou LL.M. mult.**

DATE OF PANEL DECISION 2025-01-08

Publish the Decision