Decision for dispute CAC-UDRP-107209

Case number	CAC-UDRP-107209
Time of filing	2025-01-07 08:53:03
Domain names	migros-finance.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Migros-Genossenschafts-Bund

Complainant representative

Organization	SILKA AB

Respondent

Name	Alex Nirtons

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 inter alia the owner of Community trademark registration no. 000744912 “MIGROS”, registered on July 26, 2000, Swiss trademark registration no. P-405500 "MIGROS", registered on September 20, 1993, and US trademark registration no. 6026436 "MIGROS", registered on April 7, 2020, for various goods and services in classes 1 to 42 (hereinafter referred to as the "Trademark"). Furthermore, the Complainant also owns rights to the trademark "MIGROSBANK" through Swiss trademark registration no. 2P-414500, registered on January 12, 1995.

The Trademark has already been considered to be "well-known" by previous panels in proceedings under the UDRP (Migros-Genossenschafts-Bund v. WhoisSecure / clem kenny, WIPO Case No. D2019-0803; MIGROS-Genossenschafts-Bund v. 1&1 Internet Limited / Hubert Dadoun. WIPO Case No. D2017-1924; Migros-Genossenschafts-Bund (Federation of Migros Cooperatives) v. Simon Paul, WIPO Case No. D2017-1729; Migros-Genossenschafts-Bund v. Patrizio De Bortoli, MediaEtCetera GmbH, WIPO Case No. D2017-0980; Migros Genossenschaftsbund (Federation of Migros Cooperatives) v. Centro Consulenze Kim Paloschi, WIPO Case No. D2000-1171).

FACTUAL BACKGROUND

COMPLAINANT:

The Complainant is a Swiss cooperative association. The core business is the cooperative retail trade. The Complainant, however, is also doing business in the financial area. Migros Bank AG, headquartered in Zurich, is a wholly-owned subsidiary of the Complainant and was founded in 1958. In terms of total assets, Migros Bank ranks among the ten largest banks in Switzerland. The Complainant's financial services are advertised on various social media platforms, such as LinkedIn, Facebook, Twitter, and Instagram.

The Complainant owns numerous domain names consisting of the Trademark, inter alia "migros.com" and "migrosbank.com", both registered more than 20 years ago.

The disputed domain name is not used in connection with an active website, but is connected to MX servers.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the Trademark because the domain name includes the Trademark in its entirety, because "finance" is a generic term that does not preclude a finding of confusing similarity, and because the Trademark is recognisable in the domain name.

Furthermore, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In this regard, the Complainant states that the Respondent is not a licensee of the Complainant, nor has it been otherwise authorized or allowed by the Complainant to make any use of the Trademark, that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, that the Respondent is not commonly known by the terms “MIGROS-FINANCE” or any similar term, and that the Respondent’s use of the disputed domain name is neither a legitimate non-commercial nor fair use. Finally, the Complainant argues that the disputed domain name carries a high risk of implied affiliation with the Complainant.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. As to bad faith registration, the Complainant contends that the Trademark is a highly distinctive coined mark that is well known throughout the world and continuously and extensively used since at least 1925 in respect of various goods and services and since at least 1958 in connection with banking and financial related goods and services. The Complainant further asserts that, in the present case, there is no plausible reason for the registration of the disputed domain name, other than with the value of the Trademark in mind and the intention of creating confusion among internet users who associate it with the Complainant. With regard to bad faith use, the Complainant states that the Trademark is distinctive and well-known internationally, 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 the disputed domain name, nor of it being commonly known by such, that the combination of the Trademark with the term “finance” clearly shows the Respondent’s intention to capitalize on the Trademark, and that no conceivable good faith use could be made of it by the Respondent. The Complainant further points to the fact that, even if there is no active website available at the disputed domain name, the Respondent configured MX records to the disputed domain name and that this indicates that the Respondent may intend to use the disputed domain name to engage in some form of phishing conduct.

RESPONDENT:

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

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

(i) the disputed domain name is 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 name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

1. The Panel accepts that the disputed domain name is confusingly similar to the Trademark, which has already been found to be well-known by previous panels. The addition of the generic term “finance” does not hinder a finding of confusing similarity, as the Trademark is recognizable in the disputed domain name.

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

Based on the evidence before the Panel, the Panel cannot find any rights or legitimate interests of the Respondent either. In particular, the Respondent failed to provide any additional information with regard to its own rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in respect of the disputed domain name under paragraphs 4(a)(ii) and 4(c) of the Policy.

3. The Panel is also satisfied that the Respondent registered the disputed domain name with full knowledge of the Complainant and its rights in the well-established Trademark. The Complainant provided evidence that it is intensively using the Trademark for decades and that it has a strong presence on the Internet. Given that “MIGROS” is a coined word that is unrelated to financial services, the Panel assumes that the Respondent registered the disputed domain name with knowledge of the Complainant's rights in the Trademark. There is no contrary evidence displacing this presumption and the Respondent failed to provide any other justification for the registration of the domain name.

With respect to bad faith use, the Panel finds that this is not a classic case of passive holding, where the registrant has simply registered a domain name without using it in any other way. The fact that MX records are set up at the disputed domain name demonstrates that the Respondent has in fact actively used the disputed domain name, at least for email purposes. Given that the disputed domain name clearly targets the Complainant’s financial branch and that the Trademark has been in use for approximately a century and is very well established, the Panel considers it more likely than not that the Respondent has actually used or intended to use the disputed domain in connection with fraudulent emails, which is evidence of bad faith under paragraph 4(a)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **migros-finance.com**: Transferred

PANELLISTS

Name	**Peter Müller**

DATE OF PANEL DECISION 2025-01-31

Publish the Decision