

Decision for dispute CAC-UDRP-103592

Case number	CAC-UDRP-103592
-------------	-----------------

Time of filing	2021-02-19 10:54:33
----------------	---------------------

Domain names	agmigrosbank.com
--------------	------------------

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
--------------	---------------------------------

Complainant

Organization	MIGROS-GENOSSENSCHAFTS-BUND
--------------	-----------------------------

Complainant representative

Organization	SILKA AB
--------------	----------

Respondent

Name	Jude Jackson
------	--------------

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 holder of various trademarks including the following:

- MIGROS, Swiss word mark registration No. 2P-415060, registered on March 10, 1995 in classes 35, 36, 37, 38, 39, 40, 41 and 42;
- MIGROSBANK, Swiss word mark registration No. 2P-414500, registered on January 12, 1995 in class 36;
- MIGROSBANK, Swiss figurative mark registration No. 623618, registered on December 12, 2011 in classes 35 and 36.

FACTUAL BACKGROUND

The Complainant, Migros-Genossenschafts-Bund, is the Swiss based umbrella organization of the regional Migros cooperatives. The Complainant is active in the retail sector, divided into business units such as Industry and Wholesaling, Travel and Financial Services.

Migros Bank AG is a wholly owned subsidiary of the Complainant's group and offers financial services. Migros Bank AG owns the domain names <migrosbank.com> and <migrosbank.ch>. The second one redirects to Migros Bank AG's official website

www.migrosbank.ch.

The disputed domain name <agmigrosbank.com> has been registered on January 10, 2021 by the Respondent. According to evidence provided by the Complainant, the disputed domain name referred to a website mentioning the Complainant's trademarks and offering financial services.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent has not been authorized to register or use the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the Respondent reproduced the Complainant's website by adopting the Complainant's logo and overall look with the intention to deceive internet users into believing that the website was in fact operated by the Complainant.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

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

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed, it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities, that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity or confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of the registered MIGROS and MIGROSBANK marks which are used in connection with its banking business, it is established that there are trademarks in which the Complainant has rights.

The disputed domain name <agmigrosbank.com> incorporates the Complainant's MIGROS and MIGROSBANK trademarks in their entirety, merely adding the term "ag". "ag" is a common abbreviation for "Aktiengesellschaft", the German term for a public limited company. In these circumstances, the Panel finds that the confusing similarity is obvious.

It is well established that the Top-Level Domains ("TLDs") such as ".com" may be disregarded when considering whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and *Champion Innovations, Ltd. V. Udo Dussling (45FHH)*, WIPO case No. D2005-1094; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO case No. D2003-0455; *Belupo d.d. v. WACHEM d.o.o.*, WIPO case No. 2004-0110).

The Panel observes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "Jude Jackson". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Generally speaking, UDRP panels have found that where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 WIPO Overview 3.0). In this case, the disputed domain name incorporates the Complainant's MIGROS and MIGROSBANK trademarks in their entirety, merely adding the term "ag", which is a common abbreviation for the public limited company form in German language. This short additional term does not prevent potential confusion with the Complainant. On the contrary, the Panel observes that the term "ag" may directly refer to Migros Bank AG, the wholly owned subsidiary of the Complainant's group.

Therefore, the Panel finds that the disputed domain name carries a high risk of implied affiliation with the Complainant and cannot constitute fair use.

Moreover, the Panel considers that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. While the disputed domain name currently does not resolve to an active webpage, it used to refer to a website bearing the Complainant's trademarks and offering financial services under the name "AG Migros Bank". Moreover, the Panel observes that the website linked to the disputed domain name used design elements which are confusingly similar to the Complainant's website www.migrosbank.ch, such as the green color.

UDRP panels have categorically held that the use of a domain name for illegal activity (e.g., phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on the Respondent (see section 2.13 WIPO Overview 3.0). In the Panel's view, the website connected to the disputed domain name was aimed to mislead Internet users into believing that the financial services offered on the website were genuine and offered by the Complainant. Evidently, such use cannot be considered a legitimate non-commercial or fair use of the disputed domain name.

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant succeeds on the second element of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. *Telstra Corporation Limited v. Nuclear Marshmallow*, WIPO Case No. D2000-0003; *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see *Red Bull GmbH v. Credit du Léman SA*, Jean-Denis Deletraz, WIPO Case No. D2011-2209; *Nintendo of America Inc v. Marco Beijen*, Beijen Consulting, *Pokemon Fan Clubs Org.*, and *Pokemon Fans Unite*, WIPO Case No. D2001-1070). In the instant case, the Panel finds it inconceivable that the Respondent was not aware of the Complainant's rights at the moment it registered the disputed domain name. The disputed domain name incorporates both MIGROS and MIGROSBANK trademarks of the Complainant in their entirety with the mere addition of the short descriptive term "ag". The website linked to the disputed domain name even copies the Complainant's figurative MIGROSBANK trademark and logo. As a result, it is apparent that the Respondent had the Complainant in mind when registering the disputed domain name. Moreover, as evidenced by the Complainant, a simple internet search for MIGROS and MIGROSBANK reveals obvious references to the Complainant.

By copying the Complainant's trademarks in the disputed domain name and on the website linked to it, and by offering services similar to the Complainant's financial services on this website, the Respondent intentionally aimed to attract Internet users to visit his website for commercial gain, by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the website or location and of the products advertised on the website (see section 3.1.4 WIPO Overview 3.0; *Simyo GmbH v. Domain Privacy Service FBO Registrant / Ramazan Kayan*, WIPO Case No. D2014-2227; *Credit Industriel et Commercial S.A. v. Perfect Privacy, LLC / Zakaria Benouda*, WIPO Case No. D2017-0066). The fact that the disputed domain name currently does not resolve to an active webpage does not preclude the fact that the Respondent can at any time resume the previous bad faith use of the disputed domain name.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown 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. **AGMIGROSBANK.COM**: Transferred

PANELLISTS

Name	Flip Petillion
------	----------------

DATE OF PANEL DECISION 2021-03-30

Publish the Decision