

Decision for dispute CAC-UDRP-104873

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| Case number | CAC-UDRP-104873 |
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| Time of filing | 2022-10-04 09:59:36 |
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| Domain names | migbk.com |
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Case administrator

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| Organization | Iveta Špiclová (Czech Arbitration Court) (Case admin) |
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Complainant

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| Organization | Migros-Genossenschafts-Bund |
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Complainant representative

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| Organization | SILKA AB |
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Respondent

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| Name | Anthony Maitama Smith |
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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 several trademarks MIGROS and MIGROS BANK registered in several countries, e.g. USA, EU, Switzerland ("**Complainant's Trademarks**").

The disputed domain name was registered on 4 August 2022.

FACTUAL BACKGROUND

As the Respondent did not file any response to the complaint, the Panel took into account the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

(a) Migros-Genossenschafts-Bund (in English: Migros Association of Cooperatives), founded in 1925, includes (but is not limited to) Switzerland's largest retailer, various trading and travel companies, several foundations as well as the Migros Bank. Migros Bank was founded in 1958 and is the 5th largest bank in Switzerland providing banking services to both individuals and businesses.

(b) The Complainant is the owner of Complainant's Trademarks which were registered prior to registration of the disputed domain name by the Respondent.

(c) The Complainant has registered a number of domain names under several different Top-Level Domains ("TLD") containing the term "MIGROS" as well as "MIGROSBANK", for example <migros.com> (created on 9 February 1998), <migros.ch> (created before 1 January 1996), <migrosbank.com> (created on 5 January 1999) and <migrosbank.ch> (created on 20 March 1996) as well as multiple others

(d) The disputed domain name was registered on 4 August 2022. The website under the disputed domain name was suspended following a takedown request of the Complainant. Before suspension the disputed domain name resolved to a website impersonating the Complainant, frequently using the MIGROS BANK mark as well as displaying the Complainant's official address and offering fake banking services in order to extract sensitive information and money from internet users.

PARTIES CONTENTIONS

COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

(a) The disputed domain name <migbk.com> is intended to visually appear and phonetically sound like a shortened version of MIGROS BANK. Confusing similarity is further highlighted by the fact that the content of the website was clearly targeting the Complainant's MIGROS BANK trademark by impersonating the Complainant, offering fake banking services, frequent use of the MIGROS BANK mark as well as display of the Complainant's official address, prior to it getting suspended following a takedown request sent by the Complainant's representative to the hosting provider as well as the registrar on record. As stated in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") section 1.7 regarding confusing similarity: "where a panel would benefit from affirmation as to confusing similarity with the complainant's mark, the broader case context such as website content trading off the complainant's reputation, or a pattern of multiple respondent domain names targeting the complainant's mark within the same proceeding, may support a finding of confusing similarity" and "In this context, panels have also found that the overall facts and circumstances of a case (including relevant website content) may support a finding of confusing similarity, particularly where it appears that the respondent registered the domain name precisely because it believed that the domain name was confusingly similar to a mark held by the complainant".

(b) Complainant has not found that the Respondent is commonly known by the disputed domain name, nor that the Respondent would have any relevant prior rights of its own. The Respondent has never been a licensee of the Complainant and does not have permission or authorization to use the Complainant's trademark. There is no evidence that the Respondent has a history of using, or preparing to use, the disputed domain name in connection with any bona fide offering of goods and services. Instead, the Respondent is using the disputed domain name to deceitfully impersonate an official Migros Bank online banking website, fraudulently requesting Bitcoin payments and fees from deceived internet users as well as collecting sensitive personal information. As a result, the Respondent has no rights or legitimate interest in respect of the disputed domain name.

(c) The Respondent took advantage of the MIGROS BANK trademark by using a confusingly similar domain name to display a website impersonating an official MIGROS BANK online banking website in order to pass off as the Complainant, deceive internet users and extract sensitive information and money. As the Panel has noted in the similar WIPO case no. D2017-0647 Migros-Genossenschafts-Bund v. James Okogb / Micrio <migrosbonline.com>:

"The Respondent's bad faith is particularly evident in creating a website with the same look and feel as the Complainant's website devoted to online banking, "www.migrosbank.com". In this regard, the Panel finds, at the very least, that the Respondent intends to mislead Internet users into accessing its website in the false belief that they were accessing Complainant's website, and that it did so by registering and using the disputed domain name, which is confusingly similar to Complainant's trademark, and including Complainant's trademark MIGROS in the website to which the disputed domain name resolved."

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, in the meaning of paragraph 4(b)(iv) of the Policy and thus the disputed domain name has been registered and is being used in bad faith by the Respondent.

RESPONDENT:

The Respondent did not provide any response to the complaint.

RIGHTS

The Panel concluded that the disputed domain name is identical or confusingly similar to the Complainant's Trademark within the meaning of paragraph 4(a)(i) of the Uniform Domain Name Dispute Resolution Policy ("UDRP" or "Policy").

For details, please see "Principal Reasons for the Decision".

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.

For details, please see "Principal Reasons for the Decision".

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.

For details, please see "Principal Reasons for the Decision".

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 4(a) of the Policy requires that the Complainant proves each of the following three elements to obtain an order that the disputed domain name should be transferred or revoked:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this proceeding.

RIGHTS

The Panel agrees with Complainant's assertion that the disputed domain name is confusingly similar to Complainant's Trademarks. While in most cases the test of confusing similarity only involves a side-by-side comparison of the domain name and the textual components of the relevant trademark, under certain circumstances confusing similarity may be confirmed by the content of the website associated with a domain name whereby it appears prima facie that the respondent seeks to target a trademark through the disputed domain name (please see WIPO Jurisprudential Overview 3.0, Section 1.7 and 1.15). In line with this principle, previous Panels have held, for example, that under specific circumstances of these cases, domain name <bmdecoder.com> is confusingly similar to BMW trademarks (please see WIPO case no. D2017-0156, Bayerische Motoren Werke AG ("BMW") v. Registration Private, Domains By Proxy, LLC / Armands Piebalgs) or domain name <hzcar.com> is confusingly similar to Hertz trademarks (please see WIPO case no. D2009-1165, Hertz System, Inc. v. Kwan-ming Lee).

In the present case, taking into account the contents of the website operating under the disputed domain name impersonating the Complainant and offering fake banking services under the Complainant's Trademarks, it is clear to the Panel that the "migbk" element of the disputed domain name was deliberately chosen by the Complainant as the abbreviation of Complainant's Trademarks MIGROS BANK in order to create the confusing similarity between the disputed domain name and such trademarks.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (please see, for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The Complainant has made such prima facie case as it is abundantly clear that the Respondent was using the disputed domain name to operate a website impersonating an official MIGROS BANK online banking website in order to pass off as the Complainant, deceive internet users and extract sensitive information and money. Such activity is outright criminal in many jurisdictions and certainly cannot establish Complainant's rights or legitimate interest in respect of the disputed domain name. As WIPO Jurisprudential Overview 3.0 concludes in Section 2.13.1 *"Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent."*

Therefore, the Panel concludes that the Respondent has no rights or legitimate interest in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Panel also agrees with the Complainant that the Respondent took advantage of the MIGROS BANK trademark by using a confusingly similar domain name to display a website impersonating an official MIGROS BANK online banking website in order to pass off as the Complainant, deceive internet users and extract sensitive information and money, i.e. registered and used the dispute domain name in furtherance of phishing activities. Similar case was already decided by a WIPO Panel (case no. D2017-0647 Migros-Genossenschafts-Bund v. James Okogb / Micrio <migrosbonline.com>) which has held that:

"The Respondent's bad faith is particularly evident in creating a website with the same look and feel as the Complainant's website devoted to online banking, "www.migrosbank.com". In this regard, the Panel finds, at the very least, that the Respondent intends to mislead Internet users into accessing its website in the false belief that they were accessing Complainant's website, and that it did so by registering and using the disputed domain name, which is confusingly similar to Complainant's trademark, and including Complainant's trademark MIGROS in the website to which the disputed domain name resolved."

Also, WIPO Jurisprudential Overview 3.0 states in Section 3.1.4: "As noted in section 2.13.1, given that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith."

The Panel in the present case fully concurs with such assessment and finds that Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, in the meaning of paragraph 4(b)(iv) of the Policy and thus the disputed domain name has been registered and is being used in bad faith by the Respondent (within the meaning of paragraph 4(a)(iii) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **migbk.com**: Transferred

PANELLISTS

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| Name | Michal Matějka |
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DATE OF PANEL DECISION 2022-11-04

Publish the Decision