

Decision for dispute CAC-UDRP-103734

Case number	CAC-UDRP-103734
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Time of filing	2022-04-25 10:27:18
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Domain names	migrosinvestb.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	MIGROS-GENOSSENSCHAFTS-BUND
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Complainant representative

Organization	SILKA AB
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Respondent

Organization	Hosting Concepts BV d/b/a Registrar.eu
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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 and domain names including the word MIGROS.

In particular, the Complainant is the owner of the following MIGROS trademarks:

- International trademark registration n° 315524 "M MIGROS", in classes 3, 7, 8, 9, 11, 21-31 and 34, registered on 23 June 1966;
- International trademark registration n° 397821 "MIGROS", in classes 1-12, 14-32 and 34, registered on 14 March 1973;
- International trademark registration n° 404446 "M MIGROS", in classes 1-9, 11, 12, 14-32 and 34, registered on 28 December 1973;
- International Trademark no. 637252 "MIGROS", in classes 35, 36, 37, 38, 39, 40, 41 and 42, registered on 13 February 1995;
- EU trademark registration n° 000744912 "MIGROS", in classes 1, 2, 3, 4, 6, 7, 8, 9, 11, 12, 14 - 32, 34, and 35-42, registered on 26 July 2000;
- EU trademark registration n° 003466265 "MIGROS", in class 35, registered on 13 May 2005;
- Swiss trademark registration n° 3P-268357 "M MIGROS", in classes 1-9, 11, 12 and 14-34, registered on 28 December 1973;
- Swiss Trademark registration n° 623618 "MIGROSBANK", in classes 35 and 36, registered on 12 December 2011;

- Swiss Trademark registration n° 623620 "MIGROSBANK", in classes 35 and 36, registered on 12 December 2011; and
- United States of America Trademark n° 6026436 "MIGROS", in class 35, registered on 7 April 2020.

(the "Complainant's trademarks").

The Complainant asserts to have many other MIGROS trademarks worldwide.

The Panel notes that the Complainant has domain names consisting of the word "MIGROS", such as <migros.ch>, <migrosbank.ch>, <migros.de>, which are connected to the official website of the Complainant ("the Complainant's domain names").

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a Swiss retail company founded in 1925. The Complainant is currently one of the forty largest retailers in the world and is active in manufacturing and wholesaling through more than 30 companies (about 25 Swiss-based and around 10 abroad) in many commercial areas.

One of the most relevant ventures of the Complainant is Migros Bank AG, which is a wholly-owned subsidiary and consists of the parent company's financial services division. Migros Bank AG is one of the largest and most established banks in Switzerland, providing a full range of commercial banking services to both individuals and business customers.

The Complainant uses its trademarks and domain names in connection to its activities worldwide.

The Respondent registered the disputed domain name <migrosinvestb.com> on 22 March 2022 ("the disputed domain name"). The disputed domain name is not used for an active website, and it appears that it is currently blocked because of suspected illegal activities (malware). The Complainant asserts that the disputed domain name was initially redirected to a website that was used to impersonate the Complainant in an attempt to defraud the Complainant's customers.

PARTIES CONTENTIONS

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

I. The disputed domain name is confusingly similar to the Complainant's trademarks

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks.

The Complainant rightfully contends that disputed domain name reproduces in full the well-known trademark "MIGROS", with the mere addition of the generic term "invest", which is widely used in the banking industry, and the letter "b", which could be perceived as an abbreviation of "bank".

The Panel concludes that the addition of the generic term "invest" and the letter "b" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademarks. To the contrary, it suggests that the Respondent tried to confuse and mislead the public in an attempt to defraud customers in the financial industry, where the Complainant is active.

II. 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

The Panel notes that the Complainant has never granted the Respondent any license, consent, permission, or authorization to use the Complainant's trademarks for the disputed domain name, nor is the Respondent affiliated with the Complainant in any way.

The Complainant asserts that the disputed domain name was initially redirected to a website that was used to impersonate the Complainant in an attempt to defraud the Complainant's customers. The website had a section where internet users could allegedly open a bank account with Migros, leading to a situation where customers would assume that there was an association between the Respondent and the Complainant and/or that the financial service was endorsed by the Complainant. The Respondent has not by virtue of the content of the website shown that the disputed domain name is being used in connection with a bona fide offering of goods or services.

Further, 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.

Given the lack of an administratively compliant Response from the Respondent, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

III. The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name was registered and is being used in bad faith

The Complainant contends that its MIGROS trademarks are well-known and that, given the distinctiveness of the Complainant's trademarks, including MIGROSBANK, and given its reputation, the Respondent likely had full knowledge of the Complainant's trademarks at the time of the registration of the disputed domain name.

In addition to the above mentioned non-contested facts, the fact that the disputed domain name was merely used to attract internet users for commercial gain by creating a likelihood of confusion with the Complainant as to the source of the Respondent's website and by requesting personal information to allegedly open a bank account, shows that the Respondent has registered and used the disputed domain name in bad faith. The failure of the Respondent to respond and hence to present a credible evidence-backed rationale for registering and using the disputed domain name, plus the fact that the Respondent conceals its identity, confirm the finding of bad faith.

Finally, the Complainant asserts that the disputed domain name is associated with mail servers ('MX servers') that enable the Respondent to use it for creating and using email addresses composed with "@migrosinvestb.com". These email addresses could be used for any purposes and notably for spamming or phishing purposes, to obtain banking and personal data from the Complainant's customers, and to misuse these data. The Panel agrees that such use is an example of a phishing scheme that amounts to use in bad faith of the disputed domain name.

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **MIGROSINVESTB.COM**: Transferred

PANELLISTS

Name	Tom Joris Heremans
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DATE OF PANEL DECISION 2022-06-01

Publish the Decision