

Decision for dispute CAC-UDRP-105495

Case number	CAC-UDRP-105495
Time of filing	2023-06-01 14:48:01
Domain names	migrosinvestbnk.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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

Name	David Petar
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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 <migrosinvestbnk.com>.

IDENTIFICATION OF RIGHTS

Migros Genossenschaftsbund (the Complainant) is the owner of registered trademarks for "Migros" and "Migros Bank" in particular:

- Swiss trademark registration n° P-405500 "MIGROS", registered on 20 September 1993;
- Swiss Trademark registration n° 2P-415060 "MIGROS", registered on 13 February 1995;
- Swiss Trademark registration n° 414500 "MIGROSBANK", registered on 12 January 1995; and
- Swiss Trademark registration n° 623618 "MIGROSBANK", registered on 12 December 2011.
(the "Complainant's trademarks").

The Complainant owns numerous domain names composed of either its trademark Migros alone, including <migros.com> or <migrosbank.com>, among others.

FACTUAL BACKGROUND

The Complainant is a Swiss-based umbrella organization of the regional Migros Cooperatives, founded in 1925. The Complainant is known throughout Switzerland as one of the biggest department stores, offering a wide range of food, non-food products and services (wellness, travel, catering).

Migros Bank is a wholly-owned subsidiary of the Migros Group, founded in 1958. The bank is present in 67 locations in Switzerland. The bank is also active on several social media platforms.

The Complainant uses its trademarks and domain names for its activities worldwide.

The Respondent registered the disputed domain name <migrosinvestbnk.com> on 27 March 2023.

PARTIES CONTENTIONS

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

- The disputed domain name is identical or confusingly similar to the protected mark

According to the Complainant, the disputed domain name <migrosinvestbnk.com> incorporates entirely the Complainant's well-known trademark. The combination of the term "invest" and "bnk" for bank strengthens the confusing similarity element since the terms are closely connected to the Complainant's trademark and business activities. The reason is that the Complainant offers online banking.

In addition, the presence of the generic Top-Level Domain ("gTLD") extension ".com" in the first level portion of the disputed domain names is a standard registration requirement. According to the Complainant, it may be disregarded when assessing whether the disputed domain name is confusingly similar to the trademark to which the Complainant has rights.

Therefore, the Complainant argues that the disputed domain name is confusingly similar to the Complainant's MIGROS trademark within the meaning of Paragraph 4(a)(i) of the Policy.

- Respondent does not have any rights or legitimate interest in the disputed domain name

According to the Complainant, the Respondent is unknown by the name "Migros". The combination with "bnk" and "invest" strengthens the impression of a legitimate connection between the website to which the disputed domain name resolves and the Complainant. The Respondent has not provided the Complainant with any evidence of its use of, or demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services. When entering the terms "Migros" and "Migrosbank" in Google search engine, the first returned results point to Complainant's official website. The Respondent could easily perform a similar search before registering the disputed domain name and would have quickly learnt that Complainant owns the trademarks and that the Complainant has been using its trademarks for a significant period of time.

According to the Complainant, the disputed domain name previously pointed to a website that aimed to attract consumers to a false bank website titled Migros Investment Bank, Switzerland. The Complainant managed to suspend the website, which is currently inactive. According to the Complainant, the Respondent has no legitimate, non-commercial use of the disputed domain name.

Therefore, the Complainant contends that the Respondent has no right nor legitimate interest in respect of the disputed domain name, within the meaning of the Paragraphs 4(a)(ii) and (4)(c) of the Policy.

- The disputed domain name has been registered and is being used in bad faith

The Complainant argues that the fact that the Respondent reproduced Complainant's website by adopting a website claiming to provide banking services with location in Zurich, Switzerland to deceive internet users into believing the Complainant operated the website does not constitute good faith of use of the disputed domain name.

Therefore, the Complainant contends that the Respondent has registered and used the disputed domain name in bad faith and its conduct falls within the meaning of Paragraph 4(a)(iii) of the Policy.

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

The UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (the "Policy") provides that complainant must prove each of the following to obtain transfer or cancellation of the domain name:

1. that respondent's domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
2. that 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.

- 1) The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights

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 Migrosbank, with the mere addition of the generic term "invest", which is widely used in the banking industry, and "bnk", which could be perceived as an abbreviation of "bank".

The Panel concludes that the addition of the generic terms "invest" and "bnk" 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.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark Migrosbank.

- 2) The Respondent lacks rights or legitimate interests in the disputed domain name

Under the Policy, a 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 burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy (see WIPO Overview 2.0, paragraph 2.1).

The Panel finds that the Respondent has no legal right to use the term "Migros" as part 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. When entering the terms "Migros" and "invest" in the Google search engine, the returned results point to the Complainant and its business.

The Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interest in the disputed domain name. The Respondent failed to file an administratively compliant Response in which it could have provided evidence in support of its rights or legitimate interests. The Respondent is not commonly known by the disputed domain name and has not been authorised by the Complainant to use the term "Migros". Therefore, all these circumstances are sufficient to establish a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Panel thus takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name.

3) The disputed domain name has been registered and is being used in bad faith

The Panel agrees with the Complainant that its trademarks are well-known globally. The Complainant's well-known trademarks predate the registration of the disputed domain name. The Panel finds that there appears to be no reason why the Respondent would register the Complainant's trademark as part of the disputed domain name other than to create the impression that it is connected to the Complainant's business and online presence. Given the distinctiveness of the Complainant's trademark worldwide and its online presence, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks.

In addition, the Panel notes that the Respondent's attempt to defraud the Complainant's customers by reproducing the Complainant's website by creating a website claiming to provide banking services with location in Zurich, Switzerland to presumably deceive internet users into believing the website was operated by the Complainant does not constitute good faith of use of the disputed domain name.

For all reasons stated above, the Panel is satisfied that the Complainant has proven the third element of the Policy, that is that the Respondent's registration and use of 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. **migrosinvestbnk.com**: Transferred

PANELLISTS

Name	Barbora Donathová
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DATE OF PANEL DECISION	2023-07-09
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Publish the Decision
