

ADMINISTRATIVE PANEL DECISION

Migros-Genossenschafts-Bund, Migros Ticaret A.Ş. v. Safar Adibpour
Case No. DIR2024-0006

1. The Parties

The Complainants are Migros-Genossenschafts-Bund, Switzerland and Migros Ticaret A.Ş., Türkiye, represented by SILKA AB, Sweden.

The Respondent is Safar Adibpour, Iran (Islamic Republic of) ("Iran").

2. The Domain Name and Registrar

The disputed domain names <iranmigros.ir> and <migrosiran.ir> are registered with IRNIC.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 9, 2024. On April 10, 2024, the Center transmitted by email to IRNIC a request for registrar verification in connection with the disputed domain names. On April 12, 2024, IRNIC transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (Not disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 15, 2024, providing the registrant and contact information disclosed by IRNIC, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to Complaint on the same day. Hard copies of the Complaint were received by the Center on April 15, 2024.

The Center verified that the Complaint and the amendment to Complaint satisfied the formal requirements of the .ir Domain Name Dispute Resolution Policy (the "Policy" or "irDRP"), the Rules for .ir Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .ir Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 15, 2024. In accordance with the Rules, paragraph 5(a), the due date for Response was May 5, 2024. On May 6, 2024, the Center notified the Respondent's default.

The Center appointed Ian Lowe as the sole panelist in this matter on May 10, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

The Complaint has been filed by multiple Complainants. For the reasons set out below, the Panel accepts that the respective complaints of the Complainants may be consolidated against the Respondent.

4. Factual Background

Migros-Genossenschafts-Bund (the “First Complainant”) is a co-operative association founded in 1925 and based in Switzerland. It is owned by more than two million cooperative members and, with over 97,000 employees, is one of Switzerland’s largest retailers. The First Complainant had an income in excess of CHF 30 million in 2022. It operates supermarkets and department stores and provides services related to wellness, travel and catering. The First Complainant operates its principal website at “www.migros.ch”, but also controls other domain names incorporating the MIGROS mark including <migros.com> registered on February 9, 1998.

The First Complainant is the proprietor of numerous trademarks for MIGROS around the world including International trademark number 397821 MIGROS registered on March 14, 1973, designating a number of countries including Iran, European Union trademark number 744912 MIGROS registered on July 26, 2000, and International trademark number 1239151 figurative word mark MiGROS registered on December 31, 2014, designating a number of jurisdictions including Iran .

Migros Ticaret A.Ş. (the “Second Complainant”) is one of the biggest supermarket chains in Türkiye, a neighboring country of Iran, and was originally established as a joint venture with the First Complainant in 1954. It separated from the First Complainant in 1975 and is licensed by the First Complainant to use the MiGROS figurative word mark. The Second Complainant has more than 3,000 MIGROS-branded stores in 81 provinces across Türkiye and its retail goods are advertised online at “www.migros.com.tr”.

The First and Second Complainants are together referred to as the “Complainant”.

Both disputed domain names were registered on January 11, 2024. The <iranmigros.ir> disputed domain name does not resolve to an active website but at the time of preparation of the Complaint redirected to the website at the <migrosiran.ir> disputed domain name (the Respondent’s Website). The Respondent’s Website (to which the <migrosiran.ir> disputed domain name resolves) features a logo comprising a figurative letter “M” and the words “Migros Iran”. It purports to offer for sale a range of MIGROS-branded products in the Persian language. Users are invited to register and log in.

A “Know More” section of the home page includes the following text (translated into English):

“You have probably heard the name of Migros among the famous stores in the world; Migros chain stores have branches all over Türkiye. Many Iranians have visited these stores and comfort environments related to it during their foreign trips to Türkiye and had a pleasant experience. One of the reasons that made Migros popular in the world was the website of this team and the start of online business by selling their products all over the world. In this article, we are going to first explain a little about the history of Migros stores in Türkiye and then introduce you to the benefits of buying from the Migros Iran online store and collection.”

The <migrosiran.ir> disputed domain name is configured with Mail Exchange records (also known as MX records) such that the disputed domain name is configured to send and receive email.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are confusingly similar to its MIGROS trademark and to the Complainant's trading name, that the Respondent has no rights or legitimate interests in respect of the disputed domain names, and that the Respondent registered and is using the disputed domain names in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

B. Respondent

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

6. Discussion and Findings

6.1 Consolidation

As noted above, the Complaint is filed by multiple complainants. Paragraph 10(e) of the Rules grants a panel the power to consolidate multiple domain name disputes. Section 4.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") sets out the basis on which panels have accepted that a complaint filed by multiple complainants may be brought against a single respondent¹. It notes that "panels look at whether: (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation."

In this case, the Panel is satisfied that the Complainants have a specific common grievance against the Respondent in that the Respondent has targeted both the Complainants' rights and that it would be equitable and procedurally efficient to permit the consolidation.

6.2 Substantive issues

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain names the Complainant must prove that:

- (i) the disputed domain names are 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 names have been registered or are being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has uncontested rights in the trademark MIGROS (the "Mark"), both by virtue of its trademark registrations and as a result of the goodwill and reputation acquired through use by the

¹ Given the similarities between the .IR Policy and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel finds UDRP precedent generally to be relevant to this case (except to the extent of relevant differences between the policies, such as the absence of a conjunctive requirement for bad faith under the Policy). See *VALEO v. Iman Soltanian*, WIPO Case No. [DIR2023-0001](#).

Complainant of the Mark over many years. Ignoring the country code Top-Level Domain (“ccTLD”) “.ir”, the disputed domain names are identical to the Complainant’s mark save for the addition of the geographic term “iran” either as a prefix or suffix. In the Panel’s view, these additions do not prevent a finding of confusing similarity between the disputed domain names and the Complainant’s Mark. Accordingly, the Panel finds that the disputed domain names are confusingly similar to a mark in which the Complainant has rights.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. Accordingly, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Panel considers that the Complainant has made out a strong prima facie case that the Respondent could have no rights or legitimate interests in respect of the disputed domain names. The Respondent has not used the disputed domain names for a bona fide offering of goods or services but for a website using the Complainant’s MIGROS Mark and designed to mislead Internet users that the website was operated or authorised by the Complainant.

The Respondent has chosen not to respond to the Complaint and has accordingly failed to counter the prima facie case established by the Complainant. In the circumstances, the Panel finds that the Respondent does not have any rights or legitimate interests in respect of the disputed domain names.

The Panel finds the second element of the Policy has been established.

C. Registered or Used in Bad Faith

The Respondent has used the disputed domain names for a website featuring the Complainant’s MIGROS Mark and purporting to sell MIGROS-branded products. The website includes a narrative describing the famous nature of the Complainant’s stores around the world and particularly in Türkiye. Accordingly, the Panel is no doubt that the Respondent had the Complainant and its rights in the MIGROS Mark in mind when it registered the disputed domain names and that it did so with a view to operating the Respondent’s Website for financial gain. The Panel finds that the Respondent registered the disputed domain names in bad faith.

In addition, the Panel is satisfied that the disputed domain names are being used to attract Internet users to the Respondent’s Website by creating a likelihood of confusion with the Complainant’s MIGROS Mark. In addition, the active MX records gives rise to the risk that fraudulent or phishing emails may be sent using the disputed domain names. Panels have held that the use of a domain name for illegal activity such as phishing, distributing malware, unauthorized account access/hacking or impersonation/passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Accordingly, the Panel finds that the disputed domain names have been registered and used in bad faith and that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <iranmigros.ir> and <migrosiran.ir> be transferred to the First Complainant, Migros-Genossenschafts-Bund.

/Ian Lowe/

Ian Lowe

Sole Panelist

Date: May 23, 2024