

*Before the:*

**WORLD INTELLECTUAL PROPERTY ORGANIZATION  
ARBITRATION AND MEDIATION CENTER**

*GSBA Graduate School of Business  
Administration Zurich "Oekreal  
Foundation"  
Hirsackerstrasse 46  
8810 Horgen*

**(Claimant)**

-v-

*Sikander von Bhicknapahari  
Bellerivestr. 2  
8008 Zürich*

**(Respondent)**

**Disputed Domain Name:**

*mbagsba.ch*

**REQUEST**

(Rules of Procedure, para. 12)

**I. Introduction**

[1.] This Request is hereby submitted in accordance with the Rules of procedure for dispute resolution proceedings for .ch and .li domain names (the **Rules of Procedure**) adopted by **SWITCH** on March 1, 2004.

**II. The Parties**

**A. The Claimant**

(Rules of Procedure, para. 12(b)(ii) and (iii))

[2.] The Claimant in this Dispute resolution proceeding is GSBA Graduate School of Business Administration "Oekreal Foundation".

[3.] The Claimant's contact details are:

Address: GSBA Graduate School of Business Administration  
"Oekreal Foundation" Hirsackerstrasse 46,  
8810 Horgen

Contact: Dr. Albert Stähli, Dean

Telephone: +41 44 728 99 99

Fax: +41 44 728 99 97

E-mail: [a.staehli@gsba.ch](mailto:a.staehli@gsba.ch)

Claimant is a Swiss foundation, which was incorporated in 1985. It is operating a well known and renowned business school, which is particularly known and highly regarded for its MBA program. Claimant appears – and is known respectively – in the market primarily under the acronym GSBA.

EO: Extract from Commercial Register dated 20 December 2006

Exhibit 1

Claimant is in possession of an exclusive license to use the GSBA trademarks in Switzerland. Hence, Claimant has the right to sue trademark infringements on its own behalf and in its own name. In particular, Claimant is empowered to file this request against Respondent.

EO: Authorization/Power of Attorney from trademark owner Oekreal AG  
of 18 December 2006 (in English and German)

Exhibit 2

[4.] The Claimant's authorized representative in this Dispute resolution proceeding is the undersigned attorney:

Name: Dr. Markus R. Frick

Address: Walder Wyss & Partner  
Seefeldstrasse 123, PO Box 1236  
8034 Zurich

Telephone: +41 44 498 98 98

Fax: +41 44 498 98 99

E-mail: mfrick@wwp.ch

EO: Power of Attorney dated 12 December 2006 Exhibit 3

- [5.] The Claimant's preferred method of communications directed to the Claimant in this Dispute resolution proceeding is:

Electronic-only material

Method: e-mail  
Address: mfrick@wwp.ch  
Contact: Dr. Markus R. Frick

Material including hardcopy

Method: regular mail  
Address: Walder Wyss & Partners,  
Seefeldstr. 123, PO Box 1236, 8034 Zurich  
Contact: Dr. Markus R. Frick

**B. The Respondent**

(Rules of Procedure, para. 12(b)(iv))

- [6.] According to the Whois database of SWITCH the Respondent in this Dispute resolution proceeding is Sikander von Bhicknapahari, Bellerivestr. 2, 8008 Zurich (the domain name holder). Copies of the printout of the database search conducted on December 12, 2006 are provided as Exhibit 3.

EO: Extract Whois SWITCH database of December 12, 2006 Exhibit 4

The Respondent is well known to the Claimant. He was a student at Claimant's business school in 1986, right after it was established over 20 years ago. Ever since, the Respondent has put a lot of effort in his relentless desire to harm the school's reputation. In 1998, he went too far in the sense that he posted obviously illicit content on his website "sikander.net". When Claimant succeeded in having the District Court of Zurich enjoin Respondent from posting the illegal content on his website, Respondent went through great efforts and all possibly available instances up to the Swiss Supreme Court. However, the Supreme Court confirmed the injunction issued by the lower instances. Due to

the fact that Respondent was also enjoined from reporting on the proceeding (see Supreme Court decision no. 1P.153/2001, Exhibit 4), he was blocked for many years in his efforts to bash the Claimant.

EO: Supreme Court decision no. 1P.153/2001 Exhibit 5

Extract from Respondent's website [www.sikander.net](http://www.sikander.net)  
of December 12, 2006 Exhibit 6

Extract from Respondent's webpage available at  
<http://www.sikander.net/oekreal/index.htm> with original  
layout used by Respondent with references to his long  
lasting losing legal battle against Claimant Exhibit 7

After a recent conclusion of the pending court proceedings before the District Court of Zurich, the Respondent was less restricted in his web appearance after August 2006. Respondent took this opportunity and registered the domain name "mbagsba.ch" on 13 August 2006; he then transferred his postings related to the Claimant to the new web address. He did all this with the obvious intention to divert and attract as many visitors seeking authentic information on the Claimant to his website. Otherwise, he could have simply left the content on his homepage under the URL [www.sikander.net](http://www.sikander.net).

[7.] All information known to the Claimant regarding how to contact the Respondent is as follows:

Name: Sikander von Bhicknapahari  
Address: Bellerivestrasse 2, 8008 Zurich  
Telephone: +41 44 383 90 70  
Mobile: +41 79 400 82 78  
E-mail: [email@sikander.net](mailto:email@sikander.net)

### **III. Basis for the Dispute Resolution Proceedings**

[8.] The Registration agreement, pursuant to which the Domain Name that is the subject of this Request is registered, incorporates the Rules of Procedure.

#### **IV. Factual and Legal Grounds**

(Rules of Procedure, para. 12(b)(vi))

[9.] This Request is based on the following grounds:

##### **A. Claimant has Rights in distinctive signs under the laws of Switzerland**

###### **a) Trademark GSBA**

[10.] Claimant has the exclusive right to use the trademark GSBA in Switzerland and it has the right to pursue trademark infringements in its own name. The GSBA group company Oekreal AG is the formal proprietor of the licensed trademarks, i.e. Swiss trademarks CH-No. P-403 425 GSBA, registered for services in class 41, CH-No. 392 652 GSBA ZURICH, registered for goods in Class 16 and CH-No. 540 275 GSBA Zurich Living Case, registered for goods and services in classes 16, 35, 41 and 42. The trademark GSBA is well known in Switzerland and thus enjoys an increased scope of protection. Hence, any combination of GSBA with any other term constitutes an infringement of the trademarks (Article 13 Trademark Act), in particular, if the used term, as MBA in the case in issue, describes the core business of the trademark owner (cf. WIPO expert decision No. DCH2006-0008 “sulzerareal.ch”).

EO: Extract from Swissreg database for trademark no. P-403 425      Exhibit 8

Extract from Swissreg database for trademark no. 392 652      Exhibit 9

Extract from Swissreg database for trademark no. 540 275      Exhibit 10

###### **b) Name / Company Name GSBA**

[11.] Claimant uses the name GSBA as an acronym for “Graduate School of Business Administration” ever since its incorporation. Furthermore, GSBA is now part of Claimant’s name registered in the Commercial Register of the Canton of Zurich. Due to the long and frequent use of the name GSBA in Claimant’s commercial appearance and particular in advertisements, the name GSBA has grown to a strong distinctive sign to individualize the Claimant and also its well known and renowned MBA school.

EO: Examples of advertisings in the online magazine “Jusletter”  
over the last two years Exhibit 11  
Extracts form Claimants website “gsba.ch” Exhibit 12

Furthermore, the Claimant has registered many domain names including the name GSBA, just to name a few: “gsba.ch”, “gsba.eu”, “gsba.de”, “gsba.at”, “gsba.info”, “gsba.biz”, “gsba.li”, “gsba.nl”. In addition, Claimant uses the identical domain name “mbagsba.com” to reroute visitors to its main URL “gsba.ch”.

Claimant is regularly present with its advertising in business journals and newspapers such as NZZ, Financial Times and is also well known through its MBA congress and other presentations. Just this passed summer, during the soccer World Cup (FIFA World Cup 2006), Claimant advertised its MBA program at prime television times on SF before, during and after the widely watched soccer games. In this and the following highly effective TV campaign, Claimant advertised its MBA program in 170 (!) TV-spots. As a consequence, Claimant and its MBA program are now known in virtually every household in Switzerland. This high repute and fame of the name and brand GSBA is even more widespread among prospective MBA students and people interested in MBA degrees, i.e. the relevant public.

EO: Copy of “Einschaltplan” by publisuisse re TV spots on SF for June and  
July 2006 Exhibit 13  
Publisuisse confirmation re TV spots on SF for October 2006  
Exhibit 14  
Publisuisse confirmation re TV spots on SF for November 2006  
Exhibit 15

GSBA with about 10’500 graduates and currently about 1’800 students is the oldest and largest business school in degree executive education in German speaking Europe. Its executive MBA is among the leading programs in Europe and also in the world. Numerous recognized MBA rankings list GSBA regularly among the top schools in Europe and also worldwide. In German speaking Europe, GSBA is frequently listed No. 1.

EO: Overview on Claimant's MBA Rankings from 1998-2006

Exhibit 16

MBA Ranking BILANZ 22/2005

Exhibit 17

Moreover, the GSBA group of companies includes – apart from the mentioned formal trademark proprietor Oekreal AG – other related companies, which contain the GSBA name, e.g. GSBA-Innovationsstiftung (GSBA innovation foundation), Schützengasse 4, 8001 Zurich, incorporated on July 8, 1981 and GSBA-Immobilien AG, Hirsackerstrasse 46, 8810 Horgen, incorporated on November 29, 1989.

EO: Partial extract Commercial Register of the Canton of Zurich

of December 12, 2006

Exhibit 18

Partial extract Commercial Register of the Canton of Zurich

of December 12, 2006

Exhibit 19

#### **b) Unfair Competition**

[12.] Claimants long lasting and strong position in the MBA market in Switzerland gives rise to protection of its appearance in the marketplace under its name and trademark GSBA. In particular, the combination of the strong sign GSBA with its flagship product, the executive MBA degree, also enjoys protection under the Swiss unfair competition law (see e.g. Article 3(d) Unfair Competition Act).

#### **B. The registration and use of the Domain Name at issue infringes Claimant's Rights in distinctive signs under the laws of Switzerland**

[13.] Respondent registered the domain name "mbagsba.ch" clearly in bad faith and with the only intent to attract visitors to his website seeking authentic and official information on the Claimant. The background and the prelude to this dispute shows Respondent's obvious intent to harm the Claimant with his use of the name MBAGSBA, commonly understood in the market of interested MBA students as a reference to the Claimant.

Claimant's representative sent Respondent a letter on 25 September 2006 requesting the transfer of the domain name at issue. Respondent responded on 6

October 2006 and – not surprisingly – dismissed the request. Instead, Respondent gave Claimant a sample of his intended use of the contested domain name. Such conduct clearly shows Respondent’s bad faith registration and use of the domain at issue.

EO: Letter sent by Claimant 25 September, 2006	Exhibit 20
Response email by Respondent of 6 October, 2006	Exhibit 21
Extract of Respondent’s website sample	Exhibit 22

[14.] Claimant has proprietary rights in the distinctive name, trade name and trademark GSBA. The domain name “mbagsba.ch” is very similar to the distinctive sign GSBA. The component MBA is commonly understood as “Master of Business Administration”. MBA is thus merely descriptive of Claimant’s main program and does not qualify to distinguish the sign MBAGSBA from the distinctive component GSBA (see WIPO expert decisions No. DCH2005-0021 “ottoversand.ch” and No. DCH2005-0025 “1amediamarkt.ch”). Rather, the combination of MBA and GSBA increases the likelihood of confusion between the two signs MBAGSBA and GSBA, since GSBA is primarily known for its reputed MBA program. The domain name “mbagsba.ch” clearly gives rise to associations with the Claimant and it can be compared with (partly imaginary) domain names, such as “ottoversand.ch”, “cargosbb.ch”, “bankubs.ch”, “reisenkuoni.ch” or “pharmanovartis.ch”, all causing confusion with the well known trademarks and company names of the referenced service providers.

[15.] The use of the domain name “mbagsba.ch” by Respondent leads to confusion of the public and in particular of people interested in a MBA program. They believe that Claimant sponsors and supports the website behind the domain name “mbagsba.ch”. The public expects an official website of the Claimant under the URL “mbagsba.ch” and not Respondent’s disparaging statements on the Claimant. As a consequence, the use of the domain name in issue infringes the Claimant’s rights in its distinctive signs, such as name, trade name and trademark rights.

[16.] The above mentioned likelihood of confusion caused by the domain name in issue is confirmed by the jurisprudence of the Swiss Supreme Court. The Swiss



Supreme Court held that there is likelihood of confusion if the use of a domain name similar to a mark or another distinctive sign such as a name creates the risk of a wrong attribution of the website, i.e. of a wrong identification of the person behind the website (BGE 128 III 401, Erw. 5 “luzern.ch”). The registration and use of the domain name “mbagsba.ch” constitutes a clear infringement of Claimant’s rights in a distinctive sign in Switzerland.

[17.] The likelihood of confusion exists regardless of the content of the website behind the name (BGE 128 III 401, Erw. 7.2.2. “luzern.ch”; BGE of January 21, 2005, no. 4c.376/2004 “maggi.com”; WIPO expert decision No. DCH2006-0008 “sulzerareal.ch”). In light of the quoted jurisprudence there is likelihood of confusion also in the case at hand. The Claimant therefore request the transfer of the domain name “mbagsba.ch” to the Claimant in order to remedy the existing trademark/name infringements and unfair conduct.

#### **V. Remedies Requested**

(Rules of Procedure, para. 12(b)(v))

[18.] The Claimant requests that the contested domain name “mbagsba.ch” should be transferred to Claimant.

#### **VI. Communications**

(Rules of Procedure, paras. 6 and 12(b))

[19.] This Request is submitted to the Center in electronic form (except to the extent not available for annexes), and in four (4) hard copies.

#### **VII. Payment**

(Rules of Procedure, para. 11, WIPO Schedule of Fees for .ch and .li)

[20.] As required by the Rules of Procedure and the WIPO Schedule of Fees for .ch and .li, payment in the amount of CHF 2’600.00 can be deducted from the WIPO current account no. 11505 of Walder Wyss & Partners.

**VIII. Application for Appointment of Expert**  
(Rules of Procedure, para. 12(c))

[21.] The Claimant hereby requests the Center to appoint an Expert if no Conciliation takes place, or if any Conciliation that does take place does not lead to a settlement.

[22.] The Claimant declares that, with regard to any court proceedings initiated by the Respondent against a future decision of this Expert ordering the transfer or deletion of the domain name, the Claimant submits to the jurisdiction of the courts of Zurich.

**IX. Certification**

(Rules of Procedure, para. 12(b)(ix))

[23.] The Claimant states that his claims and rights pertaining to registration or use of the Domain Name, the Dispute resolution proceedings or their completion are directed solely against the Holder and waives all such claims against the Registry or the Dispute resolution service provider, as well as its institutions, board members, employees and representatives, as well as against Conciliators and Experts appointed by the Dispute resolution service provider, in so far as these claims are not based on intentional or grossly negligent misconduct.

[24.] The Claimant states that to its knowledge the information contained in this Request is complete and accurate, and that this Request is not being submitted abusively.

Respectfully submitted,



Dr. Markus R. Frick

Date: 22 December 2006

Exhibits as per separate list

## **Exhibits:**

- Exhibit 1 Extract from Commercial Register dated 20 December 2006
- Exhibit 2 Authorization/Power of Attorney from trademark owner Oekreal AG of 18 December 2006 (in English and German)
- Exhibit 3 Power of Attorney dated 12 December 2006
- Exhibit 4 Extract Whois SWITCH database of December 12, 2006
- Exhibit 5 Supreme Court decision no. 1P.153/2001
- Exhibit 6 Extract from Respondent's website [www.sikander.net](http://www.sikander.net) of December 12, 2006
- Exhibit 7 Extract from Respondent's webpage available at <http://www.sikander.net/oekreal/index.htm> with original layout used by Respondent with references to his long lasting losing legal battle against Claimant
- Exhibit 8 Extract Swissreg database for trademark reg. no. P-403 425
- Exhibit 9 Extract Swissreg database for trademark reg. no. 392 652
- Exhibit 10 Extract Swissreg database for trademark reg. no. 540 275
- Exhibit 11 Examples of advertisings in the online magazine "Jusletter" over the last two years
- Exhibit 12 Extracts from Claimants website "gsba.ch"
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