

Decision for dispute CAC-UDRP-104922

Case number	CAC-UDRP-104922
Time of filing	2022-10-18 11:29:48
Domain names	samsungsemiconductor.com

Case administrator

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

Organization	SAMSUNG ELECTRONICS CO., LTD.
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Complainant representative

Organization	Coöperatieve Vereniging SNB-REACT U.A.
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Respondent

Name	Young Dae Kim
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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 bases its Complaint on the following trademarks:

- i. US word trademark „SAMSUNG”, registration no. 1164353, registered on 8 November 1981, for goods in classes 07, 09, 11;
- ii. US figurative trademark „SAMSUNG”, registration no. 1634816, registered on 2 December 1991, for goods in classes 18, 23, 24, 25;
- iii. EU figurative trademark „SAMSUNG”, registration no. 000506881, registered on 23 February 2000, for goods and services in classes 07, 09, 11, 14, 37, 38, 42;
- iv. EU word trademark „SAMSUNG”, registration no. 001877901, registered on 23 May 2002, for goods in classes 07, 09, 11, 14, 37, 42;
- v. Canadese word trademark „SAMSUNG”, registration no. TMA255809, registered on 13 February 1981, for goods in classes 07, 09, 11.

FACTUAL BACKGROUND

The Complainant, Samsung Electronics Co., Ltd. is an internationally known company in the business of manufacturing and selling a variety of goods ranging from consumer electronics such as refrigerators, TVs and videos, to electronic gadgets such as cellular phones, computers and printers. Complainant is also one of the largest producers of other, non-consumer goods such as semiconductors. All of Complainant's products are commercialized under their famous "SAMSUNG" trademark. Complainant was established in the Republic of Korea in 1938 and is currently one of the world's leading electronics companies, present in more than 70 countries. Complainant's products are known for their good quality and innovative features. Complainant has operated its official domain <Samsung.com> since the 29th of November, 1994.

The Complainant is the owner of several trademarks SAMSUNG trade marks.

The disputed domain name <samsungsemiconductor.com> was registered on 23 June 2022 and resolves to an inactive page.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT:

The Complainant's contentions are the following:

The Complainant states that the disputed domain name <samsungsemiconductor.com> is confusingly similar to its SAMSUNG trademarks.

The Complainant mentions that it is the owner of various word and figurative "SAMSUNG" trademarks. The Complainant contends that it has been the exclusive rightsowner of these SAMSUNG trademarks since at least 1981 which vastly predate the registration of the disputed domain name.

The Complainant asserts that the disputed domain name incorporates the "SAMSUNG" trademarks in their entirety and the addition of the generic word "semiconductor" which refer to one of the goods produced by Complainant, cannot prevent a finding of confusing similarity and actually strengthens confusion due to the similarity with the goods commercialized by Complainant.

Further, the Complainant asserts that the Respondent does not have any rights or legitimate interest in the disputed domain name.

The Complainant asserts that the Respondent is not making use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services.

The Complainant contends that according to the Whois information, the disputed domain name was registered on the 23 June 2022 long after the Complainant commenced its use of its SAMSUNG trademarks.

Further, the Complainant mentions that the Respondent has no rights or legitimate interests to use the Complainant's SAMSUNG trademarks in a confusingly similar manner within the disputed domain name. Complainant asserts that it has no relationship whatsoever with Respondent and has never licensed or otherwise authorized the Respondent to use the "SAMSUNG" trademark in the disputed domain name. The Complainant underlines that it has exclusive trademark rights which predate the registration of the disputed domain name and that Respondent cannot demonstrate any legitimate offering of goods or services under the "SAMSUNG" mark. In the absence of a license or permission from the Complainant concerning the use of its trademarks, no actual or contemplated bona fide or legitimate use of the disputed domain name can reasonably be claimed according to the Complainant.

Also, the Complainant asserts that the Respondent has not (as an individual, business, or other organization) been commonly known by the disputed domain name.

Based on the foregoing, in the Complainant's view it is clear that the Respondent has not been commonly known by the domain name prior to the registration of the domain.

The Complainant also asserts that the Respondent is not making a legitimate noncommercial or fair use of the domain name, but are intending to use it for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

In the Complainant's view, a Respondent's use of a domain name will not be considered "Fair" if it falsely suggests affiliation with the trademark owner and that this conclusion is not altered where a domain name consists of a trademark plus an additional term, as panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

The Complainant further underlines that the disputed domain name incorporates the "SAMSUNG" trademark in its entirety, followed by the generic word "semiconductor", one of the goods produced by Complainant under its mark. Complainant asserts that due to the continued and extensive use of the well-known "SAMSUNG" trademark, there is a high-risk of implied affiliation and confusion that may lead internet users to believe that the disputed domain name is owned or related to the Complainant or to one of the Complainant's divisions.

Complainant furthermore asserts that the disputed domain name appears to be wholly inactive and that nothing on the page currently points towards the page being used, or prepared to be used in connection to any bona fide offering of goods or services or

any legitimate non-commercial fair use.

The Complainant contends that the Respondent is not affiliated with the Complainant in any way and that the Complainant has not authorized the Respondent to use and register its trademark or to seek the registration of any domain name incorporating the said mark.

Lastly, the Complainant asserts that the disputed domain name has been registered and is being used in bad faith, mainly as it was registered containing a well-known/famous trade mark, resolves to an inactive website and that the domain name is not used.

In the Complainant's view, by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location.

The Complainant asserts that it has been the rightsowner of the "SAMSUNG" trademarks since at least 1981 and the disputed domain name has been registered on 23 June 2022, decades after Complainant commenced using its famous "SAMSUNG" trademarks. Due to the worldwide good reputation of Complainant's trademark, it is evident that the disputed domain name has registered in bad faith, knowing the Complainant mark, and targeting its trademarks, in the Complainant's view.

Further the Complainant contends that the disputed domain name of the Respondent resolves to an inactive website.

Also, the Complainant underlines that the Respondent uses an anonymization service "Contact Privacy Inc." in Canada. The Respondent's use of a privacy registration services which has continued the concealment of the "true" or "underlying" registrant constitutes an additional such indication of 'targeting' in the circumstances of this case, in the Complainant's view. Complainant mentions that, as the Panel held in the WIPO Case D2017-2341 (Sony Corporation v. Domain Admin, Privatewhois.biz) that although privacy services might be legitimate in many cases, it is difficult to see in the present case why this Respondent should need to protect its identity except to make it difficult for the Complainant to protect its trademark rights.

In the Complainant's view the Respondent is using the disputed domain name to intentionally attract, for commercial gain, Internet users to the website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the website.

On these bases, the Complainant asserts that the Respondent has registered and is using the disputed domain name in bad faith.

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

1. Confusing Similarity

The Panel agrees that the disputed domain name <samsungsemiconductor.com> is confusingly similar to the Complainant's earlier SAMSUNG trademarks. The addition of the generic term "semiconductor" which refers to one of the goods produced by

Complainant, cannot prevent a finding of confusing similarity and actually can strengthen confusion due to the similarity with the goods commercialized by Complainant.

In fact, the likelihood of confusion is underlined by the addition of this generic term as it might induce the idea that this domain name is related to the Complainant.

Moreover, the extension “.com” is not to be taken into consideration when examining the similarity between the Complainant’s trademark and the disputed domain name (WIPO Case No. D2005-0016, Accor v. Noldc Inc.). The mere adjunction of a gTLD such as “.com” is irrelevant as it is well established that the generic Top Level Domain is insufficient to avoid a finding of confusing similarity (WIPO Case No. 2013-0820, L’Oréal v Tina Smith, WIPO Case No. D2008-0820 Titoni AG v Runxin Wang and WIPO Case No. D2009-0877, Alstom v. Itete Peru S.A.).

Therefore, the Panel is satisfied that the first condition under the Policy is met.

2. Lack of Respondent's 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 burden of proof 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.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain name. The Respondent is not a licensee of, nor has any kind of relationship with, the Complainant. The Complainant has never authorised the Respondent to make use of its trademark, nor of a confusingly similar trademark in the disputed domain name.

The disputed domain name resolves to an inactive page. Such use does not amount to a bona fide offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain name, as other UDRP panels have found.

The Panel notes that the Respondent had an opportunity to comment on the Complainant’s allegations by filing a Response, which the Respondent failed to do.

Thus, the Panel is satisfied that the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Panel takes the view that also the second requirement under the Policy is met.

3. Bad Faith

The Complainant established in the Republic of Korea in 1938 is currently one of the world’s leading electronics companies. Its SAMSUNG trademarks predate the Respondent’s registration of the disputed domain name.

Therefore, the Panel concludes that at the time of registration of the disputed domain name, the Respondent was aware of the Complainant’s SAMSUNG trademarks and has intentionally registered the domain name in order to create confusion with the Complainant’s SAMSUNG trademarks.

In the present case, the following factors should be also considered:

(i) the Respondent failed to submit any response and has not provided any evidence of actual or contemplated good faith use of the disputed domain name;

(ii) the Respondent registered the disputed domain name containing the Complainant's earlier trademarks SAMSUNG which are known internationally to which it added the generic term “semiconductor” which refers to one of the goods produced by Complainant;

(iii) the Respondent has no business relationship with the Complainant, nor was ever authorised to use a domain name similar to the Complainant's SAMSUNG trademarks;

(iv) the disputed domain name resolves to an inactive page.

In light of the foregoing, the Panel concludes that the Respondent has registered and has been using the disputed domain name in bad faith. Thus, also the third and last condition under the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. samsungsemiconductor.com: Transferred

PANELLISTS

Name **Delia-Mihaela Belciu**

DATE OF PANEL DECISION **2022-11-24**

Publish the Decision
