

Decision for dispute CAC-UDRP-105296

Case number	CAC-UDRP-105296
Time of filing	2023-05-03 10:21:24
Domain names	siemens-healthineers.com

Case administrator

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

Organization	Siemens Trademark GmbH & Co. KG
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Respondent

Name	YD 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 proves that it is the owner of:

- European Union Trademark Registration No. 015400849, "SIEMENS Healthineers" (fig.) of May 4, 2016, producing a copy of this trademark, which is in the name of the company Siemens AG in the name of Siemens Trademark GmbH & Co. KG, covering goods and services in international classes 1, 5, 7, 9, 10, 16, 25, 35, 36, 37, 38, 41, 42 and 44;
- International registration No. 637074 "SIEMENS" of March 31, 1995 in the name of Siemens Trademark GmbH & Co. KG, covering more than 60 countries worldwide and claiming protection for goods and services in international classes 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 20, 21, 28, 35, 36, 37, 38, 40, 41 and 42.

It relies on the domain names <siemens-healthineers.com> and <siemens-healthineer.com> and produces the respective Whois, which show that they are not in the name of the Complainant, but of a company called Siemens Healthcare GmbH.

The disputed domain name <siemens-healthineers.com> was registered on March 6, 2023 and does not resolve to any website.

No Whois extract was even produced by the Complainant.

The Panel had to check online the data on the registration date.

FACTUAL BACKGROUND

The SIEMENS trademark is worldwide well-known.

The Complainant, Siemens Trademark GmbH & Co. KG, is a trademark holding company, licensing the trademarks at issue within Siemens Group. The complainant is a subsidiary of Siemens Aktiengesellschaft, which is the ultimate mother company of the Siemens Group. The turnover of the Siemens Group in 2022 was 72 billion Euro, and the group employs about 300.000 people worldwide. Siemens Group is one of the world's largest corporations, providing innovative technologies and comprehensive know-how to benefit customers in 190 countries.

Founded more than 175 years ago, the company is active - to name but a few examples - in the fields of Medicine, Automation and Control, Power, Transportation, Logistics, Information and Communications, etc.

The SIEMENS and SIEMENS HEALTHINEERS trademarks are used in relation to medical services, equipment and solutions.

The disputed domain name was used to send scam emails, according to the produced pieces of evidence that were not contested.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT:

Confusing similarity

The disputed domain name includes the Complainant's SIEMENS trademark in its entirety.

As confirmed by well-established case law, the beginning of the signs is where consumers pay most attention to.

Therefore, the disputed domain name is highly similar to the Complainant's mark.

Moreover, the disputed domain name only differs from the Complainant's SIEMENS HEALTHINEERS trademark in the absence of the letter "n" and its replacement with letter "r" in the second component. Namely, the component "healthineers" appears in the contested domain as "healthireers". This misspelling is a typical case of "typo-squatting", where the infringing domain name differs in merely one or two letters from the Complainant's mark.

This difference is visually not perceptible by the average consumer, who pays a moderate degree of attention. This is reinforced by that fact that the letters "n" and "r" have a very similar configuration in their lowercase form, being susceptible to confusing the reader, when placed within a longer word element. Aurally, both terms are almost identically pronounced as the replacement of the letter "n" with the letter "r" has a minor phonetical impact in the overall impression of the terms under comparison. Besides, as already mentioned, this minor discrepancy could easily go unnoticed by the reader, who, in this case, will pronounce the disputed domain exactly as the Complainant's mark. Therefore, the domain name in question is almost identical to the Complainant's mark.

In conclusion, the disputed domain name is confusingly similar to both trademarks of the Complainant.

Absence of rights or legitimate interest in the disputed domain name

The Respondent is not and has never been one of the Complainant's representatives, employees or one of its licensees, nor is it otherwise authorized to use the SIEMENS and SIEMENS HEALTHINEERS trademarks. The Complainant does not have any connection with the Respondent. No such relation has ever been established between the Respondent and Siemens AG, or any of its affiliates or subsidiaries. The disputed domain name <siemens-healthireers.com> is currently not in use. It resolves to a page "This site can't be reached".

Therefore, the Respondent is not using the domain name in connection with a bona fide offering of goods or services.

It has not been commonly known with this domain name.

In view of the long and extensive use of the SIEMENS trademark throughout the world, decades prior to the registration of the disputed domain name, it is obvious that the Respondent is well aware of the existence of this mark, whose status and reputation has been assessed in various UDRP decisions in the past (cf. Siemens AG v. Dorofeev, Konstantin, WIPO Case No. D2013-0923, Siemens AG v. Mr. Ozgul Fatih, WIPO Case No. D2010-1771 and Nokia Corporation, Siemens AG, Nokia Siemens Networks Oy v. Chen Fang Fang, WIPO Case No. D2008-1908).

Under these circumstances, the nature of the disputed domain name carries a risk of implied affiliation between the Respondent and the Siemens Group, which seems to be the Respondent's actual intention in registering this domain name. Therefore, it is evident that the Respondent cannot make any legitimate non-commercial or fair use of the domain name and there is nothing to suggest that the Respondent would not aim at misleadingly diverting consumers and Internet users to other sites, searching for the legitimate websites of the Siemens Group, who may mistype the Complainant's SIEMENS HEALTHINEERS trademark.

For these reasons, the Complainant deems it obvious that the Respondent has no rights or legitimate interests in the disputed domain name.

Bad faith registration and use

The disputed domain name was registered in bad faith, as the Respondent clearly knew about the Complainant's earlier rights on the SIEMENS and SIEMENS HEALTHINEERS trademarks. In deliberately registering the domain name <siemens-healthireers.com> which identically contains the famous SIEMENS trademark, as well as an almost identical slight variation as the Complainant's combined SIEMENS HEALTHINEERS trademark, the Respondent intended to usurp the strong global reputation of these trademarks,

in order to confuse the public and cause damage to the Complainant in disrupting its business.

In particular, the domain name was registered because of its high similarity to the Complainant's trademarks SIEMENS and SIEMENS HEALTHINEERS trademarks with the intention of taking predatory advantage of the goodwill of the Siemens Group, in order to divert Internet traffic, intended for the legitimate website of Siemens Healthineers, to the Respondent's potential website or e-mail address.

The Siemens Group already owns and uses for business purposes various domain names consisting of the sign "SIEMENS", such as <siemens.com>, <siemens.eu>, <siemens.de>, <siemens-healthineers.com>, <siemens-healthineer.com>. Therefore, the Respondent chose the disputed domain name, precisely to redirect Internet users mistyping "healthireers" to its website, instead of the aforementioned legitimate website(s) of Siemens.

In fact, the Respondent has not limited itself in the passive registration of this domain name, but has rather taken active steps to mislead Siemens partners to proceed to payments to – what the subject would believe to be – Siemens Healthcare GmbH (Siemens Heathineers), by using various email addresses,@siemens-healthireers.com

On March 6, 2023, the Respondent approached a business partner of Siemens Healthineers by email, impersonating a Siemens Healthineers employee, and asking to "update their banking information" for future payments.

The Respondent has proceeded to this action with the sole purpose of acquiring undue profit. In this light, the Respondent's bad faith is blatant. It is further needless to say that there exist no guarantees that this incident is an isolated event and that it does not form part of a generalized strategy of the Respondent. The latter may have already approached or may be planning to approach further partners of Siemens, in order to extract undue gain.

However, even the passive holding of a domain name amounts to use in bad faith (Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; Siemens AG v. yinsi baohu yi kai qi / li zhe, zhe li, WIPO Case No. D2017-0375). In this case, the finding of bad faith is reinforced by the use of the aforementioned email addresses.

If the Respondent has already used this domain name within these e-mail addresses, with the purposes of fraudulent economic gain, it is only a matter of time before it proceeds to using the domain by means of a website, for the same purpose. For all the above reasons, the domain name <siemens-healthireers.com> must be regarded as registered and used in bad faith.

RIGHTS

The Complainant has proved its prior rights on the SIEMENS and SIEMENS HEALTHINEERS trademarks.

The disputed domain name is composed with the SIEMENS and SIEMENS HEALTHINEERS trademarks.

The only difference is a typosquatting, replacing the letter "n" by the letter "r" in the disputed domain name.

The SIEMENS and SIEMENS HEALTHINEERS trademarks are clearly recognizable in the disputed domain name.

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

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or

(ii) the Respondent has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trademark or service mark at issue.

The Complainant asserts that the Respondent is not related in any way with the Complainant.

There is no indication that the Respondent is commonly known by the worldwide well-known SIEMENS and SIEMENS HEALTHINEERS trademarks.

There is no evidence of any bona fide use of the disputed domain name.

The Respondent did not respond to the Complainant to rebut its prima facie case. It did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name.

Therefore, the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in respect to the disputed domain name, which was not rebutted by the Respondent.

Moreover, considering the composition of the disputed domain names, the Panel finds that there is a risk of implied affiliation to the Complainant, which renders any fair use unlikely.

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

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by a Panel to be evidence of bad faith registration and use of the disputed domain name.

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a Domain Name in bad faith:

- (i) circumstances indicating that the Respondent has registered or the respondent has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the Domain Name; or
- (ii) the Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website 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 the respondent's website or location or of a product or service on the respondent's website or location.

Given the Complainant's reputation and the distinctive character of the worldwide well-known SIEMENS trademark, it is obvious that the Respondent as perfectly aware of the worldwide well-known SIEMENS and SIEMENS HEALTHINEERS trademarks when it registered the disputed domain name.

The disputed domain name is used to send scam emails impersonating the Complainant, what is an obvious evidence of bad faith use.

The Panel is of the opinion that, pursuant to Par. 4 (b) (iv) of the Policy "by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website 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 the respondent's website or location or of a product or service on the respondent's website or location".

Under the circumstances of the case, the Panel finds that the disputed domain name has been registered and is being used in bad faith, within the meaning of paragraph 4(b)(iv) and 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 disputed domain name includes the Complainant's SIEMENS trademark in its entirety.

It differs from the Complainant's SIEMENS HEALTHINEERS trademark in the absence of the letter "n" and its replacement with letter "i" in the second component.

Therefore, the disputed domain name is confusingly similar to the SIEMENS and SIEMENS HEALTHINEERS trademarks.

Given the worldwide reputation of the SIEMENS trademark, the absence of any connection between the parties and the use of the disputed domain name to send scam e-mails impersonating the Complainant, the Respondent has no right or legitimate interest in respect of the disputed domain name.

Bad faith registration and use: given the worldwide reputation of the SIEMENS trademark, the respondent was well aware of the SIEMENS and SIEMENS HEALTHINEERS trademarks when deciding to register the disputed domain name. Typosquatting a prior trademark and using the disputed domain name to send scam e-mails is a clear bad faith use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **siemens-healthineers.com**: Transferred

PANELLISTS

Name	Marie-Emmanuelle Haas Avocat
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DATE OF PANEL DECISION **2023-06-19**

Publish the Decision
