

Decision for dispute CAC-UDRP-105569

Case number	CAC-UDRP-105569
Time of filing	2023-07-10 12:41:03
Domain names	siemens-healtineers.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	Li Jiang
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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, Siemens Trademark GmbH & Co. KG, is a trademark holding company, licensing the trademarks at issue within Siemens Group, founded more than 175 years ago, is one of the world's largest corporations, providing innovative technologies and comprehensive know-how to benefit customers in 190 countries and it is active among many other multiple fields, in the field of Medicine, Automation and Control, Power, Transportation, Logistics, Information and Communications.

The Complainant owns the following Trademarks:

- International Registration No. 1357232, SIEMENS HEALTHINEERS AND DESIGN, in ICs 5, 9, 10, 35, 37, 42 and 44, registered on October 25, 2016 and in force until October 25, 2026, designating various territories, including China;

- International registration No. 637074, SIEMENS, in ICs 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 20, 21, 28, 35, 36, 37, 38, 40, 41 and 42, registered on March 31, 1995 and in force until March 31, 2025, covering more than 60 countries worldwide, including China.

The disputed domain name <siemens-healtineers.com> was registered on **August 22, 2022**, and resolves to a website with pay-per-click ("PPC") links, directing to websites operated by potential competitors of the Complainant.

FACTUAL BACKGROUND

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 more than 300.000 people worldwide.

Siemens Group, founded more than 175 years ago, is headquartered in Berlin and Munich. It is one of the world's largest corporations, providing innovative technologies and comprehensive know-how to benefit customers in 190 countries, and it is active among many other multiple fields, in the field of Medicine, Automation and Control, Power, Transportation, Logistics, Information and Communications.

Siemens Healthineers, is another company of the Siemens Group, is one of the largest manufacturers of medical equipment worldwide, with approximately 54.000 employees.

Apart from its Trademarks, the Complainant also owns, through one of its subsidiaries, Siemens Healthcare GmbH, the following domain names <siemens-healthineer.com>, registered since March 15, 2016 and <siemens-healthineers.com> registered since March 15, 2016.

The disputed domain name <siemens-healthineers.com> was registered on **August 22, 2022**, and by the time of this Decision resolves to a website with PPC links, directing to websites operated by potential competitors of the Complainant.

PARTIES CONTENTIONS

Response

The Respondent did not submit any communication during the entire proceeding, nor has submit its Response replying to Complainant's contentions.

Complainant Contentions:

- The Complainant contends that the disputed domain name <siemens-healthineers.com> is confusingly similar to its trademarks SIEMENS and SIEMENS HEALTHINEERS; that when it comes to the Complainant's first Trademark, SIEMENS, it is integrally reproduced within the disputed domain name; as for the Complainant's second Trademark, SIEMENS HEALTHINEERS, the disputed domain name only differs from it in the absence of the letter "h" in the domain's second component which has a minor phonetical impact in the overall impression of the terms under comparison; that namely, the term "healthineers" appears in the contested domain as "healtineers"; that such misspelling is a typical case of "typosquatting", where the infringing domain name differs in merely one or two letters from the Complainant's trademark.
- The Complainant contends that the SIEMENS trademark is well recognized as a symbol of the highest quality of the concerned goods and services; that by virtue of the long use and the renown of the Complainant's trademarks SIEMENS and SIEMENS HEALTHINEERS, these are exclusively associated with the Siemens Group, and, in this case in particular, with its affiliated company, Siemens Healthcare GmbH (Siemens Healthineers). The reputation associated with the Complainant's trademarks is excellent, stemming from the impeccable quality of the Siemens AG's goods and services.
- The Complainant contends that due to the high reputation of the trademark SIEMENS, the public will automatically recognize the trademarks SIEMENS and SIEMENS HEALTHINEERS and will associate the domain in dispute with the Siemens Group. The Internet users will think that the disputed domain name and a potential corresponding website belongs to the Siemens Group, providing services under the trademarks SIEMENS and SIEMENS HEALTHINEERS; which is reinforced by the fact that the Siemens Group is the owner of the domain names <siemens-healthineers.com> and <siemens-healthineer.com>, which are visually almost identical to the disputed domain name.
- The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, due to the Respondent is not and has never been one of the Complainant's representatives, employees or one of its licensees, nor is otherwise authorized to use the trademarks SIEMENS or SIEMENS HEALTHINEERS; that the Complainant does not have any connection with the Respondent; that no such relation has ever been established between the Respondent and Siemens AG, or any of its affiliates or subsidiaries.
- The Complainant contends that the disputed domain name is currently not in use and is parked with the Registrar; that when accessing "siemens-healthineers.com" users encounter ads in the form of hyperlinks reading "Digital Health Platform", "Covid-19 Testing", and other links; meaning that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services; that the Respondent has not been commonly known with the disputed domain name.
- The Complainant contends that the Complainant's Trademarks have long and extensive use at a worldwide level, decades prior to the registration of the disputed name, making obvious that the Respondent was well aware of the existence of its Trademarks, whose status and reputation has been assessed in various UDRP Decisions in the past, citing: Siemens AG v. Dorofeev, Konstantin, WIPO Case No. D2013-0923; Siemens AG v. Mr. Ozgul Fatih, WIPO Case D2010-1771 and Nokia Corporation, Siemens AG, Nokia Siemens Networks Oy v. Chen Fang Fang, WIPO Case No. D2008-1908; that 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 the disputed domain name, showing that the Respondent is not making any legitimate non-commercial or fair use of the disputed domain name and that 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 Trademark SIEMENS HEALTHINEERS.
- The Complainant contends that the disputed domain name was registered in bad faith due to the Respondent knew about the Complainant's Trademarks SIEMENS and SIEMENS HEALTHINEER, by deliberately registering the disputed domain name which identically contains the famous Trademark SIEMENS and is highly similar to the Complainant's combined Trademark SIEMENS HEALTHINEERS; that the Respondent intended to usurp the strong global reputation of such Trademarks, in order to confuse the public and cause damage to the Complainant in disrupting its business.

- The Complainant contends that the disputed domain name is being used in bad faith due to the disputed domain does not show substantial content; that even the passive holding of a domain name amounts to use in bad faith, citing: 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; that the Respondent has “parked” the disputed domain name within the Registrar aiming to, either: 1. lure the Complainant into offering to buy the domain from the Respondent, in an attempt to extract monetary gain from such transaction, and/or 2. use the domain at a later time, in order to purposefully create confusion with the offerings of the Siemens Group among the concerned consumers, and extract gain from fraudulent activity; that Respondent’s bad faith was further indicated by the scarcity of information on it on the Whois database. As all the Respondent’s details are privacy protected, without any real organization or natural person’s name, email, physical address, or phone number being available, making its identification practically impossible, citing Siemens AG v. Hello Greatness, WIPO Case No. D2020-1641.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP).

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 UDRP).

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 UDRP).

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

In relation to the First UDRP Element, this Panel finds that the Complainant has sufficiently proved before the Panel, that owns Trademark Rights, being:

- International Registration No. 1357232, SIEMENS HEALTHINEERS AND DESIGN, registered on October 25, 2016 and in force until October 25, 2026, designating various territories, including China;

- International registration No. 637074, SIEMENS, registered on March 31, 1995 and in force until March 31, 2025, covering more than 60 countries worldwide, including China.

It is well established by the Domain Name Jurisprudence, that the design elements of a trademark are largely disregard for purposes of assessing identity or confusing similarity under the first UDRP element, since they are incapable of representation in domain names (see Section 1.10 of the WIPO Overview 3.0). Therefore, this Panel for the first UDRP Element analysis, of this case, will consider the textual elements of Complainant’s Trademark SIEMENS HEALTHINEERS, only.

The disputed domain name <siemens-healtineers.com> exactly reproduces such a worldwide well-known Trademark as SIEMENS and/or SIEMENS HEALTHINEERS, differing from the absence of the letter “h”, misspelled as ‘healtineers’, constituting a typical typosquatting scenario, which is not perceived as a mere coincidence to this Panel. Multiple UDRP Panelist’s Decisions have already confirmed confusing similarity under almost identical circumstances (see Siemens AG, Siemens Trademark GmbH & Co. KG v. Wire Lord, WIPO Case No. D2020-2701; Siemens AG v. Devin Boss, HahornWo, WIPO Case. No. D2020-2340; Siemens AG v. Jeff Wall, WIPO Case No. D2020-2342; Siemens AG, Siemens Trademark GmbH & Co. KG v. Williams wire, 23 Nipco Co., Inc., WIPO Case No. D2022-0948; Siemens Trademark GmbH & Co. KG v. YD Kim, CAC-UDRP Case No. 105296).

In relation to the typosquatting practice, Section 1.9 of the WIPO Overview 3.0, has established that:

“A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels

to be confusingly similar to the relevant mark for purposes of the first element.

This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. Under the second and third elements, panels will normally find that employing a misspelling in this way signals an intention on the part of the respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the complainant.”

Regarding the gTLD, it is well established by the Domain Name Jurisprudence that for the purposes of the analysis of the First UDRP Element, in this case, the gTLD “.com”, “is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test” (see Section 1.11.1 of the WIPO Overview 3.0).

Consequently, this Panel finds the disputed domain name <siemens-healthineers.com> is confusingly similar to Complainant’s Trademark SIEMENS HEALTHINEERS.

Regarding the Second UDRP Element, to this Panel it is very clear that:

- The Respondent registered the disputed domain name on August 22, 2022, meaning very well after the Complainant’s acquired its trademark rights at international level over the term SIEMENS on March 31, 1995 (Reg. No. 637074) and/or SIEMENS HEALTHINEERS, on October 25, 2016 (Reg. No. 1357232).
- The Respondent is not and has never been one of the Complainant’s representatives, employees or one of its licensees, nor is otherwise authorized to use the trademarks SIEMENS or SIEMENS HEALTHINEERS; the Complainant does not have any connection with the Respondent; there is no relationship between the Respondent and Siemens AG, or any of its affiliates or subsidiaries.
- The Complainant contends that the disputed domain name is currently not in use and is parked with the Registrar; that when accessing “siemens-healthineers.com” users encounter ads in the form of hyperlinks reading “Digital Health Platform”, “Covid-19 Testing”, and other links; meaning that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services; that the Respondent has not been commonly known with the disputed domain name.
- The Respondent has been identified as “Li Jiang”, and no evidence suggests that it corresponds or has become commonly known by the disputed domain name or owns any corresponding registered trademark including the terms “siemens-healthineers.com”.
- The Respondent is not making a bona fide offering of goods or services nor for a legitimate non-commercial or fair use of the disputed domain name, which is based on Complainant’s Trademark SIEMENS HEALTHINEERS, to resolve to a website with PPC links directing to websites operated by potential competitors of the Complainant as “Covid-19 Testing”, which link is sponsored by a Health & Medical Chinese Company identified as Crocomed (<https://www.crocomed.com/>) or “Digital Health Platform”, which link is sponsored by a Medical Group (<https://www.serviercardiomedicalhub.com/>); plus a not related one, “Document Management Services”, for file Cloud Storage, sponsored by Cloud Solutions International, LLC (<https://fybe.com/>); being all of them, intricately actions that ultimately generates revenues to the Respondent.

In relation to PPC’s websites, Section 2.9 of the WIPO Jurisprudential Overview 3.0, states that:

“Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users.

(...) Panels have recognized that the use of a domain name to host a page comprising PPC links would be permissible – and therefore consistent with respondent rights or legitimate interests under the UDRP – where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off the complainant’s (or its competitor’s) trademark.” (emphasis added).

As described in the First UDRP Element Section, the disputed domain name is the result of a deliberate action of typosquatting based on -such a well-known- Complainant’s Trademarks as SIEMENS and SIEMENS HEALTHINEERS, which it is not perceived as a mere coincidence by this Panel, since such PPC links, constitutes actions that generates revenues for the Respondent, diverts consumers, and tarnish Complainant’s Trademarks value.

Therefore, this Panel finds that Complainant has successfully made a prima facie case, which was not rebutted in any manner by the Respondent, and concludes that the Respondent have no rights or legitimate interests in respect of the disputed domain name.

In relation to the Third Element of the UDRP, the Bad Faith, this Panel analyses the following:

Registration in Bad Faith:

The Complainant is a recognized German company founded more than 175 years ago, which, according to the evidence submitted in this dispute, acquired its Trademark Rights over the term SIEMENS in 1995, meaning 27 years; or over the term SIEMENS HEALTHINEERS in 2016, meaning 6 years before the Respondent registered the disputed domain name on August 22, 2022, facts that in any event has provided sufficient time to the Respondent to understand the Complainant’s Trademarks reputation, recognition and financial value.

The Complainant contends that given its strong global reputation over its Trademarks the Respondent clearly knew about the Complainant at the time of the registration of the disputed domain name.

As additional bad faith consideration factors, Section 3.2.1 of the WIPO Overview 3.0 states:

“Particular circumstances panels may take into account in assessing whether the respondent’s registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely-known mark, or a domain name incorporating the complainant’s mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant’s area of activity or natural zone of expansion), (...) (iii) the content of any website to which the domain name directs, including any changes in such content and the timing thereof, (...) (vi) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent’s choice of the domain name, or (viii) other indicia generally suggesting that the respondent had somehow targeted the complainant.” (emphasis added).

Also, Section 3.2.2 of the WIPO Overview 3.0 indicates:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.” (emphasis added).

As analyzed along this Decision, the circumstance that the disputed domain name substantially corresponds to Complainant’s Trademark SIEMENS HEALTHINEERS through a deliberate act of typosquatting, the intricated nature of the PPC commercial links, suggest without any trace of doubt to this Panel, that the Respondent was very much aware of Complainant’s Trademarks at the time of the registration of the disputed domain name, performing such act with Complainant’s Trademarks on mind.

Therefore, this Panel concludes that the disputed domain name has been registered in bad faith.

Bad Faith Use

In relation to this point, the Complainant contends that the disputed domain name is currently not in use and is parked with the Registrar; that when accessing “siemens-healthineers.com” users encounter adds in the form of hyperlinks reading “Digital Health Platform”, “Covid-19 Testing”, and other links.

The Complainant contends that the disputed domain name is being used in bad faith due to the disputed domain does not show substantial content; that even the passive holding of a domain name amounts to use in bad faith, citing: Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 and Siemens AG v. yinsi baohu yi kai qi / li zhe, zhe li, WIPO Case No. D2017-0375.

The Complainant also contends that the Respondent has “parked” the disputed domain name within the Registrar aiming to, either: 1. lure the Complainant into offering to buy the domain from the Respondent, in an attempt to extract monetary gain from such transaction, and/or 2. use the domain at a later time, in order to purposefully create confusion with the offerings of the Siemens Group among the concerned consumers, and extract gain from fraudulent activity.

This Panel finds some inconsistencies regarding the Complainant’s bad faith use analysis, since according with the same evidence submitted by the Complainant and as analyzed by this Panel along this Decision, the disputed domain name is being used, as described in detail under the Second UDRP Element, with PPC’s purposes, understood as a ‘positive action post-registration in bad faith’ described on paragraph 4(b)(iv) of the UDRP. The disputed domain name is in use, is not merely parked, there is substantial content and is not passively held. Therefore, the disputed domain name is not inactive as such, as usually required by the Passive Holding Doctrine emanated from The Telstra Case (see Section 7.10 of Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

In relation with the Respondent’s intentions described by the Complainant aiming to, either: 1. lure the Complainant into offering to buy the domain from the Respondent, in an attempt to extract monetary gain from such transaction, and/or 2. use the domain at a later time, in order to purposefully create confusion with the offerings of the Siemens Group among the concerned consumers, and extract gain from fraudulent activity, this Panel agrees with the Complainant.

In relation to the use of a Privacy Service by the Respondent, on this case, to avoid its real identification and the current proceeding, this Panel also agrees with the Complainant.

Consequently, according to the evidence submitted before this Panel, and as described along this Decision, the disputed domain name resolves to a website with PPC links directing to websites operated by potential competitors of the Complainant, falling into Paragraph 4(b)(iv) of the UDRP.

Therefore, this Panel concludes that, the disputed domain name is being used in faith as well.

Accepted

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

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

Name	María Alejandra López García
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DATE OF PANEL DECISION **2023-08-14**

Publish the Decision
