

Decision for dispute CAC-UDRP-105926

Case number	CAC-UDRP-105926
Time of filing	2023-11-08 16:40:42
Domain names	siemens-elevatorbd.com, siemens-elevatorbd.org, siemens-elevator.org, siemens-elevator.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	Siemens Trademark GmbH & Co. KG
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Respondent

Organization	Weak Zone
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the international registration 637074 "SIEMENS" of March 31, 1995, 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.

The mark "SIEMENS" is a mark with a global reputation. By virtue of long and extensive use, this mark belongs to the best-known trademarks in the world today.

FACTUAL BACKGROUND

The Complainant states that the mark "SIEMENS" has a global reputation. By virtue of long and extensive use, this mark belongs to the best-known trademarks in the world today.

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

The "SIEMENS" mark is in the view of Complainant well recognized as a symbol of the highest quality of the concerned goods and services. By virtue of the long use and the renown of the Complainant's mark "SIEMENS" this is exclusively associated with the Siemens Group. The reputation associated with the Complainant's mark is furthermore excellent, stemming from the impeccable quality of Siemens AG's goods and services.

The disputed domain names are the following:

1. <siemens-elevatorbd.com>
2. <siemenselevatorbd.org>
3. <siemenselevator.org>
4. <siemens-elevator.com>

All disputed domain names are registered by the Respondent.

These domains are in the view of the Complainant highly similar to the Complainant's mark "SIEMENS" as the latter is integrally reproduced within all of them, and the additional word element "elevator" is merely descriptive of the goods/services advertised and offered in the respective websites. The fact that the signs coincide in a distinctive element and only differ in non-distinctive ones, significantly increases their similarity in the view of Complainant.

Further, the element "bd" appearing within two of the disputed domain names, refers to the country of Bangladesh, and the Complainant states that this has a minor impact on the visual impression of the signs, while conceptually it does nothing but introduce a geographical element to the concept of "Siemens Elevator". The consumers will understand that the Respondent is offering Siemens Elevators in Bangladesh.

The Complainant states that due to the high reputation of the trademark "SIEMENS", the public will automatically recognize the mark "SIEMENS" and will associate the domain names in dispute with the Complainant. The Internet users will believe that these domain names belong to the Complainant and will form the false impression the websites under these domains are official Internet addresses belonging to the Complainant, precisely for selling elevators.

As to be seen from the website excerpts, all of the disputed domain names are being used to advertise and offer for sale elevators, escalators and related products and services under the fraudulent statement that these are commercially originated from the Siemens Group.

The Complainant states that the Respondent has no relation whatsoever to the Complainant. Therefore, it is obvious that the Respondent has not used and is not currently using the disputed domain names in connection with a bona fide offering of goods or services. It has not been commonly known with these domain names.

In view of the long and extensive use of the mark "SIEMENS" throughout the world, decades prior to the registration of the disputed domain names from the Respondent, it is obvious to the Complainant that the Respondent is well aware of the existence of this mark, whose status and reputation has been assessed in various UDRP judgements in the past.

Under these circumstances, the Complainant is of the opinion that the nature of the disputed domain names carries a risk of implied affiliation between the Respondent and the Siemens Group, which is obviously the Respondent's actual intention in registering these disputed domain names.

In registering the disputed domain names, which identically contain the famous trademark "SIEMENS", the Respondent saw in the view of the Complainant an opportunity to extract financial gain by the strong global reputation of the Complainant's trademark.

As for the use of the domains in bad faith, the content of the respective websites is self-explanatory. In all four websites the "SIEMENS" mark and logo are featured multiple times, while promotional text is added to further persuade the consumer that the counterfeit elevators being advertised are genuine Siemens products.

The following text appears in the home page of the disputed domain names <siemens-elevatorbd.com> and <siemenselevatorbd.org> websites: "We are proud to say that we are family owned business and we are an authorized dealer for Siemens Germany Elevator/Escalator/Passenger lift in Bangladesh. All Elevators sold are 100% authentic and come direct from the manufacturer." (available at [Siemens Elevator Bangladesh - Manufacturers, Suppliers & Products in BD \(siemens-elevatorbd.com\)](#) and [Siemens Elevator Bangladesh - Manufacturers, Suppliers & Products in BD \(siemenselevatorbd.org\)](#)).

Complainant states there is no such entity as "Siemens Germany Elevator/Escalator/Passenger" and the Respondent is certainly not an "authorized dealer" of the Siemens Group.

At the "About Us" page of both these websites, he/she would be led to the same sub-page, being [About Siemens Elevator Bangladesh - Manufacturers, Suppliers & Products in BD \(siemenselevatorbd.org\)](#). In this page, the Respondent states: "We are the importer & seller of Elevators/Escalator especially SIEMENS Germany based in Dhaka Bangladesh.", therefore falsely claiming a relationship between these entities and the Siemens Group.

Lastly, in the home pages of the disputed domain names siemens-elevatorbd.com and siemenselevatorbd.org, a hyperlink button is added, reading as "Please Visit", which leads to the official Siemens global website, in a page describing the history of Werner von Siemens developing the world's first electric elevator in 1880. While the Siemens Group has stepped out of the elevator industry more than a hundred years ago, the linking of this historical entry contained in the official Siemens website to the counterfeit websites of the Respondent is in the view of the Complainant precisely done to convince the consumers that the rogue websites are legitimate, and that Siemens is indeed still an elevator manufacturer, whose agent or distributor is the Respondent.

Similar observations can be made in the websites of the disputed domain names <siemenselevator.org> and <siemens-elevator.com>, where the below text is displayed in the "About us" page: "Siemens Elevator, a division of Siemens AG, specializes in

providing cutting-edge vertical transportation solutions. With a focus on safety, efficiency, and sustainability, Siemens Elevator has established itself as a leader in the elevator industry, transforming the way people move within buildings and shaping the urban landscapes of cities worldwide.” (available at [about \(siemens-elevator.org\)](#) and [about \(siemens-elevator.com\)](#)). The Respondent is again claiming to have a connection to the Siemens Group, by calling its rogue business a “division” of Siemens AG and proclaiming itself as the “leader in the elevator industry”.

The Complainant is of the view that the Respondent is using the disputed domain names to purposefully create confusion with the offerings of the Siemens Group among the concerned consumers and is infringing the Complainant’s marks and engaging in unfair competition practices through the websites’ content as well.

As 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”>, the Respondent knows that in registering the disputed domain names, it creates an extremely high risk of confusion with the Siemens Group.

The bad faith of the Respondent is lastly indicated in the view of the Complainant by the use of a privacy protection service to hide its details from the public WHOIS database.

In sum the Complainant states that the overall evidence boldly confirms that the Respondent’s choice of the disputed domain names was deliberate for its high similarity to the Complainant’s reputed mark and with the clear intention to extract undue monetary gain.

PARTIES CONTENTIONS

Complainant’s contentions are summarised above.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Complainant can bring the Complaint against all four disputed domain names, because they are all controlled and registered by the same Respondent.

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

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark SIEMENS based on the trademark registration and the related trademark certificates submitted as annexes to the Complaint.

In the case at hand, the Complainant's trademark SIEMENS is entirely reproduced in the disputed domain names, with the mere addition of the descriptive term "elevator" and in tow disputed domains the two letters "bd", which may also be interpreted to be referring to the geographic two letters country code of Bangladesh and of the gTLD ".com" or ".org", which is commonly disregarded under the first element confusing similarity test.

As found in a number of prior cases decided under the Policy, where a trademark is recognizable within a domain name, the addition of generic or descriptive terms does not prevent a finding of confusing similarity under the first element.

Therefore, the Panel finds that the Complainant has proven that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating, in particular but without limitation, according to paragraph 4(c) of the Policy, any of the following:

(i) before any notice to you of the dispute, your 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; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

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

It is well established that the burden of proof lies on the complainant. However, satisfying the burden of proving a lack of the respondent's rights or legitimate interests in respect of the domain name according to paragraph 4(a)(ii) of the Policy is potentially onerous, since proving a negative can be difficult considering such information is often primarily within the knowledge or control of the respondent.

Accordingly, in line with the UDRP precedents, it is sufficient that the complainant shows a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name in order to shift the burden of production on the respondent. If the respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Panel finds that the Complainant has made a prima facie case and that the Respondent, by not having submitted a Response, has failed to demonstrate rights or legitimate interests in the disputed domain names in accordance with paragraph 4(c) of the Policy.

Moreover, it has been repeatedly stated that when a respondent does not avail himself of its right to respond to a complaint, it can be assumed in appropriate circumstances that the respondent has no rights or legitimate interests in the disputed domain name (Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim, [WIPO Case No. D2003-0269](#)).

In view of the above, the Panel finds that the Respondent is not making a bona fide offering of goods or services under the disputed domain name. Moreover, since the Respondent's activity on its website is clearly commercial in nature, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names.

Furthermore, the Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained authorization to use the Complainant's trademarks and there is no evidence that the Respondent might be commonly known by the disputed domain names.

Thus, in light of the above, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names, in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

As to the bad faith at the time of the registration, the Panel notes that, in light of the amount of advertising and sales of the Complainant's products worldwide and overall the fact that the Respondent is apparently acting in the same field of activity as the Complainant, at least what Complainant was selling in the past, the Respondent was or ought to be well aware of the Complainant's trademark.

Furthermore, the circumstance that the disputed domain names have been pointed to a website featuring the Complainant's trademark and providing information about the Complainant's products, demonstrates that the Respondent was indeed well aware of the Complainant and its trademark.

In light of the fact that the Complainant's mark is a coined term and that the Respondent made reference to the Complainant's SIEMENS brand on the website to which the disputed domain names resolve, the Panel finds that the Respondent obviously registered the disputed domain name with the Complainant's trademark in mind.

Moreover, in view of the notoriety of the Complainant's trademark, the Panel finds that the Respondent acted in opportunistic bad faith at the time of registration by registering the disputed domain names with a deliberate intent to create an impression of an association with the Complainant, when the Respondent has no connection with the Complainant whatsoever.

The Panel also finds that, by pointing the disputed domain names to websites promoting and offering for sale obviously fake SIEMENS products like escalators, the Respondent fails to accurately and prominently disclose its relationship with the trademark owners. Therefore, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain, by causing a likelihood of confusion with the trademark SIEMENS as to the source, sponsorship, affiliation or endorsement of its website and the products promoted therein according to paragraph 4(b)(iv) of the Policy.

The Panel also notes that the Respondent has used the disputed domain names in a commercial website to reproduce the Complainant's trademark, thus clearly suggesting a connection with the Complainant to Internet users. Therefore, the evidence before the Panel indicates that the Respondent has used the disputed domain names for the purpose of some apparently commercial nature from which the Respondent presumably derives or intends to derive revenues. This conduct is not consistent with registration and use in good faith under the Policy, and the Panel rules in favour of the Complainant.

The Respondent's bad faith is lastly indicated by using a privacy protection service to hide its details from the public WHOIS database.

Therefore, the Panel finds that the Complainant has also proven the requirement prescribed by paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **siemens-elevatorbd.com**: Transferred
2. **siemenselevatorbd.org**: Transferred
3. **siemenselevator.org**: Transferred
4. **siemens-elevator.com**: Transferred

PANELLISTS

Name	Jan Schnedler
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DATE OF PANEL DECISION	2023-12-06
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Publish the Decision
