

Decision for dispute CAC-UDRP-106020

Case number	CAC-UDRP-106020
Time of filing	2023-12-06 10:38:14
Domain names	slemens-healthineers.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	Jeremy Austrum (Phill chase llc)
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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 has established by evidence that the Panel accepts that it is the owner the following registered trademarks for:

- International trademark registration n. 1357232 for SIEMENS Healthineers (fig.), registered on October 25, 2016, in connection with classes 5, 9,10, 35, 37, 42 and 44;
- International trademark registration n. 637074 for SIEMENS, filed on September 8, 2006, registered on March 31,1995 , in connection with classes 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 20, 21, 28, 35, 36, 37, 38, 40, 41 and 42;

("the SIEMENS and SIEMENS Healthineers trademarks").

FACTUAL BACKGROUND

The Complainant is a subsidiary of Siemens Aktiengesellschaft, the parent company of the Siemens Group of companies, one of the world's largest corporations which is renowned for its manufacture and supply of goods and services in a broad range of fields including medicine, automation, control, power, transportation , logistics, information and communications.

It owns a series of registered trademarks including SIEMENS and SIEMENS Healthineers that are used by the Siemens Group in the relation to medical services, equipment and solutions.

It also owns a series of domain names incorporating the same distinctive SIEMENS mark, such as <siemens.com>, <siemens-healthineer.com> and <siemens-healthineers.com> that it also uses in its business.

The Complainant states that the Respondent has registered the domain name <slemens-healthineers.com> ("the disputed domain name") the principal portion of which is clearly a copy of the Complainant's SIEMENS and SIEMENS Healthineers trademarks, and caused it to resolve to a webpage with no content. This is confusing to internet users, Complainant's customers and potential customers and disruptive of the Complainant's business. The Respondent has not filed a Response.

PARTIES CONTENTIONS

A. COMPLAINANT

1. The Complainant is a trademark holding company of the Siemens Group which leases its trademarks to member companies of the group which are, as noted above, engaged in a broad range of industries.
2. The Complainant owns several trademarks for SIEMENS and SIEMENS Healthineers that are used in the relation to the provision of medical services and it also owns numerous domain names including <siemens.com>, <siemens-healthineer.com> and <siemens-healthineers.com> which it also uses in its business.
3. The Respondent registered the domain name <siemens-healthineers.com> (“the disputed domain name”) on September 28, 2023.
4. The disputed domain name is confusingly similar to both of the Complainant’s aforesaid SIEMENS and SIEMENS Healthineers trademarks as it contains both trademarks, a spelling alteration by means of substituting the letter “l” in SIEMENS so that it reads <siemens-healthineers.com> adding the generic Top Level domain “.com”. The aforesaid spelling alteration is not sufficient to escape a finding that the domain name is confusingly similar to both trademarks. It also worsens the likelihood of confusion, as internet users are likely to read the domain name as <siemens-healthineers.com> and conclude that it is an official domain name of the Complainant and also as a domain name reflecting the Complainant’s SIEMENS and SIEMENS Healthineers trademarks.
5. The Respondent has no right or legitimate interest in the disputed domain name. That is so because:
 - the domain name does not resolve to an active website but is parked with its registrar and produces the reading “This site cannot be reached”;
 - the Respondent is not associated with, affiliated with or licenced by the Complainant to use its trademarks in a domain name or by any other means;
 - the Respondent is not using the domain name for a *bona fide* offering of good or services;
 - the Respondent must have had actual knowledge of the Complainant and its trademarks at the time when it registered the domain name;
 - the domain name carries the inevitable implication that it is affiliated with the Siemens group of companies;
 - the Respondent’s obvious intention in registering the domain name was to divert internet users from legitimate Siemens’ websites to other unrelated sites.
6. The Respondent has registered and used the disputed domain name in bad faith. That is so because:
 - the Respondent clearly knew of the Complainant and its trademarks SIEMENS and SIEMENS Healthineers;
 - the domain name is so similar to the SIEMENS Healthineers trademark that the Respondent clearly intended to usurp the Complainant’s strong international reputation so as to confuse the public and cause damage to the Complainant’s business by disruption;
 - the Respondent’s clear intention was to divert internet traffic from the Complainant’s legitimate sites to the Respondent’s own potential site;
 - the Respondent also clearly chose the disputed domain name with its misspelling so as to redirect internet users;
 - the domain name is not active but resolves to the registrar’s site which produces its aforesaid message;
 - the construction of the domain name is such that the Respondent must have been aware of the Complainant, its business and its SIEMENS and SIEMANS Healthineers trademarks;
 - the Respondent’s intention must have been to lure the Complainant into buying the domain name so that it could extract money from the Complainant and to create confusion among internet users;
 - the Respondent has sought to keep its name and contact details a secret by means of using a privacy service; and
 - this is a clear case of typosquatting.
7. It is not possible to conceive of any legitimate or *bona fide* activity in which the Respondent could register or use the domain name.
8. The validity of those contentions is supported by numerous prior UDRP decisions cited by the Complainant.

B. RESPONDENT

The Respondent did not file a Response in this proceeding.

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

DISCUSSION AND FINDINGS

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy ("the Policy" or "UDRP") of the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy ("the Rules"), and the CAC Supplemental Rules.

A. Administrative compliance

By notification dated December 6, 2023 and in accordance with paragraph 4 (b) of the Rules, the CAC notified the Complainant that the Complaint was administratively deficient in that the Complaint did not sufficiently identify the Respondent. The notification invited the Complainant to have regard to the Registrar's verification available in the online case file in the form of a non-standard communication regarding the appropriate identification of the domain name holder. The Complainant was also invited to use the correct name of the UDRP provider FORUM. Also on December 6, 2023, the Complainant filed an Amended Complaint with the deficiencies having been rectified and the CAC determined that the Complaint should be admitted to proceed further in the Administrative Proceeding.

The Panel has reviewed all of the above matters and makes a finding that within the meaning of paragraph 4(b) of the Rules, the administrative deficiencies have been corrected and that this matter has proceeded properly to the Panel in accordance with the Policy and the Rules.

B. SUBSTANTIVE MATTERS

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In that regard, the Panel also notes that the onus is on the complainant to make out its case and past UDRP panels have consistently said that a complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

The Panel therefore turns to discuss the various issues that arise for decision on the facts as they are known.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

Identical or Confusingly Similar

The Complainant has adduced evidence that the Panel accepts that it is the registered owner of the SIEMENS and SIEMENS Healthineers trademarks and as such has rights in those trademarks. Evidence of the registration of those trademarks is contained in Annex 1 to the Complaint which the Panel has examined and finds to be in order.

The Panel next finds that the Respondent registered the disputed domain name <slemens-healthineers.com> ("the disputed domain name") on September 28, 2023.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's SIEMENS and SIEMENS Healthineers trademarks for the following reasons.

First, the domain name includes the entirety of both trademarks, so the natural reaction of internet users on seeing the domain name

would be first to notice the presence of the trademarks and then to conclude that the domain name was invoking the Siemens' group and its trademarks and that they were either official trademarks of Siemens, being the trademark owner, or were being used with the knowledge and approval of Siemens and that they would lead to an official Siemens website, neither of which was true.

Secondly, as for the misspelling of the trademarks by altering the first letter "i" to an "l", internet users would either not notice the change at all or they would assume that, despite the change, the domain name was still intended to invoke the trademark and that the change in the spelling was either accidental or intended. Either way, the internet user would be confused. The alteration would not negate a finding of confusing similarity but would emphasise it, as the domain name gives the impression that it is legitimately connected with the trademark and its owner, which it is not. Taken as a whole, the domain name would convey to the objective bystander that it related to the activities of the Complainant, giving rise to inevitable confusion.

It is also now well established that the addition of a generic top level domain, such as ".com" in the present case, cannot negate the confusing similarity that is otherwise present, as it is in this case.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's SIEMENS and SIEMENS Healthineers trademarks.

The Complainant has thus shown the first of the three elements that it must establish.

Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. But by virtue of paragraph 4(c) of the Policy, it is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [respondent] 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 [respondent] (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 [respondent] are making a legitimate noncommercial 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.

Thus, if a respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the complaint will fail.

It is also well-established that the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests in the domain name and that when such a *prima facie* case is made out, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent cannot do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP. The Panel, after considering all of the evidence in the Complaint, finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name.

A *prima facie* case has been made out in this proceeding from the following considerations:

- the Respondent cannot have a right or legitimate interest in the disputed domain name as it has clearly taken two trademarks owned by the Complainant and used them in a domain name without the consent of the Complainant express or implied;
- there was clearly a dishonest element in doing so, as the Respondent changed the spelling of the relevant trademark slightly and did so for the obvious reason of misleading internet users into the false belief that this was a genuine disputed domain name of the Complainant;
- as courts and tribunals regularly draw inferences from evidence, the Panel draws the inference from the only evidence it has in this proceeding that the Respondent created the disputed domain name with the intention of ultimately using it for an illegal purpose; it is probable, as the Complainant submits, that the Respondent's ultimate plan was to lure the Complainant into being forced to buy the disputed domain name;
- the evidence is that the disputed domain name does not resolve to an active website but is parked with its registrar and that it produces the reading "This site cannot be reached";
- the evidence is that the Respondent is not associated with, affiliated with or licenced by the Complainant to use its trademarks in a disputed domain name or by any other means;

- the evidence is that the Respondent is not using the disputed domain name for a bona fide offering of good or services; it cannot be bona fide to steal a trademark and use it without permission for any purpose;
- because of the fame of the Complainant and its well-known name trademark and brand, the Respondent must have had actual knowledge of the Complainant and its trademarks at the time when it registered the disputed domain name;
- in particular, the disputed domain name carries the inevitable implication that it is affiliated with the Siemens group of companies and the goodwill associated with that name and with the Complainant's famous trademarks;
- the Respondent's obvious intention was to divert internet users from legitimate Siemens' websites to other unrelated sites; the Respondent's intention was therefore a dishonest one;
- as the Complainant submits and the Panel agrees, the evidence shows that the Respondent is not related in any way to the Complainant's business, is not affiliated with the Complainant nor authorized by it in any way to use the SIEMENS and SIEMENS Healthineers trademarks and does not carry out any activity for, nor has any business with, the Complainant;
- it is also clear from the evidence that the Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii);
- moreover, the essence of this proceeding is that the Respondent has set about tricking internet users into thinking that the disputed domain name is an official domain name of the Complainant and that it will lead to an official website of the Complainant, neither of which is true. Clearly, such conduct cannot give rise to a right or legitimate interest in the disputed domain name;
- the disputed domain name resolves to a parking page that is empty for all practical purposes and which shows that the Respondent has not made any legitimate use of the disputed domain name and has no demonstrable plan to use it legitimately;
- the Respondent could not conceivably bring itself within any of the criteria in Policy paragraph 4(c) that give rise to a right or legitimate interest in the disputed domain name;
- those propositions are supported by prior UDRP decisions which have been cited by the Complainant.

The foregoing circumstances give rise to the *prima facie* case made out by the Complainant.

The Respondent has not filed a Response or made any other answer to the claims of the Complainant and is in default. Accordingly, the *prima facie* case has not been rebutted and the Complainant has therefore made out the second of the three elements that it must establish.

Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

Paragraph 4(b) of the Policy sets out four circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive. The four specified circumstances are:

- (i) circumstances indicating that the respondent has registered or 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 the

respondent's 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 site or location.

The Panel finds that the Complainant has shown that the Respondent registered and used the disputed domain name in bad faith. That is so for the following reasons.

- the domain name is so similar to the SIEMENS and SIEMENS Healthineers trademarks that the Respondent clearly intended to usurp the Complainant's strong international reputation so as to confuse the public and cause damage to the Complainant's business by disruption;
- the Respondent must have chosen the trademark to invoke the concept of the Complainant, its fame and its activities. By that means the Respondent, in registering the domain name deceptively and without any authority to do so, must be taken to have created a likelihood of confusion within the meaning of Policy paragraph 4(b)(iv), with the intention of attracting current and potential customers of the Complainant and internet users looking for the services of the Siemens Group and doing so in this misleading manner;
- the Respondent's clear intention was to divert internet traffic from the Complainant's legitimate sites to the Respondent's own potential site;
- the Respondent also clearly created the disputed domain name with the misspelling of the trademarks so as to redirect internet users;
- the domain name is not active but resolves to the registrar's site which produces its aforesaid message;
- the construction of the domain name is such that the Respondent must have been aware of the Complainant, its business and its SIEMENS and SIEMENS Healthineers trademarks;
- the Respondent's intention must have been to lure the Complainant into buying the domain name so that it could extract money from the Complainant; that is a clear breach of Policy paragraph 4(b)(i);
- the Respondent's intention must also have been to disrupt the business of the Complainant within the meaning of Policy paragraph 4(b)(iii).
- the Respondent has sought to keep its name and contact details a secret by means of using a privacy service;
- this is a clear case of typosquatting;

Finally, in addition to the specific criteria for finding bad faith set out in Policy paragraph 4(b) and having regard to the totality of the evidence, the Panel finds that, in view of the Respondent's registration of the disputed domain name incorporating the SIEMENS and SIEMENS Healthineers trademarks in the domain name and using it as aforesaid, the Respondent registered and used the domain name in bad faith within the generally accepted meaning of that expression.

The foregoing propositions are supported by prior UDRP decisions which have been cited by the Complainant.

Accordingly, the Complainant has shown the third of the three elements that it must establish, has established all such elements and is entitled to the relief that it seeks.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name **Neil Brown**

DATE OF PANEL DECISION **2023-12-31**

Publish the Decision
