Decision for dispute CAC-UDRP-106021

Case number	CAC-UDRP-106021
Time of filing	2023-12-06 16:40:02
Domain names	siemens-healthinneers.com

Case administrator

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

Complainant

Organization	Siemens Trademark GmbH & Co. KG.

Respondent

Name	Bei Ping Jiang

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. The Complainant is a subsidiary of Siemens Aktiengesellschaft, mother company of the Siemens Group. 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.

Among trademarks held by the Complainant, the Complaint is based on:

- International Registration No. 1357232 "SIEMENS Healthineers" (fig.) of October 25, 2016, in the name of Siemens Trademark GmbH & Co. KG, designating various territories and claiming protection for goods and services in classes 5, 9, 10, 35, 37, 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.

The Respondent has not submitted anything in relation to rights to the disputed domain name.

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, mother company of the Siemens Group. 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.

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The disputed domain name was registered on September 19, 2023.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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 Complainant requests that the language of this administrative proceeding be English pursuant to UDRP Rule 10(b): "In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case." Complainant makes this request in light of the potential Chinese language Registration Agreement of the disputed domain name involved at this Complaint.

Paragraph 10 of the UDRP Rules vests a Panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. UDRP panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios were summarized into WIPO Jurisprudential Overview 3.0, 4.5.1. In this particular instance, the Complainant tried to request change of languages of proceedings in light of Chinese language Registration Agreement by showing that 1) The dispute domain name contains generic Latin characters suggesting that the Respondent has some grasp of the English language; and 2) the translation of the Complaint would unfairly disadvantage and burden the Complainant and delay the proceedings and adjudication of this matter.

In light of the scenarios and equity, the Panel is of the view that conducting the proceeding in English is unlikely to heavily burden the Respondent, and it is likely that the Respondent can understand the English language based on a preponderance of evidence test. Without further objection from the Respondent on the issue, the Panel will proceed to issue the decision in English.

PRINCIPAL REASONS FOR THE DECISION

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

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, mother company of the Siemens Group. 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.

The "SIEMENS" mark is well recognized as a symbol of the highest quality of the concerned goods and services. Siemens Healthineers, another company of the Siemens Group, is one of the largest manufacturers of medical equipment worldwide, with approximately 54.000 employees. The Complaint owns international Trademark Registration of "SIEMENS Healthineers" and No. 637074 "SIEMENS", in various countries worldwide and claiming protection for goods and services in various classes.

The disputed domain name <siemens-healthinneers.com> is confusingly similar to the Complainant's marks "SIEMENS" and "SIEMENS Healthineers". In addition to fully incorporating the term "SIEMENS", the element "Healthinneers" appears similarly with "Healthineers", with the only addition of an extra letter "n". As the Complaint noted, "The mere repetition of this letter is barely perceptible visually by the average consumer, who pays a moderate degree of attention." Previous UDRP panels have consistently stated in this regard that "minor alterations cannot prevent a finding of confusing similarity between the trademark and the domain name" (See LinkedIn Corporation v. Daphne Reynolds, WIPO Case No. D2015-1679). gTLDs such as ".com" are commonly viewed as a standard registration requirement, and as such they are disregarded under the first element confusing similarity test (WIPO Overview 3.0, section 1.11).

The Panel therefore concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant have rights within the meaning of paragraph 4(a)(i) of the Policy.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name.

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in the present case has not licensed or authorized the Respondent to register or use its trademark or the disputed domain name. There is no evidence that the Respondent is known by the disputed domain name or owns any corresponding registered trademarks. The organization of the Respondent, "Bei Ping Jiang", or its address, also has no connection with "SIEMENS" or "SIEMENS Healthinneers". The Complainants did not grant any license or authorization to the Respondent to register or use the disputed domain name, nor the use of the Complainants' trademark on pages of the disputed websites.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

3. The disputed domain name has been registered and is being used in bad faith.

The use and registration of the disputed domain name by the Respondent has been done in bad faith.

First of all, the registration of the disputed domain name by the Respondent was done in bad faith. UDRP panels have consistently held that the mere registration of a domain name that is confusingly similar to a famous trademark by an unaffiliated entity can by itself create a presumption of bad faith. With the reputation of the "SIEMENS" trademark worldwide, the presumption arises that the disputed domain name was registered with the intention to attract Internet users by creating a likelihood of confusion with the well-known "SIEMENS" trademark.

Secondly, the use of the disputed domain name was in bad faith. The Complainant notes that the "disputed domain currently shows no content". However, pursuant to section 3.3 of the WIPO Overview 3.0, the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding if certain circumstances are met. "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put." As the Complainant has rightly pointed out having regard to structure of the domain name in the way confusingly similar to the Complainant's trademark and without providing additional evidence to prove any potentially legitimate use, it is impossible to think of any good faith use to which the domain name could be put by the Respondent (See also Siemens AG v. Hello Greatness, WIPO Case No. D2020-1641).

Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the Complainant has provided sufficient evidence that the disputed domain name was registered and is being used in bad faith within the meaning of 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-healthinneers.com**: Transferred

PANELLISTS

Name	**Carrie Shang**

DATE OF PANEL DECISION 2024-01-16

Publish the Decision