Decision for dispute CAC-UDRP-106158

Case number	CAC-UDRP-106158
Time of filing	2024-01-23 15:36:17
Domain names	siemensios.com, siemensapp.com

Case administrator

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

Complainant

Organization	Siemens Trademark GmbH & Co. KG.

Respondent

Name	anilx cols

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 following trademark registrations:

- International registration No. 637074 “SIEMENS” of 31 March 1995 protected 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 Complainant proved its ownership of the listed trademark registrations by the submitted Certificate of Trademark Registration and an extract from the WIPO Madrid Registry.

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 2023 was 77 billion EUR, and the group employs more than 320.000 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 (among others) in the fields of Automation and Control, Power, Transportation, Logistics, Information and Communications, Medical Technology, etc.

The trademark “SIEMENS” of the Complainant is used in various countries in relation to technological, industrial and other solutions, as to be seen from its global website accessible, under https://new.siemens.com/global/en.html (copy of the webpage about the Complainant).

The disputed domain names <siemensapp.com> and <siemensios.com> (hereinafter “disputed domain names”) were registered on 29 July 2023 according to the WHOIS information. According to the Registrar, the Respondent is ‘anilx cols’. The Respondent’s provided address as being at Aland Islands.

PARTIES CONTENTIONS

COMPLAINANT:

A. The Complainant contends that the disputed domain names are confusingly similar to the Complainant's trademarks.

The Complainant claims that the mark "SIEMENS" is a mark with a global reputation. By long and extensive use, this mark belongs to the best-known trademarks in the world today. The "SIEMENS" mark is 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 excellent, stemming from the impeccable quality of Siemens Group's goods and services.

The Complainant contends that the disputed domain names are highly similar to the Complainant's mark "SIEMENS" as the latter is integrally reproduced within all of them.

The Complainant asserts that when it comes to the first of the disputed domain names, the additional "APP" verbal element, a common abbreviation for "application", is descriptive of the promised offering of the respective website, being a supposed "Siemens application". As for the second one, the additional "IOS" verbal element will be perceived by the relevant public as meaning either "iPhone Operating System" or as a meaningless ending. As both disputed domain names integrally reproduce the Complainant's mark, which is a highly distinctive term, placed at the beginning of each domain, it follows that there is a high similarity between these domains and the earlier mark "SIEMENS".

The Complainant claims that the addition of a generic Top-Level Domain (i.e., ".com") after a domain name is technically required, it is well established that such element may be disregarded when assessing whether a domain name is identical or confusingly similar to a mark.

The Complainant assumes that due to the high reputation of the trademark "SIEMENS", the public will automatically recognize the mark "SIEMENS" and will associate the disputed domain names 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 the disputed domain names are official Internet addresses belonging to the Complainant.

B. The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

The Complainant contends that it is impossible to know the owner of any of the disputed domain names, as the holders' details are privacy-protected (WHOIS information). The Complainant has strong indications that all the disputed domain names are held and controlled by the same entity. As can be seen on the WHOIS database, both disputed domain names were registered on the same date and with the same Registrar. Further, their name servers are the same. For the above reasons, the Complainant believes there is a very high probability that the same entity, i.e., the Respondent, is the owner of the disputed domain names.

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 trademark "SIEMENS". The Complainant does not have any connection with the Respondent.

The Complainant adds that the disputed domain names seem to have been deactivated and do not show any content. However, in the recent past, both disputed domain names were leading to rogue websites. Namely, the first disputed domain name was used to fraudulently collect money from external users (Screenshot of website under siemensapp.com). As for the second disputed domain name, it used to show content aiming to mislead individuals with promises of daily earnings through work-from-home opportunities (Screenshot of website under siemensios.com).

The Complainant assumes that 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 the disputed 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 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.

The Complainant contends that under these circumstances, 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 domain names.

C. The Complainant contends that the disputed domain names have been registered and are being used in bad faith.

The Complainant asserts that the disputed domain names were registered in bad faith, as the Respondent knew about the Complainant's earlier rights on the trademark "SIEMENS". In registering the disputed domain names, which identically contain the famous trademark "SIEMENS", the Respondent saw an opportunity to extract financial gain from the strong global reputation of the Complainant's trademark.

The Complainant claims that, as for the use of the disputed domain names in bad faith, the previously mentioned past content of the respective websites is self-explanatory. Both websites – up until very recently – displayed the "SIEMENS" mark and logo. The

Respondent took active steps to fraudulently convince the consumers that these websites stem from the Siemens Group, and persuade them to “investing”, while in reality conferring the Respondent undue monetary gain. While it seems that the content of these websites has been currently removed, even the passive holding of a domain name amounts to use in bad faith.

Indicatively, a strong factor that can lead to this conclusion is the unequivocal reputation of the Complainant, in a way of making it impossible to assume that the Respondent was not aware of the Complainant’s business and that it chose the element “SIEMENS” for its disputed domain names as a mere coincidence.

Based on all of the above, the Complainant concludes that it is more than obvious that the Respondent is using the 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 was 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 registering the disputed domain names creates an extremely high risk of confusion with the Siemens Group.

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

The Complainant assumes 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. Therefore, the Respondent has registered and is using the disputed domain names in bad faith.

RESPONDENT:

No administratively Complaint 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 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 names (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 names have been registered and are 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 the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. Therefore, the Panel proceeds to decide only on the basis of the Complainant’s factual statements and the documentary evidence provided in support of them [Paragraph 5(f) of The Rules].

1. CONFUSING SIMILARITY

The Panel finds that the disputed domain names are confusingly similar to the Complainant’s “SIEMENS” trademark.

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter “The WIPO Overview 3.0”) in Paragraph 1.2.1 states: “Where the complainant holds a nationally or regionally registered trademark or service mark, this prima

facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The WIPO Overview 3.0 in Paragraph 1.7 states: "[…] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The WIPO Overview 3.0 in Paragraph 1.8. states: "Where the relevant trademark is recognizable within the disputed domain names, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

In the WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin, the panel stated that: "In numerous cases, it has been held that a domain name that wholly incorporates a Complainant´s registered mark may be sufficient to establish confusing similarity for purposes of the UDRP."

In the WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., the panel stated that: "It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar".

In the present case, the Complainant has proved international trademark registration consisting of the "SIEMENS", verbal element protected for the classes in connection with multiple services throughout (among others) the chemical and electronics industry (evidenced by an extract from the WIPO Madrid Registry).

The disputed domain names <siemensapp.com> and <siemensios.com> contains the Complainant's trademark "SIEMENS" in its entirety and add the generic terms "APP" (abbreviation smartphone or computer application) and "IOS" (usual abbreviation for "iPhone Operating System"). No further adjustments were made to distinguish it from the Complainant's trademark.

The addition of the gTLD <.com> does not change the overall impression of the disputed domain names either.

Past panels have declared that when the trademark is recognizable within the disputed domain names, the addition of generic terms ("APP" and "IOS") would not prevent a finding of confusing similarity.

Therefore, the disputed domain names are considered to be confusingly similar to the relevant trademark.

As a result, the Panel finds that the Complainant has satisfied Paragraph 4(a)(i) of the UDRP.

2. THE RESPONDENT´S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAMES

The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain names.

According to Paragraph 4(a)(ii) of the UDRP, the Complainant shall make a case that the Respondent lacks rights and legitimate interests in the disputed domain names. If the Complainant fulfils this demand the burden of proof shifts to the Respondent and so the Respondent shall demonstrate rights or legitimate interests in the disputed domain names. If the Respondent fails to prove its rights or legitimate interests, it is assumed that the Complainant satisfied the element of Paragraph 4(a)(ii) of the UDRP (see CAC Case No. 102430, Lesaffre et Compagnie v. Tims Dozman). Moreover, past panels were of the view that it is difficult or sometimes impossible to prove negative facts, i.e., absence of rights or legitimate interest on the part of the Respondent. In this respect, past panels referred to the WIPO Case No. D2000-1769, Neusiedler Aktiengesellschaft v. Vinayak Kulkarni. Within the meaning of Paragraph 4(a)(ii) of the UDRP, once the complainant has made something credible (prima facie evidence), the burden of proof shifts to the Respondent to show that he has rights or legitimate interests in the domain name at issue by providing concrete evidence.

In the CAC Case No. 102279, FileHippo s.r.o. v. whois agent, the panel stated that "[i]n the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain names. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under Paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain names, the Panel concludes that the Complainant has satisfied the requirements of Paragraph 4(a)(ii) of the Policy."

In the Forum Case No. FA 1781783, Skechers U.S.A. Inc. v. Chad Moston / Elite Media Group, the panel stated that: "where a response is lacking, WHOIS information can support a finding that the respondent is not commonly known by the disputed domain names".

In the present case, the Complainant claims that the Respondent is not related in any way to the Complainant, the Respondent is not and has never been one of the Complainant's representatives, employees, or one of its licensees and the Complainant has never granted any license nor authorization to the Respondent to use the Complainant's trademark or apply for registration of the disputed domain names.

The Complainant submitted an extract from the WIPO Madrid Registry containing details related to international trademark registration for the word "SIEMENS", predating the date of the disputed domain names registration on 29 July 2023 (proven by extract from the WIPO Madrid Registry).

Past panels have declared the high distinction and reputation of the "SIEMENS" trademark worldwide (see, e.g., the CAC Case No.

106021, Siemens Trademark GmbH & Co. KG. v. Bei Ping Jiang).

There is no evidence that would lead to the conclusion that the Respondent is known by the disputed domain names. The Respondent is not identified in the WHOIS information as it is apparent from WHOIS information.

Recently, the disputed domain names were connected with fraudulent websites for offering goods of (allegedly) the Complainant (proven by Screenshots of websites under siemensapp.com and siemensios.com).

The Respondent did not reply to the Complaint and so failed to demonstrate his rights or legitimate interests in the disputed domain names.

Therefore, the Panel finds that the Complainant has satisfied the requirement under Paragraph 4(a)(ii) of the UDRP.

3. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAMES IN BAD FAITH

The Panel finds that the Respondent registered and used the disputed domain names in bad faith.

The WIPO Overview 3.0 in Paragraph 3.1.1 states: “If on the other hand circumstances indicate that the respondent’s intent in registering the disputed domain names was in fact to profit in some fashion from or otherwise exploit the complainant’s trademark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the respondent’s likely knowledge of the complainant’s rights, (ii) the distinctiveness of the complainant’s mark, […], (vii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name, […].

The WIPO Overview 3.0 in Paragraph 3.1.4 states: “Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”

The WIPO Overview 3.0 in Paragraph 3.3 states: “From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding.”

In the WIPO Case No. D2006-1440, National Football League v. Thomas Trainer, the panel stated: “when a registrant, such as the Respondent here, obtains a domain name that is confusingly similar to a famous mark, with no apparent rights or legitimate interests in the name, and then fails to respond to infringement claims and a UDRP Complaint, an inference of bad faith is warranted.”

In the WIPO Case No. D2015-1167, Valero Energy Corporation and Valero Marketing and Supply Company v. Sharad Bhat, the panel stated that: “In accordance with previous UDRP decisions, inactive or passive holding of a domain name, under the circumstances does not prevent a finding of bad faith use.”

In the Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants, the panel stated that: “The Panel finds that Respondent’s lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy ¶¶ 4(c)(i) and (iii).”

In the present case, the Complainant has established international trademark registration comprising of the “SIEMENS”, a verbal element protected for the classes in connection with multiple services throughout (among others) the chemical and electronics industry with the priority right since 1995. The disputed domain names consist of the Complainant’s trademark wording in its entirety. The addition of the “APP” and “IOS” verbal elements does not change the overall impression. Therefore, the disputed domain names are confusingly similar to a highly distinctive earlier trademark of the Complainant.

Past panels have declared that the “SIEMENS” trademark is well-known worldwide (see, e.g., the CAC Case No. 106021, Siemens Trademark GmbH & Co. KG. v. Bei Ping Jiang).

This Panel states that the Respondent must have been aware of the Complainant’s trademark and its reputation before the registration of the disputed domain names on 29 July 2023.

The Respondent is not identified in the WHOIS information and so cannot be recognized under the disputed domain names (evidenced by WHOIS information). Moreover, the Respondent did not reply to the Complaint and so failed to demonstrate his/her rights or legitimate interests in the disputed domain names.

Recently, the disputed domain names related to websites where the “SIEMENS” trademark and logo were displayed (proven by Screenshots of website under siemensapp.com and siemensios.com). This Panel agrees with the Complainant that the Respondent, by creating the likelihood of confusion, took active steps to attract Internet users and convince them that the websites under the disputed domain names were from the Siemens Group. Such use of the disputed domain names cannot represent good faith.

Since the content is removed from the websites, the passive holding of the disputed domain names is considered to be used in a bad faith.

This Panel agrees with the Complainant that Internet users might be confused about the source of the potentially dangerous page regarding the confusing similarity created by the Respondent. As a result, it might bring a detrimental effect on the Complainant’s trademarks and Its reputation.

Following the above-mentioned, the Panel finds that the Complainant has satisfied conditions pursuant to Paragraph 4(a)(iii) of the UDRP.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **siemensios.com**: Transferred
2. **siemensapp.com**: Transferred

PANELLISTS

Name	**Radim Charvát**

DATE OF PANEL DECISION 2024-03-01

Publish the Decision