Decision for dispute CAC-UDRP-106930

Case number	CAC-UDRP-106930
Time of filing	2024-10-17 10:35:51
Domain names	siemensheathineers.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Siemens Trademark GmbH & Co. KG

Respondent

Organization	siemensusadc

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

Complainant states that it is “a trademark holding company, licensing the trademarks at issue within Siemens Group.”; and that the Complaint is based on the following trademark registrations, for which Complainant provided supporting documentation: Int’l Reg. No. 1,357,232 for SIEMENS HEALTHINEERS (registered October 25, 2016); and Int’l Reg. No. 637,074for SIEMENS (registered March 31, 1995).

FACTUAL BACKGROUND

Complainant states that it is “a subsidiary of Siemens Aktiengesellschaft, which is the ultimate mother company of the Siemens Group”; and that Siemens Group was founded “more than 175 years ago” and is “one of the world’s largest corporations, providing innovative technologies and comprehensive know-how to benefit customers in 190 countries,” employing more than 320,000 people “in the fields of Medicine, Automation and Control, Power, Transportation, Logistics, Information and Communications, etc.” Complainant further states that “Siemens Healthineers, another company of the Siemens Group, is one of the largest manufacturers of medical equipment worldwide, with approximately 54.000 employees.”

The Disputed Domain Name was created on August 15, 2024, and, according to Complainant, is not being used in connection with an active website.

PARTIES CONTENTIONS

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant states that it has rights in the trademarks SIEMENS HEALTHINEERS and SIEMENS based on the registrations cited above; that the Disputed Domain Name is confusingly similar to the SIEMENS HEALTHINEERS trademark because the Disputed Domain Name contains the SIEMENS HEALTHINEERS trademark with the exception of a missing letter “L,” which is a misspelling that is a “typical case” of typosquatting; and that the Disputed Domain Name is confusingly similar to the

SIEMENS trademark because the Disputed Domain Name contains the SIEMENS trademark in its entirety and "[d]ue to the high reputation of the trademark 'SIEMENS', the public will automatically associate the domain in dispute to the marks 'SIEMENS' and 'SIEMENS Healthineers' and the Siemens Group."

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, "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'; "Complainant does not have any connection with the Respondent"; "[n]o such relation has ever been established between the Respondent and Siemens AG, or any of its affiliates or subsidiaries"; because the Disputed Domain Name is not used in connection with an active website, "Respondent is not using the domain name in connection with a bona fide offering of goods or services"; and Respondent "has not been commonly known with this domain name."

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, "Respondent clearly knew about the Complainant's earlier rights on the trademarks 'SIEMENS' and 'SIEMENS Healthineers'" because the Disputed Domain Name "identically contains the famous trademark 'SIEMENS', and is highly similar to the Complainant's combined trademark 'SIEMENS Healthineers'," which is "intended to usurp the strong global reputation of these trademarks, in order to confuse the public and cause damage to the Complainant in disrupting its business"; and "the passive holding of a domain name amounts to use in bad faith" where, as here, "a domain name… is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity."

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 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

Identical or Confusingly Similar: Paragraph 4(a)(i):

The trademark citations and documentation provided by Complainant is sufficient to establish that Complainant has rights in the SIEMENS HEALTHINEERS and SIEMENS trademarks.

As to whether the Disputed Domain Name is identical or confusingly similar to the SIEMENS HEALTHINEERS and/or SIEMENS trademarks, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., "siemensheathineers") because "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.11.1.

Here, the Disputed Domain Name contains the SIEMENS trademark in its entirety, and it also contains the SIEMENS HEALTHINEERS trademark in its entirety absent only the letter "L." As set forth in section 1.7 of WIPO Overview 3.0: "[I]n 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." Further, as set

forth in section 1.8 of WIPO Overview 3.0: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element." And, as set forth in section 1.9 of WIPO Overview 3.0: "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."

In light of the above, the Panel finds that the Disputed Domain Name incorporates the entirety of the SIEMENS trademark and a dominant feature of the SIEMENS HEALTHINEERS trademark; that both trademarks are recognizable within the Disputed Domain Name; and that the absence of the letter "L" from the Disputed Domain Name is a common, obvious, or intentional misspelling of the SIEMENS HEALTHINEERS trademark.

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, "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'; "Complainant does not have any connection with the Respondent"; "[n]o such relation has ever been established between the Respondent and Siemens AG, or any of its affiliates or subsidiaries"; because the Disputed Domain Name is not used in connection with an active website, "Respondent is not using the domain name in connection with a bona fide offering of goods or services"; and Respondent "has not been commonly known with this domain name."

WIPO Overview 3.0, section 2.1, states: "While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Panel finds that Complainant has established its prima facie case and, without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant has 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 registrant's documented out-of-pocket costs directly related to the domain name; or (ii) the registrant 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 registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the registrant's website or location or of a product or service on the registrant's website or location.

As set forth in section 3.1.4 of WIPO Overview 3.0: "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." That is applicable here.

Further, WIPO Overview 3.0, section 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.

"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."

Here, the SIEMENS trademark and the SIEMENS HEALTHINEERS trademark appear to be distinctive and to have a high degree of reputation given that they are protected by international registrations that are eight to 29 years old and used by a company that Complainant describes as "is one of the largest manufacturers of medical equipment worldwide, with approximately 54.000 employees." Further, Respondent did not submit a response or provide any evidence of actual or contemplated good-faith use. And it is implausible to conceive of any good faith use to which the Disputed Domain Name may be put.

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **siemensheathineers.com**: Transferred

PANELLISTS

Name	**Douglas Isenberg**

DATE OF PANEL DECISION 2024-11-20

Publish the Decision