Decision for dispute CAC-UDRP-106929

Case number	CAC-UDRP-106929
Time of filing	2024-10-17 09:12:02
Domain names	siemens-helthineers.com

Case administrator

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

Complainant

Organization	Siemens Trademark GmbH & Co. KG

Respondent

Organization	Quan Zhongjun, Juanita Co

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 submitted evidence, which the Panel accepts, showing that it is the registered owner of the trademarks bearing “SIEMENS”, inter alia, the following:

- International Registration No. 1357232 “SIEMENS Healthineers” (fig.) of October 25, 2016 designating various territories;
- International registration No. 637074 “SIEMENS” of March 31, 1995, designating various territories.

The Complainant also owns several domain names containing “SIEMENS“, such as <siemens.com>, <siemens.eu>, <siemens.de>, <siemens-healthineers.com>.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

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 Euro, 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 - to name but a few examples - in the fields of Medicine, Automation and Control, Power, Transportation, Logistics, Information and Communications, etc.

The trademarks “SIEMENS” and “SIEMENS Healthineers” of the Complainant are used in relation to medical services, equipment and solutions.

The Complainant owns international registration No. 1357232 “SIEMENS Healthineers” (fig.) of October 25, 2016, designating various territories and claiming protection for goods and services in classes 5, 9, 10, 35, 37, 42 and 44, as well as the international

registration no. 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 disputed domain name <siemens-helthineers.com> was registered on October 24, 2023 and resolves to an inactive page.

PARTIES CONTENTIONS

COMPLAINANT:

THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR

The Complainant states that the disputed domain name <siemens-helthineers.com> is confusingly similar to its trademarks “SIEMENS“ and “SIEMENS Healthineers“, as the Complainant’s trademark “SIEMENS“ is reproduced identically within the contested domain name.

Furthermore, the Complainant states that the disputed domain name <siemens-helthineers.com> is highly similar or nearly identical to the “SIEMENS Healthineers“ mark, as it is reproduced integrally within the contested domain with the omission of the letter “a“ from “healthineers“. The Complainant explains that this misspelling is a typical case of “typo-squatting”, where the infringing domain name differs in merely one or two letters from the Complainant's mark, by referring to following previous cases involving domains differing from the respective earlier rights in one or two letters: Red Bull GmbH. v. Grey Design, (WIPO Case No. D2001-1035 - finding the domain name “redbul.com” confusingly similar to complainant's trademark “RED BULL”), AltaVista Company v. Saeid Yomtobian, (WIPO Case No. D2000-0937 - finding the misspellings “altabista.com” and “altaista.com” confusingly similar to the ALTAVISTA mark); and Breitling SA, Breitling USA Inc. v. Acme Mail, (WIPO Case No. D2008-1000 where the respondent had registered the domain name “bretling.com” which differs from the trademark “BREITLING” only in the lack of the letter “i”).

The Complainant explains that due to the high reputation of the trademark “SIEMENS”, the public will automatically associate the disputed domain name to the marks “SIEMENS” and “SIEMENS Healthineers” and the Siemens Group. The Internet users will think that this domain name and a potential corresponding website belongs to the Siemens Group, and more precisely its subsidiary Siemens Healthineers. This is reinforced by the fact that the Siemens Group is the owner of the domain names “siemens-healthineers.com” and “siemens-healthineer.com”, etc.

NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent has no rights or legitimate interests in the domain name <siemens-helthineers.com>, as 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 trademarks “SIEMENS” or “SIEMENS Healthineers”. The Complainant states that neither it, or its affiliates or subsidiaries have ever been in any connection with the Respondent.

The Complainant states that the disputed domain name <siemens-helthineers.com> is not in use and is parked with the Registrar. When accessing <siemens-helthineers.com> users encounter the message “This site can’t be reached”. Thus, the Respondent is not using the domain name in connection with a bona fide offering of goods or services. It has not been commonly known with this domain name.

The Complainant contends that due to the long extensive use of the mark “SIEMENS” throughout the world, decades prior to the registration of the domain name <siemens-healthirneers.com>, 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 judgements in the past (cf. Siemens AG v. Dorofeev, Konstantin, WIPO Case No. D2013-0923, Siemens AG v. Mr. Ozgul Fatih, WIPO Case No. D2010-1771 and Nokia Corporation, Siemens AG, Nokia Siemens Networks Oy v. Chen Fang Fang, WIPO Case No. D2008-1908).

Under these circumstances, the nature of the disputed domain name carries a risk of implied affiliation between the Respondent, which seems to be the Respondent’s actual intention in registering this domain name. Thus, the Respondent cannot make any legitimate non-commercial or fair use of the domain name and there is nothing to suggest that the Respondent would not aim at misleadingly diverting consumers and Internet users to other sites, searching for the legitimate websites of the Siemens Group, who may mistype the Complainant's mark “Siemens Healthineers”.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant asserts that the disputed domain name < siemens-helthineers.com > was registered in bad faith, as the Respondent clearly knew about the Complainant’s earlier rights on the trademarks “SIEMENS” and “SIEMENS Healthineers”, and the Respondent 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 by deliberately registering the disputed domain name.

The Complainant explains that the disputed domain name was registered with the intention of taking predatory advantage of the goodwill of the Siemens Group, in order to divert Internet traffic, intended for the legitimate website of Siemens Healthineers, to the Respondent's potential website, bearing in mind its high similarity to the Complainant’s “SIEMENS“ and “SIEMENS Healthineers“ trademarks.

The Complainant states that 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>, <siemens healthineers.com>. This also shows that the Respondent chose the domain name <siemens helthineers.com>, precisely to create the impression to internet users that this is another legitimate domain address, owned and used by the Complainant or its affiliate companies.

Furthermore, the Complainant expresses that the disputed domain does not show any content and even holding a domain name passively amounts to use in bad faith, as accepted in previous cases (Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; Siemens AG v. yinsi baohu yi kai qi / li zhe, zhe li, WIPO Case No. D2017-0375), and explained in “WIPO Jurisprudental Overview 3.0“, 3.1.4“.

Moreover, the Complainant explains that due to 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 elements “Siemens” and “He(a)lthineers” for its domain name as a mere coincidence.

Additionally, the Complainant states that the bad faith of the Respondent is also indicated by the scarcity of information on it on the Whois database, since all the Respondent’s details are privacy protected, identifying the Respondent becomes practically impossible.

Based on these grounds, the Complainant concludes the Respondent has registered and is using the disputed domain name in bad faith.

RESPONDENT:

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 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

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 this context, the Panel also notes that the burden of proof 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.

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

- the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

- the disputed domain name has been registered and is being used in bad faith.

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

1. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of the registered "SIEMENS" and "SIEMENS Healthineers" trademarks.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's "SIEMENS" and "SIEMENS Healthineers" trademarks as it incorporates the Complainant's "SIEMENS" trademark in its entirety (PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS), WIPO Case No. D2003-0696).

Moreover, the disputed domain, <siemens-helthineers.com>, consists of a misspelling of the SIEMENS HEALTHINEERS trademark. 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 (Section 1.9, WIPO Overview 3.0).

Furthermore, the addition of the gTLD ".COM" is not enough to abolish the similarity as it is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (Section 1.11.1, WIPO Overview 3.0).

The Panel is of the opinion that the Internet users will easily fall into false impression that the disputed domain name is an official domain name of the Complainant. The Panel recognizes the Complainant's rights and concludes that the disputed domain name is confusingly similar with the Complainant's trademark. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy are met.

2. NO 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 domain name.

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 the respondent of the dispute, the use or making 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) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

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

Thus, if the respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the complainant will have failed to discharge its burden of proof and the complaint will fail. The burden is on the complainant to demonstrate a prima facie case that the respondent does not have rights or legitimate interests in the disputed domain name. Once the complainant has made out a prima facie case, then the respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

The Complainant argues that the Respondent has no rights or legitimate interests in the domain <siemens-helthineers.com>. The Panel is satisfied that the Complainant's "SIEMENS" and "SIEMENS Healthineers" trademarks are well-known and the Complainant has been using its trademark for many years, while the Respondent registered the disputed domain name recently without authorization.

In 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 trademark in the disputed domain name.

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 name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

3. BAD FAITH

The Panel concludes that the Complainant's “SIEMENS” and “SIEMENS Healthineers“ trademarks are of distinctive character and is well-known in its sector. Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in well-known “SIEMENS” and “SIEMENS Healthineers“ trademarks, the Respondent, was or should have been aware of the Complainant and its trademarks at the time of registration of the disputed domain name (see e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107). Referring to Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226, the Panel believes that the awareness of the Complainant’s trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Moreover, at the time of submitting the Complaint, and as of the date of this Decision, the disputed domain has been resolving to an inactive website. In the overall circumstances of this case, the Panel finds that the Respondent’s passive holding of the disputed domain name supports the finding of bad faith. As numerous UDRP panels have held, passive holding, under the page 5 totality of circumstances of the case, can constitute a bad faith use under the Policy.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element under 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-helthineers.com**: Transferred

PANELLISTS

Name	**Mrs Selma Ünlü**

DATE OF PANEL DECISION 2024-11-25

Publish the Decision