Decision for dispute CAC-UDRP-107102

Case number	CAC-UDRP-107102
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Domain names	siemens-energyuae.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Siemens Trademark GmbH & Co. KG.

Complainant representative

Organization	cv SNB-REACT ua

Respondent

Organization	Kotha Bhada dot com pvt ltd

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 is owner of the following trademarks:

- the international trademark (figurative) SIEMENS no. 637074 in Nice classes 01, 03, 05, 06, 07, 08, 09, 10, 11, 12, 14, 16, 17, 20, 21, 28, 35, 36, 37, 38, 40, 41, 42, registered since March 31, 1995;
- the international trademark (figurative) SIEMENS ENERGY no. 1548516 in Nice classes 01, 03, 06, 07, 09, 11, 17, 35, 36, 37, 38, 39, 40, 41, 42, registered since June 16, 2020.

The above-mentioned rights of the Complainant are hereinafter referred to as the SIEMENS Trademark and the SIEMENS ENERGY Trademark.

FACTUAL BACKGROUND

The Complainant is part of the German multinational technology conglomerate, SIEMENS AG, founded in 1847 and focused on industrial automation, distributed energy resources, rail transport and health technology. It is the largest industrial manufacturing company in Europe, and holds the position of global market leader in industrial automation and industrial software.

The disputed domain name was registered on June 21, 2024 by sagar poudel / Kotha Bhada dot com pvt ltd, residing in Nepal. It is

inactive, not resolving to any website.

PARTIES CONTENTIONS

The Complainant contends that all 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 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

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

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

I. THE COMPLAINANT'S RIGHTS AND THE CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARKS

The Complainant has established that it has rights in the SIEMENS Trademark and the SIEMENS ENERGY Trademark.

The disputed domain name consists of the following elements: the wording "SIEMENS ENERGY" divided by a hyphen, plus the geographical term "UAE", and the top-level domain (TLD) ".COM".

In UDRP disputes, the test for identity or confusing similarity involves a straightforward, reasoned comparison between the complainant's trademark and the disputed domain name. This typically entails a side-by-side evaluation of the domain name and the textual elements of the relevant trademark to determine if the mark is recognizable within the domain name. When a domain name fully incorporates a trademark, or at least a dominant feature of it is evident in the domain name, the domain is generally deemed confusingly similar to the mark for the purposes of UDRP standing. Adding other terms—whether descriptive, geographical, derogatory, or otherwise—does not prevent a finding of confusing similarity under this first element. The TLD is usually disregarded in determining identity or similarity, as it is simply a technical aspect of registration.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, because it contains the entirety or at least the distinctive part of such marks, namely "SIEMENS", combined with the generic term "ENERGY"

and the geographical term "UAE". These additional terms neither affect the attractive power of the Complainant's marks, nor are sufficient to distinguish the disputed domain name from the Complainant's trademarks.

Accordingly, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's marks.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

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. If the 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 disputed domain name.

The Complainant contends to have no relationship whatsoever with the Respondent. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademarks or to register and use the disputed domain name.

The Respondent has been identified as sagar poudel of Kotha Bhada dot com pvt ltd, having his address in Nepal. There is no evidence available that the Respondent, as an individual, business, or other organization, has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

The disputed domain name, registered on June 21, 2024, incorporates the Complainant's trademarks, combined with a generic and a geographical term, and, thus is confusingly similar to such marks.

UDRP panels have found that domain names identical or confusingly similar to a complainant’s trademark carry a high risk of implied affiliation. A domain name consisting of a trademark plus an additional term (descriptive, geographical, pejorative, meaningless, or otherwise) at the second- or top-level is seen as tending to suggest sponsorship or endorsement by the trademark owner. Thus, UDRP panels have largely held that such composition cannot constitute fair use.

Moreover, the disputed domain name is inactive, not resolving to any website.

Therefore, the Panel is unconvinced that, before any notice of the dispute, the Respondent used or prepared to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services or is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademarks.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response to the Complaint and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

III. THE REGISTRATION AND THE USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Complainant has sufficiently demonstrated to own rights in the following prior and well-known marks: SIEMENS Trademark since 1995 and in the SIEMENS ENERGY Trademark since 2020.

The disputed domain name is to be considered confusingly similar to the Complainant's trademarks, since it incorporates the entirety or at least the distinctive part of such marks (i.e., "SIEMENS"). The addition of the generic and descriptive term "ENERGY", the geographical term "UAE" and the TLD “.COM” (technical requirement of the registration) are not sufficient elements to escape the finding of confusing similarity between the disputed domain name and the Complainant’s trademarks. Internet users might be misled and believe that the disputed domain name and any related web services (website, e-mail, etc.,) are operated, sponsored or endorsed by the Complainant.

UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

Given the distinctiveness and reputation of the Complainant's prior marks acquired during the years, it is inconceivable that the Respondent could have registered the disputed domain name for a mere chance without actual knowledge of the Complainant's rights in such mark and the intention to exploit such reputation by diverting traffic away from the Complainant’s website.

Even assuming that the Respondent had no knowledge of the Complainant’s prior marks at the time of registration of the disputed domain name (which is highly unlikely), he omitted to verify that the disputed domain name would have infringed the Complainant's earlier rights or, even worse, he verified it and deliberately proceeded with the infringing registration.

Under paragraph 2 of the Policy, it is the Respondent’s responsibility to determine whether the domain name registration infringes or violates third party's rights. By registering the disputed domain name confusingly similar with the Complainant’s mark, the Respondent has violated, inter alia, the cited provision of the Policy.

As for the use of the disputed domain name, the Complainant has submitted evidence and the Panel has verified that the disputed domain name does not resolve to any active website.

UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see WIPO Case No. D2000-0003 Telstra Corporation Limited v. Nuclear Marshmallows and WIPO Case No. D2000-0400 CBS Broadcasting, Inc. v. Dennis Toeppen).

The following factors were considered by this Panel when applying the passive holding doctrine in the present case:

- the degree of distinctiveness and/or reputation of the Complainant's trademarks;
- the failure of the Respondent(s) to submit a response or to provide any evidence of actual or contemplated good faith use;
- the implausibility of any good faith use to which the disputed domain name may be put.

In view of all circumstances of this case, the Panel is dissuaded that it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as by being an infringement of the Complainant's marks under trademark law and/or an infringement of consumer protection legislation.

The Complainant has, therefore, discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the Policy).

The disputed domain name is to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **siemens-energyuae.com**: Transferred

PANELLISTS

Name	**Ivett Paulovics**

DATE OF PANEL DECISION 2025-01-04

Publish the Decision