

ADMINISTRATIVE PANEL DECISION

Siemens AG and Siemens Trademark GmbH & Co. KG v. David Marcu
Case No. D2022-1589

1. The Parties

The Complainants are Siemens AG and Siemens Trademark GmbH & Co. KG, Germany, represented by Müller Fottner Steinecke Part mbB, Germany.

The Respondent is David Marcu, United States of America.

2. The Domain Name and Registrar

The disputed domain name <siemenshealthsineers.com> (the “Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2022. On May 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 6, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 24, 2022.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on July 4, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

Siemens AG (the “Complainant 1”) is an electrical engineering and technological services company operating in such fields as medicine, automation and control, power, transportation, logistics, information and communications.

Siemens Trademark GmbH & Co. KG (the “Complainant 2”) is an affiliated trademark holding company of the Complainant 1.

The Complainant 2 is the owner of numerous SIEMENS and SIEMENS HEALTHINEERS trademark registrations, including:

- the European Union Trade Mark Registration SIEMENS HEALTHINEERS No. 015400849 registered on November 21, 2018;
- the International Trademark Registration SIEMENS No. 637074 registered on March 31, 1995.

The Complainants’ affiliated company Siemens Healthcare GmbH is also the owner of the domain names incorporating the SIEMENS HEALTHINEERS trademark, including <siemens-healthineers.com> and <siemens-healthineer.com>.

The Respondent registered the Domain Name on April 3, 2022.

In accordance with the screenshots attached to the Complaint, at the time of submitting the Complaint, the Domain Name resolved to an inactive website. As of the date of this Decision, the Domain Name still resolves to an inactive website.

5. Parties’ Contentions

A. Complainant

The Complainants request that the Domain Name be cancelled. According to the Complainants, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainants submit that the Domain Name is confusingly similar to the SIEMENS and SIEMENS HEALTHINEERS trademark registrations of the Complainants.

Second, the Complainants argue that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainants submit that the Domain Name was registered and is being used in bad faith.

B. Respondent

The Respondent did not reply to the Complainants’ contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) the respondent has no rights or legitimate interests in the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

A. Identical or Confusingly Similar

The first element that the Complainants must establish is that the Domain Name is identical or confusingly similar to the Complainants’ trademark in which they have rights.

The Complainant 2 holds valid SIEMENS and SIEMENS HEALTHINEERS trademark registrations, which precede the registration of the Domain Name.

The Domain Name incorporates the Complainant’s SIEMENS trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *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 Domain Name consists of an obvious misspelling of the SIEMENS HEALTHINEERS trademark, where the letter “s” is added after the letter “i” in the term “healthineers”. 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. See section 1.9, [WIPO Overview 3.0](#).

The generic Top-Level Domain (“gTLD”) “.com” in the Domain Name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Name is confusingly similar to the trademarks of the Complainant 2. Thus, the Complainants have proved the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second requirement the Complainants must prove is that the Respondent has no rights or legitimate interests in the Domain Name.

The respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

(i) that it has used or made 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 prior to the dispute; or

(ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or

(iii) that it intends to make a legitimate, noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that the SIEMENS and SIEMENS HEALTHINEERS trademark registrations of the Complainant 2 predate the Respondent's registration of the Domain Name. There is no evidence in the case file that the Complainant 2 has licensed or otherwise permitted the Respondent to use its trademarks or to register the Domain Name incorporating these trademarks. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name.

Moreover, it does not result from the evidence in the record that the Respondent makes use of the Domain Name in connection with a *bona fide* offering of goods or services, or it makes a legitimate, noncommercial or fair use of the Domain Name without intent for commercial gain.

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainants' *prima facie* case. The Panel concludes that the Complainants have also proved the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The third requirement the Complainants must prove is that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name were registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the rights of the Complainant 2 in the SIEMENS and SIEMENS HEALTHINEERS trademarks predate the registration of the Domain Name. This Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration of the Domain Name, as it has been proven to the Panel's satisfaction that the SIEMENS and SIEMENS HEALTHINEERS trademarks of the Complainant 2 is well-known and unique to the Complainant. Thus, the Respondent could not likely reasonably ignore the reputation of products and services under these trademarks.

Moreover, it does not result from the evidence in the record that Domain Name has been used in any active way to date. As indicated above, at the time of submitting the Complaint, the Domain Name resolved to an inactive website. As of the date of this Decision, the Domain Name still resolves to an inactive website. In the overall circumstances of this case, the Panel finds that the Respondent's passive holding of the Domain Name supports the finding of bad faith. As numerous UDRP panels have held, passive holding, under the

totality of circumstances of the case, can constitute a bad faith use under the Policy.

For the reasons discussed above, the Panel finds that the Complainants have proved the requirements under paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <siemenshealthsineers.com> be cancelled.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: July 18, 2022