

## **ADMINISTRATIVE PANEL DECISION**

Siemens AG, Siemens Trade mark GmbH & Co. KG v. Domains By Proxy, LLC / Godwin Donald  
Case No. DCC2022-0007

### **1. The Parties**

The Complainants are Siemens AG, Germany, and Siemens Trade mark GmbH & Co. KG, Germany (unless otherwise indicated, collectively the “Complainant”), represented by Müller Fottner Steinecke, Germany.

The Respondent is Domains By Proxy, LLC, United States of America (“U.S.”) / Godwin Donald, U.S.

### **2. The Domain Name and Registrar**

The disputed domain name <siemens-healthineers.cc> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 27, 2022. On May 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 31, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on June 3, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on June 8, 2022.

The Center verified that the Complaint together with the amended 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 June 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 12, 2022.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on July 15, 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

The Complainant SIEMENS AG., is a German multinational conglomerate corporation and the largest industrial manufacturing company in Europe.

For the purpose of the Complaint, the Complainant relies on, among other, the following trade mark registrations (Annex 5 to the Complaint):

- International trade mark n°  1357232 in classes 5, 9, 10, 35, 37, 42, and 44, registered on October 25, 2016, designating among other jurisdictions, the U.S.
- European Union trade mark trade mark° 15400849  in classes 1, 5, 7, 9, 10, 16, 25, 35, 36, 37, 38, 41, 42, and 44, registered on November 21, 2018.
- International trade mark n° 637074 SIEMENS in 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, registered on March 31, 1995, designating among other jurisdictions, the U.S.
- International trade mark n° 1320512 HEALTHINEERS in Classes 1, 5, 9, 10, 16, 25, 35, 36, 37, 38, 41, 42, and 44, registered on March 10, 2016, designating among other jurisdictions, the U.S.

The Complainant promotes in particular its activities through the website “www.siemens-healthineers.com”.

Siemens Healthineers is Siemens’ parent company for several medical technology companies. Formerly Siemens Medical Solutions, then Siemens Healthcare, it was rebranded Siemens Healthineers in 2016.

The disputed domain name <siemens-healthineers.cc> was registered on May 13, 2022, through a privacy shield service. After the Complaint was filed, the Registrar notified to the Center that the disputed domain name was reportedly held by an individual with an address in the U.S.

Presently no active webpage resolves from the disputed domain name, but the Complainant did evidence a prior landing page with the content “Sharing Economy”.

#### 5. Parties’ Contentions

##### A. Complainant

The arguments of the Complainant on the three elements of the Policy can be summarized as follows:

First, the Complainant claims that the trade mark SIEMENS is well-known by virtue of long and extensive use. The Complainant SIEMENS AG is one of the world’s largest companies providing innovative technologies and comprehensive know-how to benefit customers in 190 countries. The Complainant argues that the disputed domain name is confusingly similar to its trade marks.

Second, the Complainant asserts that:

- i. the Respondent is not affiliated with, nor authorized by, the Complainant in any way, to register or use the disputed domain name, not having been granted authorization or license to make any use of the

Complainant's trade mark;

ii. the disputed domain name was used to direct users to a landing page, which shows a lack of a *bona fide* offering of goods or services or a legitimate non-commercial or fair use.

Third, on the issue of bad faith, the Complainant claims that the Respondent knew of the Complainant's trade marks. Finally, regarding the use of the disputed domain name in bad faith, the Complainant indicates that at the moment of the submission of the present Complaint, the Respondent clearly does not use or does not seem to have the intention to use the disputed domain name for in connection with a *bona fide* offering of goods and services. In addition, the Respondent's bad faith may be deduced from the use of a privacy service to conceal his name and contact details.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

(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 was registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Complainant has established rights over the trade marks SIEMENS, SIEMENS HEALTHINEERS, and HEALTHINEERS.

The disputed domain name incorporates the Complainant's SIEMENS HEALTHINEERS trade mark entirely and, ignoring the Top-Level Domains, is also identical to the Complainant's domain name <siemens-healthineers.com>.

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate the Respondent's rights or legitimate interests in the disputed domain name. These circumstances are:

i. before any notice of the dispute, the Respondent's use of, or demonstrable preparations 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

ii. the Respondent (as individuals, businesses, or other organizations) has been commonly known by the disputed domain name, in spite of not having acquired trade mark or service mark rights; or

iii. the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at

issue.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any inferences from such default as it considers appropriate, pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prima facie* case against the Respondent which has not been commonly known by the disputed domain name and is not affiliated with the Complainant nor has it been licensed or otherwise permitted to use any of the Complainant's trade mark or to register a domain name incorporating any of those trade marks.

Moreover, considering the Complainant's use of the domain name <siemens-healthineers.com> that incorporates the Complainant's SIEMENS HEALTHINEERS trademark, the nature of the disputed domain name carries a high risk of implied affiliation that cannot constitute fair use.

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

### **C. Registered and Used in Bad Faith**

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, a complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trade mark or service mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or
- (iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent'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 respondent's] website or location or of a product or service on [the respondent's] website or location.

Indisputably, the disputed domain name was specifically designed to target the Complainant. Indeed, it is nearly identical to its trade mark SIEMENS HEALTHINEERS, which is both inherently distinctive and well-known, the Complainant being one of the most famous company in terms of industry, healthcare and energy, this division being Siemens Healthineers.

Therefore, the Panel finds that the disputed domain name was registered in bad faith.

Regarding the use of the disputed domain name, the Complainant relies in particular on the doctrine of bad faith passive holding.

Indeed, there are sufficient elements in this case to consider that the disputed domain name was registered, and is being used - at least passively – in bad faith.

Indeed, the Respondent could not ignore the notable reputation of the trade mark SIEMENS HEALTHINEERS of the Complainant. This presumption of knowledge is confirmed by the mirroring of the Complainant's trade mark and domain name <siemens-healthineers.com>. Anyone faced with the disputed domain name will believe that it hosts a webpage belonging to the Complainant. Also, the Respondent attempted to conceal his identity through the services of a privacy shield and provided incomplete contact details resulting in the courier's inability to deliver the Center's written communication.

Hence, the Panel cannot foresee any possible legitimate use of the disputed domain name: the connection is too obvious.

Accordingly, the third criteria element set out in paragraph 4(a) of the Policy is also satisfied.

## **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 disputed domain name, <siemens-healthineers.cc>, be transferred to the Complainant.

*/Benjamin Fontaine/*

**Benjamin Fontaine**

Sole Panelist

Date: July 29, 2022.