

ADMINISTRATIVE PANEL DECISION

Siemens Energy Global GmbH & Co. KG v. Super Privacy Service LTD c/o
Dynadot / hayal simsek
Case No. D2022-2623

1. The Parties

The Complainant is Siemens Energy Global GmbH & Co. KG, Germany, represented by Müller Fottner Steinecke Rechtsanwälte PartmbB, Germany.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States of America / hayal simsek, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <verscaler.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 19, 2022. On July 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 20, 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 July 27, 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 July 28, 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 July 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 19, 2022.

The Center appointed Edoardo Fano as the sole panelist in this matter on September 2, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to the Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is Siemens Energy Global GmbH & Co. KG, a German company operating in the field of energy technology and having the trademark VERSCALER filed in May 2022, for a products and services offering which is the subject of the following trademarks:

- European Union Trade Mark Application No. 018705845 for VERSCALER, filed on May 19, 2022;
- German Trademark Registration No. 302022108618 for VERSCALER, applied for on May 27, 2022, claiming the priority of the above European Union Trade Mark Application of May 19, 2022, and registered on July 14, 2022.

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on May 19, 2022, that is on the same day and a few hours after the Complainant filed its European Union Trade Mark Application for VERSCALER, and it resolves to a landing page in which the disputed domain name is offered for sale. The disputed domain name was also offered for sale for USD 995.00 on the platform "www.dan.com".

On May 23, 2022, the Complainant instructed its legal representatives to try and buy the disputed domain name for USD 995.00 on the platform "www.dan.com". On the same day the reply from the platform "www.dan.com" was that the transfer was almost completed, but a few hours later the transaction was cancelled and the explanation was that the seller no longer owned the disputed domain name. On May 27, 2022, the Complainant's legal representatives verified the status of the disputed domain name and discovered that it was offered for sale for EUR 18,448,47 on the Registrar's website and, a few minutes later, for USD 36,036.00 on the "www.whois.domaintools.com" website.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is identical to its trademark VERSCALER. A trademark search for VERSCALER reveals that the Complainant's registration and pending applications are the only registrations and/or pending applications for VERSCALER, confirming the distinctiveness of the Complainant's VERSCALER mark.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name. The Respondent is not commonly known by the disputed domain name and it is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.

The Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith, since the latter was bought by the Respondent essentially in order to misleadingly divert the Complainant's customers and to generate financial benefit by selling it, preventing at the same time the Complainant from adopting its trademark VERSCALER in the corresponding ".com" domain name.

B. Respondent

The Respondent has made no reply to the Complainant's contentions and is in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn (see, e.g., *Reuters Limited v. Global Net 2000, Inc*, WIPO Case No. [D2000-0441](#); *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. [D2003-0109](#); *SSL International Plc v. Mark Freeman*, WIPO Case No. [D2000-1080](#); *Altavista Company v. Grandtotal Finances Limited et. al.*, WIPO Case No. [D2000-0848](#); and *Confédération Nationale du Crédit Mutuel, Caisse Fédérale du Crédit Mutuel Nord Europe v. Marketing Total S.A.*, WIPO Case No. [D2007-0288](#)).

6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant is the owner of the trademark VERSCALER and that the disputed domain name is identical to the trademark VERSCALER.

It is well accepted that a generic Top-Level Domain ("gTLD"), in this case ".com", is typically ignored when assessing the confusing similarity between a trademark and a domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain name is identical to the Complainant's trademark, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed 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 circumstances, in particular but without limitation:

- “(i) before any notice to you of the dispute, your use of, or 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving the three elements of the Policy. However, satisfying the burden of proving a lack of the Respondent’s rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a)(ii) of the Policy is potentially quite difficult, since proving a negative circumstance is always more complicated than establishing a positive one. As such, it is well accepted that it is sufficient for the Complainant to make a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production to the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not using the disputed domain name for a legitimate noncommercial or fair use or in connection with a *bona fide* offering of goods or services. The disputed domain name is offered for sale for a consideration higher to the documented fees directly in relation to the disputed domain name.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

Moreover, the Panel finds that the composition of the disputed domain name carries a high risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that “for the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that [the respondent has] registered or 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 the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) [the respondent 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 respondent has]

engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] web site or location or of a product or service on [the respondent's] web site or location."

Regarding the registration in bad faith of the disputed domain name, the latter was registered only a few hours after the Complainant filed its European Union Trade Mark Application for VERSCALER and the Panel finds that the obvious conclusion is that the Respondent likely knew of the Complainant and deliberately registered the disputed domain name.

As regards the use in bad faith of the disputed domain name, redirected to a landing page where it is offered for sale, the Panel finds the offer to sell the disputed domain name in different places for high prices likely in excess of the Respondent's costs related to the disputed domain name that the Panel believes would be paid only by the Complainant (or by someone trying to trade off the Complainant's trademark rights), to be evidence of bad faith within the meaning of paragraph 4(b)(i) of the Policy.

Finally, the Panel considers that the nature of the disputed domain name, which is identical to the Complainant's trademark, and the fact that it was registered immediately after the filing of the trademark (now registered in Germany), further support a finding of bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain name in bad faith.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been 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 <verscaler.com> be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: September 12, 2022