

## **ADMINISTRATIVE PANEL DECISION**

**Siemens AG, Siemens Trademark GmbH & Co. KG v. Privacy service  
provided by Withheld for Privacy ehf / Gunther Koch  
Case No. D2022-2884**

### **1. The Parties**

The Complainants are Siemens AG and Siemens Trademark GmbH & Co. KG, Germany (collectively, the “Complainant”), represented by Müller Fottner Steinecke Rechtsanwälte PartmbB, Germany.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Gunther Koch, Austria.

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

The disputed domain name <siemens-productcert.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 5, 2022. On August 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 5, 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 August 8, 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 August 11, 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 August 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 6, 2022.

The Center appointed Alistair Payne as the sole panelist in this matter on September 9, 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 has its headquarter in Germany and is one of the world's largest companies providing technology and products in the fields of medicine, automation and control, power, transportation, logistics, information and communications to customers in 190 countries since it commenced in business some 150 years ago. The Complainant Siemens Trademark GmbH & Co. KG is the trade mark holding company of Siemens AG. The latter company owns International trade mark registration No. 637074 for SIEMENS registered on March 31, 1995 which is designated in numerous countries including, in particular, Austria. The Complainant also owns various domain names that incorporate its SIEMENS mark, including <siemens.com>, <siemens.eu>, and <siemens.de>.

The Complainant uses the term "Siemens ProductCERT" to designate cyber-security-related services offered by a team of security experts which manages the receipt, investigation, internal coordination, and public reporting of security issues related to Siemens products, solutions, or services.

The disputed domain name was registered on July 30, 2022. It does not resolve to an active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant submits that it owns registered trade mark rights as noted above. It says that the disputed domain name wholly incorporates its SIEMENS mark and is therefore confusingly similar to it for the purposes of the Policy. It asserts that the term "productcert" is a purely descriptive element having the meaning of product certification and referring to product certification services. The Complainant says that in circumstances that it provides such services as part of its security business the addition of this term only serves to further confuse Internet users and therefore does not prevent a finding of confusing similarity.

The Respondent says that it is not and has never been one of the Complainants' representatives, employees, or one of its licensees and is not otherwise authorised to use the trade mark SIEMENS and it confirms that the Complainant does not have any connection with the Respondent. It notes that the disputed domain appears to be not in use for the time being. It says that when entering the URL "www.siemens-productcert.com", users receive the message "Dies ist keine sichere Verbindung. Hacker könnten versuchen, deine Daten von www.siemens-productcert.com zu stehlen", which it suggests in English translates as: "This is not secure connection. Hackers could try to steal your data from www.siemens-productcert.com". Therefore, says the Complainant, the Respondent does not use and is not using the disputed domain name in connection with a *bona fide* offering of goods or services. Further, says the Complainant, in view of the long and extensive use of the mark SIEMENS throughout the world for decades prior to the registration of the disputed domain name, the Respondent cannot make any legitimate noncommercial or fair use of the disputed domain name and there is nothing to suggest that the Respondent would not aim at misleadingly diverting consumers and Internet users searching for the Complainant's website. In addition, asserts the Complainant, the nature of the disputed domain name carries a high risk of implied affiliation. For these reasons, the Complainant is of the opinion that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant submits that the disputed domain name was registered in bad faith as the Respondent knew or should have known about the Complainants' earlier rights in the SIEMENS trade mark. In deliberately registering the disputed domain name which wholly contains the famous SIEMENS trade mark,

the Complainant says that the Respondent intended to trade on the strong reputation throughout the world attaching to the Complainant's trade mark in order to confuse the public and to cause damage to the Complainant in disrupting its business by diverting Internet traffic intended for the Complainant to the Respondent's future website or email address. It says that, in this context. The passive use of the disputed domain name amounts to use in bad faith and that this is further confirmed by the Respondent's use of a privacy service to hide its name and contact details.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Complainant has demonstrated that it owns International trade mark registration No. 637074 for SIEMENS registered on March 31, 1995 which is designated in numerous countries including, in particular, Austria. The disputed domain name wholly contains the Complainant's SIEMENS mark and is therefore confusingly similar to it under the Policy. The addition of a hyphen and the term "productcert" does not prevent a finding of confusing similarity. As a result, the Panel finds that the Complaint succeeds under this element of the Policy.

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

The Respondent has submitted that it is not and has never been one of the Complainants' representatives, employees, or one of its licensees. It has also asserted that the Respondent is not otherwise authorised to use the trade mark SIEMENS and it has confirmed that the Complainant does not have any connection with the Respondent. It has further submitted that the disputed domain name is not in current use and therefore is not being used in relation to a *bona fide* offering of goods or services. It has further asserted that in view of the long and extensive use of the SIEMENS mark by the Complainant, the Respondent cannot make any legitimate noncommercial or fair use of the disputed domain name and there is nothing to suggest that the Respondent would not use the disputed domain to misleadingly divert consumers and Internet users searching for the Complainant's website.

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. As the Respondent has failed to respond to or to rebut the Complainant's case and for the reasons set out under Part C below, the Panel finds that the Complaint also succeeds under this element of the Policy.

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

The disputed domain name was registered on July 30, 2022, many years after the registration of the Complainant's trade mark registration as described above and more than a century since it commenced its business. The SIEMENS mark is distinctive in relation to the technology and products and services provided by the Complainant. As noted above, the Complainant uses the term "Siemens ProductCERT" to designate cyber-security-related services which are offered by a team of security experts who manage the receipt, investigation, internal coordination, and public reporting of security issues related to Siemens products, solutions, or services. Considering the degree of renown attaching to the Complainant's mark, that it operates a business under a name that is almost identical to the disputed domain name, and that its mark is registered in Austria where the Respondent is based, the Panel finds that it is more likely than not that the Respondent was well aware of the Complainant's mark and business when it registered the disputed domain name in July 2022.

Currently the disputed domain name resolves to an Internet browser warning page featuring the note as set out under Part 5 above. Section 3.3 of the [WIPO Overview 3.0](#) sets out the circumstances in which past panels have found passive holding of a domain name in bad faith as follows:

“While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

In this case the Complainant’s SIEMENS mark is highly distinctive and has acquired very considerable reputation as a result of substantial use over many years. The Respondent has failed to submit a response or to provide any evidence of the actual or contemplated good faith use of the disputed domain name and the disputed domain name does not resolve to an active website providing any further information. The Panel notes that the Respondent, who controls the disputed domain name, could use it for illegitimate purposes at any moment. Further, the Respondent used a privacy service in an effort to conceal its identity prior to the Registrar’s verification. Finally, without the Complainant’s express consent and authority, there is no plausible use to which the disputed domain name could be put in good faith, noting that the Complainant’s mark is a distinctive, well-reputed term and that the disputed domain name is almost exactly identical to the name of the “Siemens ProductCERT” cyber security service of the Complainant. In these circumstances there is a very strong inference, which has not been rebutted by the Respondent, that it registered the disputed domain name with a view to using it to interfere with the Complainant’s business service or for its own illegitimate purposes.

Accordingly, the Panel finds that the disputed domain name has been registered and used in bad faith and that the Complaint also succeeds under this element 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 disputed domain name <siemens-productcert.com> be transferred to the Complainant.

*/Alistair Payne/*

**Alistair Payne**

Sole Panelist

Date: September 20, 2022