

ADMINISTRATIVE PANEL DECISION

Siemens Trademark GmbH & Co. KG. v. Randy Palmer
Case No. D2023-0346

1. The Parties

The Complainant is Siemens Trademark GmbH & Co. KG., Germany, internally represented.

The Respondent is Randy Palmer, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <siemen-healthneer.com> (the "Disputed Domain Name") is registered with Google LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on January 25, 2023. On January 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On the same day, 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 (Unknown), and from the Respondent identified by reference to Annex 1 to the Complaint (Privacy Inc. Customer 7151571251), and contact information in the Complaint. The Center sent an email communication to the Complainant on January 27, 2023, 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 amendment to the Complaint on January 30, 2023.

The Center verified that the Complaint together with the amendment to 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 February 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 9, 2023.

The Center appointed Nicholas Weston as the sole panelist in this matter on March 27, 2023. 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 is a trademark holding company, licensing the trademarks at issue within Siemens Group, one of the world's largest corporations, with turnover in 2022 of EUR 72 billion, and employing about 300,000 people worldwide. Siemens Healthineers AG, another company of the Siemens Group, is one of the world's largest manufacturers of medical equipment, with approximately 54,000 employees. The Complainant holds a number of registrations for the trademarks SIEMENS and SIEMENS HEALTHINEERS in numerous jurisdictions including, for example: International Trademark Registration No. 637074 for SIEMENS, registered on March 31, 1995, and European Union Trademark Registration No. 015400849 for SIEMENS HEALTHINEERS registered on November 21, 2018.

The Complainant owns other domain names that comprise or contain the trademarks SIEMENS or SIEMENS HEALTHINEERS, including the domain name <siemens-healthineers.com>.

The Disputed Domain Name was registered on January 2, 2023, and resolves to an inactive webpage.

5. Parties' Contentions

A. Complainant

The Complainant cites its trademark registrations internationally for the marks SIEMENS and SIEMENS HEALTHINEERS as *prima facie* evidence of ownership.

The Complainant submits that its rights in the marks SIEMENS and SIEMENS HEALTHINEERS predate the Respondent's registration of the Disputed Domain Name. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates distinctive elements of the marks SIEMENS and SIEMENS HEALTHINEERS trademarks and that the confusing similarity is not removed by the omission of the letter "s" from the word "siemens" and omission of the second letter "i" and the second letter "s" from the word "healthineers", or the addition of the generic Top-Level Domain ("gTLD") ".com".

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it resolves to a webpage that is inactive and because it allegedly has been used in a phishing scheme involving impersonation of an actual employee of SIEMENS HEALTHINEER in an attempt to extract fraudulent payments.

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and Rules, and submits that "the Respondent has not limited itself in the passive registration of this domain name, but has rather taken active steps into misleading Siemens partners, requesting them to proceed to payments to - what the subject would believe to be - Siemens Healthcare GmbH (Siemens Healthineers), using the [Disputed Domain Name as part of an email address]".

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

- (i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has produced sufficient evidence to demonstrate that it has registered trademark rights in the mark SIEMENS HEALTHINEERS in numerous jurisdictions. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the SIEMENS HEALTHINEERS trademark, the Panel observes that the Disputed Domain Name comprises: (a) the words “siemens” and “healthineers” from the Complainant’s trademark SIEMENS HEALTHINEERS, with the second letter “s” omitted from the word “siemens” and the second letter “i” and the second letter “s” omitted from the word “healthineers”; (b) followed by the gTLD “.com”.

It is well established that the gTLD used as technical part of a domain name may be disregarded. The relevant comparison to be made is with the Second-Level portion of the Disputed Domain Name, specifically: “siemenhealthneer” (see section 1.11 of the [WIPO Overview 3.0](#)).

The Panel finds that the omission of the letter “s” from the word “siemens” to form the word “siemen” and the letters “i” and “s” from the word “healthineers” to form the word “healthneer” does not avoid a finding of confusing similarity between the Disputed Domain Name and the Complainant’s trademark. It is well established that in cases where at least a dominant feature of the relevant mark of a complainant is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden on the Complainant to establish the absence of the Respondent’s rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see: [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because (i) the Disputed Domain Name resolved to an inactive webpage so there is no evidence of any fair or noncommercial or *bona fide* use; (ii) the Respondent has not acquired or owned any trademark or service mark rights in the name “siemenhealthneer”, and has not been commonly known by the name “siemenhealthneer”; and (iii) the Respondent is not 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 Complainant’s trademarks. The Complainant submits that “[i]n view of the long and extensive use of the mark ‘SIEMENS’ throughout the world, decades prior to the registration of the domain name

'www.siemens-healthineer.com', it is obvious that the Respondent is well aware of the existence of this mark". The Panel accepts the Complainant's uncontested submission and evidence that the Disputed Domain Name resolves to an inactive webpage and is satisfied that the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. In the absence of a response, this Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Panel finds for the Complainant on the second element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy requires that the Complainant must also demonstrate that the Disputed Domain Name has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both of these conjunctive requirements.

The Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Name in bad faith.

On the issue of registration, taking into account the composition of the Disputed Domain Name, the Panel is satisfied that the Respondent knew of the Complainant's trademark SIEMENS HEALTHINEERS when it registered the Disputed Domain Name (see *Siemens Aktiengesellschaft v. Ahmed Hassan*, WIPO Case No. [D2016-1119](#) ("SIEMENS is a widely known trade mark with a well-established and widespread international reputation"); *Siemens AG v. WhoisGuard, Inc. / Scott A. Davis*, WIPO Case No. [D2020-1445](#) ("Given the circumstances of the case, in particular the extent of use and reputation of the Complainant's trademark SIEMENS, as well as the distinctive nature of the Complainant's combined SIEMENS HEALTHINEERS mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's marks"). On any view, the Respondent in this proceeding cannot credibly claim to have been unaware of the mark (see [WIPO Overview 3.0](#), section 3.2.2).

In addition, the gap of several years between registration of the Complainant's trademark and the Respondent's registration of the Disputed Domain Name is a further indicator of bad faith. (See *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#)). In this case, the Complainant's rights in its trademark predate any rights that could possibly flow from the Respondent's registration of the Disputed Domain Name by at least 27 years.

On the issue of use, the Complainant's evidence is that the Disputed Domain Name does not resolve to an active website and that there have been no demonstrative preparations to use the Disputed Domain Name for an active webpage. The fact that the Disputed Domain Name does not resolve to an active website does not prevent a finding of bad faith (see [WIPO Overview 3.0](#), section 3.3.). On the evidence before it, the Panel is unable to consider any plausible good faith use to which the Respondent could put the Disputed Domain Name and notes that the circumstances of this case, including the strong reputation of the Complainant's trademark and the absence of any response or evidence of good faith use, support a finding of bad faith.

The Complainant's evidence is that the Disputed Domain Name has been used in attempted phishing by using the Disputed Domain Name to attempt to fraudulently obtain payments by sending emails using the Disputed Domain Name purporting to come from an actual employee of the Complainant. In line with prior UDRP panel decisions, the Panel finds that the use of a domain name for *per se* illegitimate activity such as phishing supports a finding of bad faith (see [WIPO Overview 3.0](#), section 3.1.4).

In the absence of any evidence to the contrary, this Panel accepts the Complainant's evidence and finds that the Respondent has targeted the Complainant's trademark SIEMENS HEALTHINEERS by the incorporation of a deliberate misspelling of the trademarks in the Disputed Domain Name, without the Complainant's consent or authorization.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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 Disputed Domain Name, <siemen-healthneer.com>, be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: April 4, 2023