

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN-1300692

Complainant: Siemens AG
Respondent: WANG SONGXU
Domain Name: siemenshs.info
Registrar: GoDaddy.com LLC

1. Procedural History

On 18 July 2013, the Complainant submitted a Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules).

On 26 July 2013, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the Complaint. On the same day, the ADNDRC Beijing Office requested the Registrar GoDaddy.com LLC and the ICANN by email for the provision of information at their WHOIS database in respect of the disputed domain name.

On 27 July 2013, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 1 August 2013, the ADNDRC transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the Respondent over the disputed domain name and the ADNDRC had sent the Complaint and its attachments to the Respondent through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC notified the Complainant that the

Complaint has been confirmed and transmitted to the Respondent, and notified the ICANN and the Registrar of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time period. On 28 August 2013, the ADNDRC notified both parties of the Respondent's default, and informed both parties that the ADNDRC would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Zhao Yun on 30 August 2013, the ADNDRC notified the parties on 2 September 2013 that the Panel in this case had been selected. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 2 September 2013, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 16 September 2013. In accordance with the circumstance of this case, the ADNDRC decide to extend the deadline of the decision to October 10, 2013 based on the request of the panel.

Pursuant to Paragraph 11(a) of the Rules, unless otherwise agreed by the parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current disputed domain name Registration Agreement is English and no request has been made to carry out the proceeding in a language other than English, thus the Panel determines English as the language of the proceeding.

2. Factual Background

For the Complainant

The Complainant in this case is Siemens AG. The registered address is

Munich, Germany. The authorized representative of the Complainant in this case is Wang Renhai.

For the Respondent

The Respondent in this case is WANG SONGXU. The address is Taihua shuiyin gongyu Fuzhou Dongjie No.360 of Wei Fang shandong 261041 China. The Respondent is the current registrant of the disputed domain name <siemenshs.info> which was registered on December 20th, 2012 through the registrar, Godaddy.com, LLC according to the Whois information.

3. Parties' Contentions

The Complainant

The Respondent has no right to use "SIEMENS" as its domain name. The Respondent uses the disputed domain name for porno website, there are a lot of sex pictures on this website. People who surfer on this website will inevitably link the Complainant with this porno website in their mind, which will weaken the Complainant's image for good quality products and service. As a world renowned industry company, the Complainant stands for high technical and good quality products. The Complainant is also responsible for its customers, the Respondent uses a similar mark "SIEMENSHS" as the Complainant's trademark "SIEMENS" as its domain name of the porno website, and the domain name consists of the Complainant's trademark "SIEMENS" and other two latin words "HS", which is highly similar to the trademark "SIEMENS". This kind of trademark dilution is trademark tarnishment, which has destroyed the commercial value of our trademark because people will associate it with offensive and obscene behaviors.

As such, the Complainant requests to transfer the disputed domain name <siemenshs.info> from the Respondent to the Complainant.

The Respondent

The Respondent failed to submit a Response within the specified time period.

4. Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

Paragraph 4(a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- 1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- 2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) the domain name has been registered and is being used in bad faith.

Identity or Confusing Similarity

The Complainant is a German company in the field of electronic products. Evidence submitted by the Complainant shows that the Complainant registered “SIEMENS” as the trademark as early as of 1995. This trademark is still within the protection period. The Panel has no problem in finding that the Complainant enjoys the trademark right over “SIEMENS”. The Panel further finds that the registration date of the above trademark is much earlier than the registration date of the disputed domain name (20 December 2012). The Complainant enjoys the prior rights in the trademark “SIEMENS”. The evidence further shows that “SIEMENS” has been recognized as a well-known trademark in China.

The disputed domain name “siemenshs.info” ends with “.info”, this suffix only indicates that the domain name is registered under this gTLD and “.info” is not distinctive. Thus, we will only need to examine the main part of the disputed domain name.

The main part (“siemenshs”) of the disputed domain name consists of two sub-parts: “siemens” and “hs”. The first sub-part is the same as the

Complainant's trademark "SIEMENS". The second sub-part "hs" is only a combination of two letters, which does not have any meaning. The combination of the two sub-parts does not reduce the distinctiveness of "SIEMENS" in the main part of the disputed domain name in view of the fame of the trademark "SIEMENS"; thus, such a combination cannot effectively differentiate the main part of the disputed domain name from the Complainant's trademark "SIEMENS". Therefore, the disputed domain name is confusingly similar to the Complainant's trademark "SIEMENS".

Accordingly, the Panel holds that the Complaint fulfills the condition provided in Paragraph 4(a)(i) of the Policy.

Rights or Legitimate Interests of the Respondent

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant's assertion is sufficient to establish a prima facie case under Policy 4(a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain name. No evidence has shown that the Respondent is using or plans to use the domain name for a bona fide offering of goods or services. The Respondent is not commonly known by the disputed domain name. The evidence submitted by the Complainant further shows that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The act of registering the disputed domain name does not automatically endow any legal rights or interests with the Respondent.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

Bad Faith

Under Paragraph 4(b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use in bad faith:

- (i) Circumstances indicating that you have registered or you have 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 that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

- (ii) You have 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 you have engaged in a pattern of such conduct; or
- (iii) You have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your website 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 your website or location or of a product or service on your website or location.

The Complainant is a famous German company in the field of electronic products. The evidence shows that the Complainant registered the trademark "SIEMENS" as early as of 1995 and that the trademark is still in the protection period. Since its registration, the Complainant has put in a lot of money and efforts in promoting its products and services trademarked with "SIEMENS". Through extensive use, advertisement and promotion, the trademark has achieved a strong reputation. Evidence shows that the Complainant and its trademark are listed in "Best Global Brand 2011" and "Millward Brown BrandZ Top 100". As such, the public has come to recognize and associate the Complainant's trademark as originating from the Complainant and no other.

Since entering the Chinese market, the Complainant has enjoyed great success. Sufficient evidence shows that the Complainant, its trademark and products are very well accepted by Chinese customers. The judgment made by a Chinese People's Court in 2010 put down in clear wordings that the trademark "SIEMENS" is a well-known trademark in China. As a citizen in the Chinese city of Wei Fang, the Respondent should have

known the existence of the Complainant and its trademark “SIEMENS”.
As such, the act of registering the disputed domain name per se has constituted bad faith. Actually, it is impossible to conceive of any plausible active use of this disputed domain name by the Respondent that would not be illegitimate.

Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4(a)(iii) of the Policy.

5. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the disputed domain name “siemenshs.info” should be TRANSFERRED to the Complainant Siemens AG.



Panelist: ZHAO Yun

Dated: 10 October 2013