

Asian Domain Name Dispute Resolution Center
Beijing Office
Administrative Panel Decision
Case No. CN-120526

Complainant: SIEMENS AKTIENGESELLSCHAFT

Respondent: bosenzhao zhao

Domain Name: siemensplcweb.com

Registrar: GoDaddy.com, Inc.

1、Procedural History

On 22 December 2011, the Complainant submitted a Complaint in the English language to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing Office) and elected this case to be dealt with by a one-person panel, 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 the same date, the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint.

On 23 December 2011, the ADNDRC Beijing Office transmitted by email to ICANN and Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 23 December 2011, the ADNDRC Beijing Office transmitted the Complaint to the Respondent.

On 9 January 2012, the ADNDRC Beijing Office notified the Respondent of the commencement of the proceedings. On the same day, the ADNDRC Beijing Office 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. The ADNDRC Beijing Office notified the Respondent's default on 6 February 2012.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC Beijing Office notified the parties that the Panel in this case had been selected, with Dr ZHAO Yun acting as the sole panelist. The Panel determines that the appointment was made in accordance

with Rules 6 and Articles 8 and 9 of the ADNDRC Supplemental Rules.

On 20 February 2012, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 6 March 2012.

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, thus the Panel determines English as the language of the proceedings.

2. Factual Background

For the Complainant

The Complainant in this case is SIEMENS AKTIENGESELLSCHAFT. The registered address is Siemens aktiengesellschaft, Wittelsbacherplatz 2, 80333 Munich, Germany. The authorized representative in this case is Lihui Sui and Gaoming Wang.

For the Respondent

The Respondent in this case is bosenzhao zhao. The registered address is Bay Wellington Tower/BCE Place, Wellington, British Columbia M4B 1G5, Canada. The Respondent is the current registrant of the disputed domain names <siemensplcweb.com > according to the Whois information.

3. Parties' Contentions

Complainant

(1) The disputed domain name is confusingly similar to the well-known registered trademark of SIEMENS in which the Complainant has rights and PLC (Programmable Logic Controller) is also a famous product of Siemens.

As a famous trademark all over the world, SIEMENS has been registered in Europe since 1936 and extended to China by international trademark application since 1976 and is still in force. The trademark has become a sign of high-quality goods because the goods produced by the Complainant, especially industrial automation system, are popular among customers.

“SIEMENS”, “PLC”, “WEB” and “.COM” constitute the domain name in question. “.COM” is the sign of the common top domain name that does not have special meanings, “SIEMENS” is the famous trademark owned by the Complainant, “PLC” means programmable logic controller that is one kind of goods made by the Complainant and that is widely used in industrial automation systems. WEB means the system on the internet that allows

people to find and use information that is held on computers. Meanwhile, the Respondent uses the website directed by the disputed domain name to sell the goods with the trademark of SIEMENS. Therefore, the disputed domain name is easily and mistakenly regarded as an official website to sell SIEMENS goods.

(2) The Respondent has no rights or legitimate interests in respect of the disputed domain names.

Before any notice to the Respondent of the dispute, the Respondent has used the domain name to offer goods or services in bad faith. Firstly, the Respondent uses the website directed by the domain name in question to sell many kinds of goods with the registered trademark SIEMENS. Secondly, the Complainant has never authorized the Respondent to use the website to sell goods produced by the Complainant. Finally, the prices of the goods with the registered trademark are much lower than the normal market prices of the same SIEMENS goods and the website guarantees that they sell the real goods of the Complainant. As a result, it can be said with certainty that the Respondent is using the domain name to offer goods in bad faith.

The Respondent has not been commonly known by the disputed domain name until now. The disputed domain name was registered on 13 November 2009 and the description of www.siemensplcweb.com in the registration information says "We are selling Siemens plc is new! German production. A large number of stocks (Siemens s7/Siemens s5/siemens 200/Siemens 300/siemens400). kindly sell some famous factory automation products, the brands such as Siemens s7/Siemens s5/Siemens 200/Siemens 300/Siemens 400. We are so stronger on Siemens PLC/Siemens HMI /Siemens Inverters & Mitsubishi FA, AB-PLC, that we can sell them to many countries." It is easily proved that the Respondent has tried to sell goods by the known registered trademark of SIEMENS and has never planned to legally advertise the domain name in question.

The Respondent is making an illegitimate commercial or unfair use of the domain name, with intent for commercial gain to misleadingly divert consumers and to tarnish the registered trademark. It is the sole aim for the Respondent to make profits using the domain name in question, which can be proved by "About Us" of the website directed by the domain name that says "We kindly sell some famous factory automation products, the brands such as Siemens, Mitsubishi PLC, Schneider, AB and so on. We are so stronger on Siemens Plc/Siemens HMI/Siemens Inverters & Mitsubishi FA, AB-PLC, that we can sell them to many countries. We do the business based on high credit! Credibility is our eternal pursuit! And we hope & need your kind support also. Siemens pls At the same time, we hope that, if various brands manufacturers have the good product to enter the Chinese market, seeks in China's business agent, and can contact with us! Believe that we can build a better cooperation! We can supply a wide range of Siemens automation products such as Siemens plc Simatic PLC S7 200/300/400, LOGO, HMI, S5 and inverters." Meanwhile, the disputed domain name has never been authorized to sell any goods of the Complainant. However, all the titles of the disputed domain name are about promoting Siemens goods the prices of which are much lower than

normal market prices. Therefore, it can be believed that the Respondent is making illegal profits by misleading innocent customers and tarnishes the registered trademark by unlawfully selling low-quality goods.

(3) The disputed domain name has been registered and is being used in bad faith.

The Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of the Complainant. The key words of the website www.siemensplcweb.com are "Siemens automation, Siemens, simatic, Siemens plc, plc Siemens, Siemens s7-200, Siemens s7-300, Siemens s7-400" and its website description says "We are selling Siemens plc is new! German production. A large number of stocks (Siemens s7/Siemens s5/Siemens 200/Siemens 300/siemens400). Kindly sell some famous factory automation products, the brands such as Siemens s7/Siemens s5/Siemens 200/Siemens 300/Siemens 400. We are so stronger on Siemens PLC/Siemens HMI /Siemens Inverters & Mitsubishi FA, AB-PLC, that we can sell them to many countries." Therefore, it is clearly proved that the Respondent is disrupting the business of the Complainant by selling low-quality goods with the registered trademark of SIEMENS.

By using the domain name in question, the Respondent has intentionally attempted to attract the internet users to the website for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of www.siemensplcweb.com or location or of products on the website in question. Firstly, when customers search "Siemens plc" on the internet, the website in dispute appears in the top ranking so that customers can be easily misled to log on the website in question and buy the illegal goods with the registered trademark. Secondly, there are many pieces of news about SIEMENS that copied from the Complainant's official websites without authorities and lots of introduction to SIEMENS goods are also illegally copied from the Complainant's official websites. Thirdly, many goods' pictures on the website are marked with the registered trademark of SIEMENS. Therefore, it is impossible for customers to tell the website is not an official SIEMENS website and at least customers think that the website has some relation with SIEMENS.

In conclusion, though the Respondent completely knows the ownership and the reputation of Siemens in all the world, it still intentionally registered the disputed domain name which is misleadingly similar to the registered trademark of SIEMENS and the website directed by the dispute domain name uses lots of information of the Complainant without authority, which has infringed on the trademark right of the Complainant. The intent of the register obviously is to make the customers misunderstand that there is some relation between the Complainant and the Respondent, and the Respondent also intends to make illegal profits by taking advantage of the reputation and the popularity of the Complainant.

According to the reasons clarified above, the Complainant requests the Panel to issue a decision to cancel the Disputed Domain Name.

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/Confusingly Similarity

The Complainant is a famous company in the field of electronic products, such as Programmable Logic Controller (PLC). The evidence shows that the Complainant registered the trademark “SIEMENS” in mainland China as early as 1995. The protection period lasts till 2015. This trademark was also registered with the WIPO under the Madrid Agreement at the same year. Both registration dates are much earlier than the registration of the disputed domain name (14 May 2010). The Panel has no problem in finding that the Complainant enjoys the prior rights in the trademark “SIEMENS”.

The disputed domain names are “siemensplcweb.com”. As the suffix “.com” only indicates that the domain name is registered under this gTLD and is not distinctive, the main part of the disputed domain name is “siemensplcweb”. This main part consists of three sub-parts: “siemens”, “plc” and “web”. Obviously, the first sub-part (“siemens”) is identical to the Complainant’s trademark “SIEMENS”. The second sub-part (“plc”) is exactly one major product of the Complainant. The third sub-part (“web”) is a plain English word. As such, neither the second sub-part nor the third sub-part is distinctive. The addition of “plc” and “web” to the Complainant’s trademark “SIEMENS” does not differentiate the main part of the disputed domain name from the Complainant’s trademark; with “plc” being one major product of the Complainant, such an addition, on the contrary, strengthens the connection between the disputed domain name and the Complainant’s trademark.

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

Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant has never authorized the Respondent to use the trademark or the 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.

Under Paragraph 4 (c) of the Policy, the following are relevant examples a Panel may take as evidence of the Respondent's rights or legitimate interests to the disputed domain name:

- (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.

Obviously, the above circumstances do not exist in the current case. The evidence shows that the Respondent has not carried out the business in good faith, which will be further discussed in the next part. The Respondent has not been commonly known by the disputed domain name. It is clear from the website of the disputed domain name that the Respondent is making commercial use of the disputed domain name. As such, the Respondent has failed to show that the Respondent has any rights or legitimate interests in respect 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 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 in 1995 and that the trademark is still in the protection period. Through extensive use, advertisement and promotion, the trademark "SIEMENS" has achieved a strong reputation around the world. As such, the public has come to recognize and associate the Complainant's trademark as originating from the Complainant and no other. The fact that the website of the disputed domain name contains the trademark "SIEMENS" is obvious to all that the Respondent is aware of the existence of the Complainant and its trademark. This conclusion can be further substantiated by the addition of "plc", one major product of the Complainant, to the "SIEMENS". The action of registering the disputed domain name *per se* has constituted bad faith. Actually, it is impossible to conceive of any plausible active use of the disputed domain name by the Respondent that would not be illegitimate.

The evidence further shows that the website of the disputed domain name has been designed to sell similar products trademarked "SIEMENS" as the Complainant. In fact, the Complainant has never authorized the Respondent to use the trademark or sell these products. This is exactly the type of bad faith use of the disputed domain name as identified in the Policy, i.e. the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or other on-line location, by creating a likelihood of confusion with the Complainant's trademark as to source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

The Panel concludes that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

5. Decision

For the foregoing reasons, the Panel orders that the domain name "siemensplcweb.com" be cancelled.

Sole Panelist:



DATED: 6 March 2012