

தமிழ்நாடு தமில்நாடு TAMILNADU



31 AUG 2020

Dr. Sudhir Raja Ravindran.

BZ 022453

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BEFORE THE SOLE ARBITRATOR, DR. SUDHIR RAJA RAVINDRAN

.IN REGISTRY

(NATIONAL INTERNET EXCHANGE OF INDIA)

.IN DOMAIN NAME DISPUTE RESOLUTION POLICY (INDRP)

ARBITRATION AWARD

DATED: September 01, 2020

SIEMENS AG  
Wittelsbacherplatz 2  
D-80333 Munich  
GERMANY

COMPLAINANT

2014

**VERSUS**

**Tech Narayana Software Pvt. Ltd.**

Narasimha Murthy

Malleswaram

BNG

Karnataka 560032

INDIA

**RESPONDENT(s)/REGISTRANT(s)**

**DISPUTED DOMAIN NAME: "SIEMENSHEALTHCARE.IN"**

**1. Parties**

1.1. The Complainant in this arbitration proceeding is represented by MÜLLER FOTTNER STEINECKE Rechtsanwälte PartmbB, Alexandra Fottner, Dr and Markus Müller, Elisenstr. 3 (Elisenhof), 80335 Munich, Germany.

1.2. The Respondent in this arbitration proceeding, according to the WHOIS database extract as per Annexure1 of the Complaint is Tech Narayana Software Private. Limited.

**2. The Dispute:** The domain name in dispute is "SIEMENSHEALTHCARE.IN". According to the WHOIS search utility of the .IN Registry, the Registrar of the disputed domain name is Name.com, Inc..

**3. Calendar of Major Events:**

S. No	PARTICULARS	DATE
1.	Date on which NIXI'S letter was received for appointment as Arbitrator	10-08-2020
2.	Date on which consent was given to act as an Arbitrator	10-08-2020
3.	Date of appointment of Arbitrator	11-08-2020
4.	Date on which the soft copy of the complaint was received	11-08-2020
5.	Date on which notice was issued to the Respondent	17-08-2020
6.	Date on which the Respondent had sent a email reply	17-08-2020
7.	Due date for filing of Counter Statement by the Respondent	24-08-2020

*24/8*



#### **4. Procedural History**

- 4.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP), adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure ("Rules") were approved by NIXI on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.
- 4.2. In accordance with the Rules 2(a) and 4(a), NIXI formally notified the Respondent of the complaint and appointed Dr. Sudhir Raja Ravindran as the sole arbitrator for adjudicating upon the dispute in accordance with the .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder and the Indian Arbitration and Conciliation Act, 1996 and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI.
- 4.3. The Complaint was filed in accordance with the requirements of the .IN Domain Name Dispute Resolution Policy (INDRP).
- 4.4. On August 17, 2020, the Arbitrator issued a notice to the Respondent intimating the Respondent of the appointment of the Arbitrator and calling upon the Respondent to submit his response within seven (7) days, i.e. on or before August 24, 2020.
- 4.5. On August 17, 2020, the Respondent sent an email stating that the disputed domain name does not belong to the Respondent and they are domain and website hosting service provider who book domains on behalf of the client requirements, if available.

#### **5. Factual Background:**

- 5.1. The Complainant is headquartered in Berlin and Munich, is one of the world's largest companies providing innovative technologies and comprehensive know-how to benefit customers in 190 countries and was founded more than 150 years ago, the company is

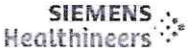


active - to name but a few examples - in the fields of Medicine, Automation and Control, Power, Transportation, Logistics, Information and Communications, etc. The Complainant owns the trademark "SIEMENS" which is well recognized as a symbol of the highest quality of the concerned goods and services. By virtue of the Complainant's long use and the renown of the Complainant's "SIEMENS" mark, "SIEMENS" is exclusively associated with the Complainant. The reputation associated with the Complainant's marks is excellent by virtue of the quality of the Complainant's goods and services.

5.2. The Respondent is a domain and website hosting service provider who book domains on behalf of their client requirements, if available and registered the disputed name "SIEMENSHEALTHCARE.IN" on March 02, 2020.

## 6. Parties Contentions

### 6.1. Complainant's Submission:

6.1.1. Complainant states that they own the mark "SIEMENS" and  under trademark no. 153599, 651426, 1598675, 3602059 in class 10 and International trademark under trademark no. 637074 for the mark "SIEMENS" covering more than 60 countries worldwide and claiming protection for goods and services in international classes 1, 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 20, 21, 28, 35, 36, 37, 38, 40, 41 and 42.

6.1.2. Complainant states that they use the trademark "SIEMENS" in India in relation to medical services, equipment and solutions in particular for medical imaging and medical diagnostics, as shown from the website screenshots available under <https://new.siemens.com/in/en/company/about.html> and <https://www.siemens-healthineers.com/en-in> enclosed as Annexure 6 of the Complaint.

6.1.3. Complainant states that the mark "SIEMENS" has been used in India since 1867 and today the Complainant has 22 factories located across the country and a nationwide sales and service network.



6.1.4. Complainant states that the disputed domain name contains the trademark "SIEMENS" in an identical form as well as the descriptive indication "Healthcare" referring to a field of business in which SIEMENS is active in India. In its entirety, the sign "siemenshealthcare" also corresponds to the name of the complainant's Indian subsidiary company "SIEMENS Healthcare Private Limited", as shown in the Annexure 6 of the Complaint and is comparable in its structure and meaning with the combined mark "SIEMENS Healthineers".

6.1.5. Further the Complainant states that due to the high reputation of the trademark "SIEMENS", the public will automatically recognize the contested domain name and will associate this domain name with the Complainant. The Internet users will think that this domain name and the corresponding website belong to the Complainant providing services under the mark "SIEMENS" in the field of healthcare. Consequently, the Internet users will have the false impression that the corresponding addresses [www.siemenshealthcare.in](http://www.siemenshealthcare.in) is an official Internet address of the Complainant.

6.1.6. Complainant states that the Respondent has intentionally attempted to attract internet users to its website by creating a likelihood of confusion with the Complainant's name and mark as to the source and affiliation of the website and the disputed domain name is likely to be linked to domain name parking services to wrongfully generate revenue as a result of the confusing nature of the domain name.

6.1.7. Complainant states that they already owns and uses for business purposes various domain names consisting of the sign "Siemens", such as "siemens.com", "siemens.eu", "siemens.de", "siemens- healthineers.com", "siemens-healthineer.com", etc and it was very conceivable for the Respondent that the domain name "siemenshealthcare.in" would be of relevance for the Complainant.

6.1.8. Complainant states that the Respondent cannot make any legitimate non-commercial or fair use of the domain name and there is nothing to suggest that the Respondent would not aim at misleadingly diverting consumers or at tarnishing the trademark at issue. The domain name was selected by the Respondent with intent to attract the Internet users for illegitimate purposes and to cause damage to the Complainant.

**6.2. Respondent:**

6.2.1. The Respondent did not file any reply to the Complaint. However the Respondent had sent an email stating that the disputed domain name does not belong to the Respondent and they are domain and website hosting service provider who book domains on behalf of their client's requirements, if available.

**7. Discussion and findings:**

7.1. Under the .IN Policy, the registrant of the domain name is required to submit to a mandatory arbitration proceeding in the event that a complaint is filed in the .IN Registry, in compliance with the .IN Policy and the INDRP Rules.

7.2. The .IN Policy, Paragraph 4 requires the Complainant, to establish the following three elements:

7.2.1. The disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights, and

7.2.2. The Respondent has no rights or legitimate interests in respect of the domain name; and

7.2.3. The Respondent's domain name has been registered or is being used in bad faith.

**7.3. Identical or Confusingly Similar**

7.3.1. The first element requires the Complainant to prove that the domain name registered by the Respondent is identical or confusingly similar to a mark in which the Complainant has rights.





7.3.2. The Complainant has filed documents of its registered trademarks to prove it has rights in the trademark "SIEMENS" in India and various countries as set out in Annexure 5 of the Complaint and the mark "SIEMENS" has been used by the Complainant in India since 1867.

7.3.3. The disputed domain name incorporates the trademark "SIEMENS" in entirety along with a suffix "healthcare" which corresponds to the name of the complainant's Indian subsidiary company "SIEMENS Healthcare Private Limited", following by ccTLD (country code top level domain), mere addition of the word "healthcare" followed by ccTLD ".in" does not remove the distinctiveness of the Trademark. This position was upheld in *Google. Inc Vs. Vinit keshav Case No. INDRP/940, Nike Inc. And Nike Innovative C.V v.Zhaxia INDRP/804 and Santa fe moving service Private Limited v. Achyut Khare INDRP/886*.

7.3.4. The Arbitrator finds that the Complainant has satisfied the first element under paragraph 4 of the Policy.

#### **7.4. Rights and Legitimate Interests**

7.4.1. The second element requires the Complainant to show that the Respondent has no rights and legitimate interests in the disputed domain name.

7.4.2. Under Paragraph 7 of the Policy, a Respondent or a registrant can establish rights in the domain name, if (i) before notice of the dispute, the registrant had used or made demonstrable preparations to use the domain name in connection with a bona fide offering of goods or services or (ii) the registrant (as an individual, business organization) has been commonly known by the domain name, or (iii) the registrant is making legitimate, non-commercial 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.



7.4.3. The Respondent has stated that it is in the business of hosting websites and registering Domain name for its clients and neither has the Respondent come forward to reveal the identity or contact details of the so-called "real owner", this shows that objective behind the Respondent's registration here appear to be, for impeding the use of the domain name by the Complainant and awaiting its future resale. It has been found in previous cases that exploiting the Complainant's mark in this manner does not confer to any legitimate rights on the Respondent. It was found that registration of the disputed domain name for reselling or preventing Complainant's use was not legitimate use and did not give any rights to the Respondent this position was upheld in *Permira IP Limited v. Paperboy & Co INDRP/092 and LF LLC v. Lira INDRP/1128*.

7.4.4. The Arbitrator finds the Complainant have made a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name and has satisfied the second element under paragraph 4 of the Policy.

#### **7.5. Bad Faith**

7.5.1. Under the INDRP Policy the Complainant is required to establish that the domain name was registered or is being used in bad faith. Proof of bad faith is a separate requirement. Information that is relevant to a consideration of the other ingredients of a claim can be relevant to bad faith inquiry, but it usually will not be sufficient to meet the Complainant's burden of proof.

7.5.2. The Complainant has been using the mark "SIEMENS" in India since 1867, in relation to medical services, equipment and solutions, in particular for medical imaging and medical diagnostics and as there is no evidence or justification provided by the Respondent for registering the disputed name in its name while not being the "actual owner" shows that the Respondent misappropriated/ misused the Complainant's mark to mislead the public to create a false affiliation with the Complainant. Further,



Misleading users by incorporating a third party's trademarks in a domain name gives a false impression to users and does not constitute a bona fide use under the Policy. This view has been upheld in *Starbucks Corporation v. Mr.M.C. Nolten INDRP/439*.

7.5.3. Under Paragraph 6 (iii) of the Policy, if the registrant of the domain name in dispute, has used the domain name to intentionally attract internet users by creating a likelihood of confusion with the trademark of another and an attempt to take undue/ un fair advantage of Complainant's goodwill and reputation, is considered evidence of bad faith. The Arbitrator finds the circumstances here suggest that there is no other reasonable explanation for the registration of the disputed domain name by the Respondent.

7.5.4. For the reasons discussed, the Arbitrator finds the disputed domain name has been registered and used in bad faith under the Policy.

7.6. The above-mentioned contentions and submissions of the Complainant have not been rebutted by the Respondent, as such, they are deemed to be admitted by them.

## **8. Decision**

8.1. The Complainant has successfully established the three grounds required under the Policy to succeed in these proceedings.

8.2. For reasons discussed, the .IN Registry of the NIXI is hereby directed to transfer the domain name "**WWW.SIEMENSHEALTHCARE.IN**" to the Complainant.

8.3. The Award is accordingly passed on this the 1<sup>st</sup> day of September, 2020.

Place: Chennai

  
Dr. Sudhir Raja Ravindran

Sole Arbitrator