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C.V. Francis, Advocate
Arbitrator appointed by the (.IN Registry)
National Internet Exchange of India
T-15, Green Park Extension
New Delhi 110016

ARBITRATION AWARD

Disputed Domain Name : www.siemens.in

In the matter of:

Siemens AG
A German Company
having its registered office at
WITTELSBACHERPLATZ2, IN 80333,
Munich Germany

Complainant No. 1

Siemens Limited
An Indian Company
Having its registered office at
130, Pandurang Budhkar Marg
Worli, Mumbai 400018

Complainant No. 2

Vs.

Gunsung Kim
314-8 Pochun Silvertown
Sohak-ri Naechon-myeon Pocheon-gun
GYEONGGI-DO
SEOUL-487831

Respondent/Registrant

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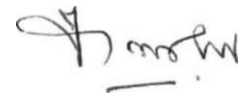
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Complainant No. 2

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GYEONGGI-DO
SEOUL-487831

Respondent/Registrant



1. The Parties

Complainant No. 1 Siemens AG, is a company incorporated in Germany and Complainant No.2 Siemens Limited is a company incorporated and existing under the Indian Companies Act, 1956. (collectively called "the Complainant") with the following contact details as provided in the Complaint:

SIEMEN AG
Wittelsbacherplatz 2, in 80333
Munich, Germany
Volkmar.bonn@siemens.com
+09131733205
+09131732570

Siemens Limited
130, Pandurang Budhkar Marg
Worli, Mumbai 400018
Prashant.doshi@siemens.com
+91 (022) 24987000 / 7584
+91 (022)24987043/7500

The Respondent in this Arbitration proceeding is Mr. Gunsung Kim with the following contact details:

314-8 Pochun Silvertown
Sohak-ri Naechon-myeon Pocheon-gun
GYEONGGI-DO
SEOUL-487831
Cn_partner@dotname.co.kr
+82 0315330056

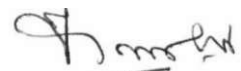
+82 0315332559

2. Details of the disputed Domain Name

The disputed domain name www.siemens.in has the following details:

The particulars of the said domain name are as follows :

- | | | |
|----|--------------------|--------------|
| a) | Name of Registrant | Gunsung Kim |
| b) | Domain Id | D547189-AFIN |
| c) | Created on | 16 Feb 2005 |



- | | |
|-------------------------|----------------------|
| d) Expiration Date | 16 Feb 2007 |
| e) Sponsoring Registrar | ONLINE NIC (R8-AFIN) |
| f) Registrant Id | OLNIC 773561 0 |

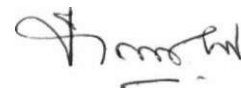
About procedures adopted in the Complaint

This is a mandatory arbitration proceeding submitted for adjudication in accordance with the .IN Domain Name Dispute Resolution Policy (INDRP) for Domain Name Dispute Resolution, adopted by the National Internet Exchange of India ("NIXI"). The INDRP Rules of Procedure (the Rules) was approved by NIXI on 28th June, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996, and the bye-laws, rules and guidelines framed there under.

By registering the disputed domain name with the NIXI accredited Registrar, the Respondent agreed to the resolution of disputes pursuant to the Rules.

According to the information provided by the National Internet Exchange of India (the ".IN Registry"), the history of this proceeding is as follows:

In accordance with the Rules, 2(a) and 4(a), NIXI formally notified the Respondent of the Complaint, and appointed me as a Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder. I had



submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the NIXI to ensure compliance with the Rules.

The arbitration proceedings commenced on July 31, 2006, when notice of proceeding was issued by me. A copy of the notice is annexed herewith as **Annexure 1**.

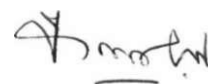
The Respondent in reply to the notice, sent an email dated 13 August 2006 to me raising doubts on my appointment as Arbitrator. The email of the Respondent is annexed herewith as **Annexure 2** to this Award. In clarification to this doubt, .IN Registry by email dated 23rd August 2006 informed me and the Respondent that my name had been listed on the registry website, and I was asked to proceed with the arbitration proceeding. The email sent by the .IN Registry is annexed herewith as **Annexure 3** to this Award.

Nonetheless no reply was submitted by the Respondent thereafter. In the facts and circumstances, in-person hearing was unnecessary for deciding the complaint, and consequently on the basis of the statements and documents submitted on record, the present Award is passed.

4. Parties' Contentions

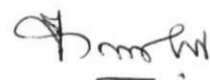
(a) Complaint

The Complainant contends as follows:



That Complainant No.1 is a Public Limited Company, duly incorporated in Germany, in the year 1897 and the word SIEMENS forms a significant part of its trading name. Complainant No.1 adopted the trade mark SIEMENS for the first time in GERMANY in the year 1897. Complainant No.1 is carrying on the business of manufacture, sale, and supply of industrial products in the fields of electrical engineering and electronics, mechanical engineering, precision mechanics and all related sectors of engineering including research and development in these fields - development and design, sale, supply, assembly and commissioning of branch and customer-specific system, solutions and plants in the fields of electrical engineering and electronics, mechanical engineering, precision mechanics and all related sector of engineering, performance of industrial and other business-related services under the trade mark **SIEMENS**, since 1897.

That Complainant No.1 has 817 trade mark registrations for the mark **SIEMENS** throughout the world, including India, a list of which has been filed by the Complainant as Annexure A to the Complaint. Complainant No.1 has 300 subsidiaries throughout the world, Including India, which have SIEMENS as part of their trading name. Complainant No.1 has about **730** domain names registered in its name throughout the world, all having SIEMENS as a significant part thereof. A list of the same has been annexed with the Complaint as Annexure B.

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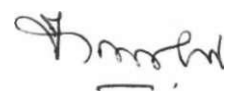
Complainant No.1 has also given the financial figures of international/worldwide sales of the goods /services bearing the trademark SIEMENS which runs into on an average 80,000 millions of Euros.

Complainant No.2 is a subsidiary of Complainant No.1 and was incorporated on 02.03.1957 under the Indian Companies Act 1956. It has all the permissions of Complainant No.1 for using the trademark SIEMENS in respect of goods / services. Complainant No.2 has also given the financial figures of the sales of its goods / services bearing the trademark SIEMENS. For instance the sales figures for the year 2004 - 2005 were 27485 million rupees.

From the evidence submitted by the Complainant with the complaint, it is clear that Complainant No. 1 is the exclusive proprietor of trademark SIEMENS in India and other countries.

The Complainant has contended that the Respondent is using the disputed domain name in bad faith and has 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, and also engaged in a pattern of such conduct.

The Complainant submits that the Respondent's registration and use of the Domain Name is a clear case of cyber-squatting, whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the Internet in order to confuse the public to the detriment of the Complainant.

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(b) Respondent

As previously indicated, the Respondent has not filed any response to the Complaint and has not answered the Complainant's contentions in any manner. The Respondent had however sent an email to the Arbitrator raising doubts on the appointment of Arbitrator and has also indicated his willingness to transfer the domain name.

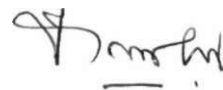
3. Discussion and Findings

The Respondent bears no relationship to the business of the Complainant. The Respondent is neither a licensee of the Complainant, nor has it otherwise obtained authorization of any kind whatsoever, to use the Complainant's mark. The Respondent has nothing to do even remotely with the business of the Complainant. The Respondent has never been commonly known by the domain name in question. The Respondent is not at all making a legitimate non-commercial or fair use of the domain name.

Once a complainant makes a prima facie case showing that a respondent lacks rights to the domain name at issue, the respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption. *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. D2000-0270.

(a) The Respondent's Default

The Rules paragraph 8(b) requires that the Arbitrator ensure that each party is given a fair opportunity to present its case. Paragraph 11(a) of the Rules reads as follows:

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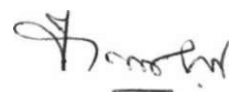
"11. Default

(a) In the event that a Party, in the absence of exceptional circumstances as determined by the Arbitrator in its sole discretion, does not comply with any of the time periods established by these Rules of Procedure or the Arbitrator, the Arbitrator shall proceed to decide the Complaint in accordance with law."

The Respondent was given notice of this proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rules paragraph 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

As previously indicated, the Respondent failed to file any reply to the Complaint and has not sought to answer the Complainant's assertions, evidence or contentions in any manner. The Arbitrator finds that the Respondent has been given a fair opportunity to present his case, and the Arbitrator will proceed to a decision on the Complaint.

The Rules paragraph 12(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with Rules paragraph 12, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's decision is based

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upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to reply.

(b) The issues involved in the dispute

The Complainant in its complaint has invoked paragraph 4 of the INDRP which reads

Types of Disputes

Any Person who considers that a registered domain name conflicts with his legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

(i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;

(ii) the Registrant has no rights or legitimate interests in respect of the domain name; and

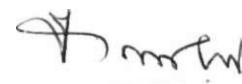
(Hi) the Registrant's domain name has been registered or is being used in bad faith.

The Registrant is required to submit to a mandatory Arbitration proceeding in the event that a Complainant files a complaint to the .IN Registry, in compliance with this Policy and Rules thereunder."

Paragraph 4 of the INDRP thus envisages 3 elements, which are being discussed hereunder in the light of the facts and circumstances of this case.

(i) The domain name registered by the Respondent is identical to the Trademark of the Complainant.

The Complainant is the owner of the "SIEMENS" trademark registered in several countries. "SIEMENS" is a well known trademark in several countries including India. The INDRP paragraph 3 clearly states that it is



the responsibility of the Respondent to find out before registration that the domain name. Since the "SIEMENS" is a famous and well-known mark and it is unlikely that the Respondent does not know about the Complainant's rights in the domain name is very less.

Paragraph 3 of the INDRP is reproduced below:

"The Registrant's Representations

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant represents and warrants that:

(a) the statements that the Registrant made in the Registrant's Application Form for Registration of Domain Name are complete and accurate;

(b) to the Registrant's knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;

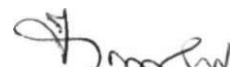
(c) the Registrant is not registering the domain name for an unlawful purpose; and

(d) the Registrant will not knowingly use the domain name in violation of any applicable laws or regulations.

It is the Registrant's responsibility to determine whether the Registrant's domain name registration infringes or violates someone else's rights."

In the absence of any response from the Respondent and in the presence of the pleadings and documents filed by the Complainant, the Arbitrator finds that the disputed domain name is identical with or deceptively similar to the Complainants' "SIEMENS" trademark. Accordingly, the Arbitrator finds that the Complainant has satisfied the first element required by Paragraph 4 of the INDRP.

(ii) The Respondent's Rights and Legitimate Interests



The second element required by paragraph 4(ii) of the INDRP is that the Registrant has no legitimate right or interest in the disputed domain name.

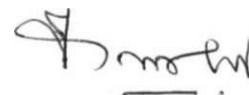
The burden of proof on a complainant regarding the second element is necessarily light, because the nature of the Registrant's rights or interests, if any, in the domain name lies most directly within the Registrant's knowledge. And once the complainant makes a prima facie case showing that the Registrant does not have rights or legitimate interest in the domain name, the evidentiary burden shifts to the Registrant to rebut the contention by providing evidence of its rights or interests in the domain name.

The Respondent in this case has not at all filed any response to show his interest in protecting his own right and interest in the domain name, which means that the Respondent does not have any legitimate interest in the domain name.

For these reasons, the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

(Mi) Bad Faith Registration and Use

The Complainant has averred that the Respondent has registered and has used the disputed domain name in bad faith. The language of the INDRP paragraph 4(iii) is clear enough, and requires that either bad faith registration or bad faith use be proved.

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Paragraph 6 of the Rules provides that the following circumstances are deemed to be evidence that a Registrant has registered and used a domain name in bad faith:

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

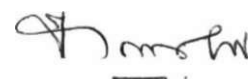
(ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or

(Hi) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to its 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 its Website or location or of a product or service on its Website or location."

I am of the opinion that all the three conditions given in paragraph 6 of the Rules are proved in the circumstances of this case and thus the registration of the impugned domain name by the Respondent / Registrant is a registration in bad faith.

Decision

The Respondent has failed in his responsibility to ensure before the registration of the impugned domain name by him that the Registrant's domain name registration infringes or violates someone else's rights as

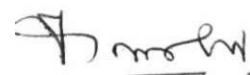


required by the Para 3 of the INDRP. The Complainant has given sufficient evidence to prove his trademark rights on the impugned domain name. Further the actions of the Respondent show that he merely blocked the disputed domain name, and deprived the rightful owner, i.e. the Complainant to register and use the domain name. The Respondent has not given any reason to register the domain name rightfully owned by the Complainant and therefore it can be presumed that the Respondent had registered the domain name only to make quick buck by selling the domain name to the rightful owner or his competitor.

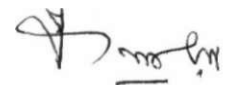
As discussed above the registration of the Domain Name by the Respondent is also hit by all three elements of the Para 4 of the INDRP and is a registration in bad faith as per paragraph 6 of the INDRP. Thus it is clear that the Respondent is using the disputed domain name in bad faith and has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name.

The Respondent's registration and use of the Domain Name is a clear case of cyber-squatting, whose intention is to take advantage of the Complainant's substantial reputation and its prominent presence on the Internet in order to confuse the public to the detriment of the Complainant.

Considering the infringement of the Complainant's trademark by the Respondent,

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- (a) I order the Respondent to immediately stop using the mark "SIEMENS" in any manner whatsoever.
- (b) I also direct that the registration of the disputed domain name be **transferred** from the Respondent to the Complainant immediately. NIXI to monitor.
- (c) The Respondent shall pay to the Complainant the legal costs of Indian Rupees 30,000 and the lawyer's fees upto Indian Rupees 25,000 upon production of the evidence thereof, within 30 days of this decision, under supervision of NIXI.



C.V. Francis
Sole Arbitrator.

Dated: 11th October, 2006.