

ADMINISTRATIVE PANEL DECISION

Amgen, Inc. v. Zahir Sanlisoy
Case No. D2022-3560

1. The Parties

Complainant is Amgen, Inc., United States of America (“U.S.”), represented by Snell & Wilmer, LLP, U.S.

Respondent is Zahir Sanlisoy, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <amgenecovation.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 27, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 27, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on September 28, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on September 28, 2022.

The Center verified that the Complaint together with the amended 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 Respondent of the Complaint, and the proceedings commenced on September 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 20, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 24, 2022.

The Center appointed Nathalie Dreyfus as the sole panelist in this matter on November 4, 2022. 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

Complainant is Amgen, Inc. an American multinational biopharmaceutical company, specialized in research, innovation and treatment in the areas of cardiovascular disease, oncology, bone health, neuroscience, nephrology and inflammation.

Complainant has provided a wide range of services under its trade name “AMGEN” since 1981.

Complainant demonstrates its ownership over the following trademarks, consisting in or including the word AMGEN at the United States Patent and Trademark Office (USPTO) since 1990:

- US trademark AMGEN No. 1,621,967, filed on July 24, 1989, and registered on November 13, 1990, for goods and services in classes 5 and 42;
- US trademark AMGEN + logo No. 2,170,735, filed on July 8, 1996, and registered on July 7, 1998, for goods in class 5;
- US trademark AMGEN No. 3,226,919, filed on October 19, 2005, and registered on April 10, 2007, for goods and services in classes 5, 10, 35, 36, 41, 42 and 44;
- US trademark AMGEN No. 3,912,146 filed on October 19, 2005, and registered on February 15, 2011 for goods in class 5.

Complainant also demonstrates rights in the domain name <amgen.com> registered on July 27, 1990, and used by the Complainant for offering and promoting its goods and services.

Complainant announced its intention to use the terms “Amgen Ecovation” at an event on March 7, 2022, and published this announcement on a press released the next day. On March 9, 2022, Complainant filed the US trademark application AMGEN ECOVATION No. 97303847 for services in classes 35 and 41.

Three days after that, on March 12, 2022, the disputed domain name has anonymously been registered. Later on, the registrant was identified as Zahir Sanlisoy, located in Türkiye.

The disputed domain name resolves to a registrar parking page where the domain name is offered for sale.

5. Parties' Contentions

A. Complainant

First and foremost, Complainant alleges that the disputed domain name is identical or confusingly similar to the AMGEN trademarks and the AMGEN ECOVATION applied-for trademark of which it is the owner:

To support this claim, Complainant argues that the disputed domain name incorporates its trademarks AMGEN and applied-for trademark AMGEN ECOVATION in full. Given the incorporation of the entirety of its trademark in the disputed domain name, Complainant considers that disputed domain name to be confusingly similar to its trademarks.

Complainant also underlines that the substantial identity between Complainant's trademarks and the disputed domain name cannot be reduced by inserting the generic Top-Level Domain (“gTLD”) “.com” and refers to precedent UDRP decision in *Pomellato S.p.A v. Tonetti*, WIPO Case No. [D2000-0493](#).

As a result, Complainant asserts that the disputed domain name is identical or confusingly similar to its trademarks.

Secondly, Complainant claims that Respondent has no rights or legitimate interests in the disputed domain name:

Complainant considers that Respondent was not commonly known by the name Amgen nor Amgen Ecovation. In addition, Complainant argues that the AMGEN trademark is an arbitrary term coined by Complainant and that therefore, Respondent could not have chosen the disputed domain name legitimately.

Complainant adds that Respondent appears to select the disputed domain name to create a false impression of an association with Complainant by referring to the following cases, amongst which:

- *Sbarro Franchise Co., LLC v. Domain Admin Domain Admin whoisprotection.biz/Burc Caglayan*, WIPO Case No. [D2016-1837](#);
- *Biogen MA Inc. v. Privacy Protect, LLC/ On behalf of spinrazahcp.com owner, Domain Administrator*, WIPO Case No. [D2018-0615](#).

Complainant further argues that it is unlikely that Respondent has used or will use the disputed domain name in connexion to a *bona fide* offering of goods or services or to conduct a legitimate noncommercial or fair use. Complainant addresses that the disputed domain name redirects to a website where the Internet users can hire a domain name broker with GoDaddy to negotiate the purchase of the disputed domain name.

Complainant also emphasises that it has not authorised Respondent to register or to use its trademarks AMGEN and they do not have any relation such as affiliation, connection or association.

Therefore, Complainant affirms that Respondent does not have rights or legitimate interests in the disputed domain name.

Finally, Complainant asserts that Respondent registered and is using the disputed domain name in bad faith:

Bad faith registration

Complainant accentuates its ownership of trademark registrations for AMGEN and domain names containing the term AMGEN for a long time prior to Respondent's registration of the disputed domain name.

Complainant claims that it is unbelievable that Respondent would have not known of the reputation of the AMGEN trademarks, which Complainant has invested in and registered on both U.S. and international scale. Complainant also cites the precedent UDRP decision to support its argument - *Telstra Corp. Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

Complainant underlines Respondent's bad faith registration of the disputed domain name, said registration occurring a few days after its announcement about its use of sign "Amgen Ecovation" and application for its AMGEN ECOVATION trademark registration before the USPTO. Complainant also quotes that "the integral reproduction of [complainant's trademark] within the disputed domain name can hardly be the result of coincidence", refers to the following previous UDRP decisions, amongst which:

- *Telstra Corp. Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#);
- *Johnson & Johnson v. Daniel Wistbacka*, WIPO Case No. [D2017-0709](#).

As a result, Complainant concludes that the disputed domain name has been registered in bad faith.

Use in bad faith

Complainant considers that Respondent may contemplate to sell the disputed domain name at a high price to make profit.

Otherwise, Complainant assumes that Respondent may use the disputed domain name to make profit by redirecting it to a page promoting domain broker's services.

Complainant concludes that in both theories, Respondent is using the disputed domain name in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions and is therefore in default.

6. Discussion and Findings

According to Policy 4(a) there are three conditions, the second and third of which are alternative, that Complainant must satisfy in order to obtain a decision that the disputed domain name registered by Respondent be deleted or transferred to Complainant:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
- (ii) respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Complainant has registered AMGEN trademarks in the United States of America, such as:

- US trademark AMGEN No. 1,621,967, filed on July 24, 1989, and registered on November 13, 1990, for goods and services in classes 5 and 42;
- US trademark AMGEN + logo No. 2,170,735, filed on July 8, 1996, and registered on July 7, 1998, for goods in class 5;
- US trademark AMGEN No 3,226,919, filed on October 19, 2005, and registered on April 10, 2007, for goods and services in classes 5, 10, 35, 36, 41, 42 and 44;
- US trademark AMGEN No. 3,912,146 filed on October 19, 2005, and registered on February 15, 2011, for goods in class 5.

Complainant also owns the domain name <amgen.com> registered on July 27, 1990.

This *prima facie* demonstrates Complainant's trademark rights to the AMGEN signs for standing to file this Complaint.

Complainant has filed the trademark application AMGEN ECOVATION No. 97303847 on March 9, 2022 in the United States. However, as it is a mere pending application, it does not establish trademark rights of Complainant AMGEN ECOVATION sign in accordance with paragraph 4(a)(i) of the Policy. (See *Championx USA Inc. v. Name Redacted*, WIPO Case No. [D2022-1299](#): "Complainant submitted evidence that the CHAMPIONX trademark was applied for in the United States, with a filing date of June 11, 2019. Pending trademark applications alone do not generally establish trademark rights within the meaning of paragraph 4(a)(i) of the Policy, because they have not yet been approved or matured into registrations. [WIPO Overview 3.0](#), section 1.1.4.").

Anyway, the Panel considers that the trademark rights of Complainant on the AMGEN sign have been established prior to the registration of the disputed domain name.

The Panel finds that the trademarks AMGEN are well-known as established by Complainant and previous UDRP decisions (See *Amgen, Inc. v. He Nan An Jin Sheng Wu Ji Shu Gu Fen You Xian Gong Si*, WIPO Case No. [D2019-1221](#); *Amgen, Inc. v. Privacy service provided by Withheld for Privacy ehf / Aflora Network*, WIPO Case No. [D2022-2722](#)).

Complainant underlines that the disputed domain name reproduces identically its trademarks AMGEN and is thus confusingly similar to such trademarks. Many previous UDRP panels have decided that the integration

of a trademark in its entirety can be sufficient to establish that the disputed domain name is confusingly similar to a registered trademark. (See, *Puma SE v. Puma, Exports Pvt Ltd*, WIPO Case No. [D2021-1757](#): “The disputed domain name includes the Complainant’s PUMA trademark in its entirety. Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms does not prevent a finding of confusing similarity under the first element of the Policy.”).

The Panel finds that the addition of the “ecovation” term does not prevent the finding of confusing similarity between the disputed domain name and Complainant’s trademarks AMGEN as set out in [WIPO Overview 3.0](#), section 1.8 (See *OSRAM GmbH v. Shin Pil Sup / Paul David Song*, WIPO Case No. [D2018-0969](#): “All of the disputed domain names (including the Additional Domain Names) incorporate the mark “osram” entirely with additions of either descriptive or meaningless terms or letters, except for one name which replaces the letter “o” in the “osram” with the letter “q.” [...] Section 1.8 of [WIPO Overview 3.0](#) also provides that an addition of a descriptive or meaningless term would not prevent a finding of confusing similarity if the relevant trademark is recognizable within the disputed domain names. Therefore, the Panel finds that the disputed domain names are confusingly similar to the Complainant’s trademark.”).

In addition, the Panel finds that the addition of the “ecovation” term and the gTLD “.com” do not prevent a finding of confusing similarity between the disputed domain name and Complainant’s trademarks.

As a result, the Panel considers the disputed domain name is confusingly similar to Complainant’s trademarks AMGEN.

The Panel finds consequently that Complaint has satisfied Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Complainant underlines that Respondent was not authorized in any way to register the disputed domain name and that there was no relationship such as affiliation, connection or association between Complainant and Respondent.

Long-standing case law has considered these circumstances to be sufficient to make a *prima facie* case that Respondent lacks rights or interests in the disputed domain name. (See *Linklaters LLP v. WhoisGuard Protected / Cindy Smith*, WIPO Case No. [D2019-0941](#): “The Panel accepts that the Respondent has no rights or legitimate interests in the disputed domain name. There is no evidence that the Complainant has authorized or licensed the Respondent to use its LINKLATERS trademark and the Complainant has made out a *prima facie* case to that effect, which then places the burden on the Respondent, which it has failed to satisfy.”).

Respondent did not reply to Complainant’s contentions.

Moreover, Complainant claims that Respondent was not commonly known by the disputed domain name. This is a long-standing criterion to assess whether Respondent has right or legitimate interest in the disputed domain name. (See *LEGO Juris A/S v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-0248](#): “Given that the Respondent was duly notified of the Complaint and has chosen not to rebut it on merits, the Panel draws an adverse inference against the Respondent with respect to the allegations made by the Complainant, from the silence of the Respondent.”).

The Panel considers that Respondent does not have rights or legitimate interests in the disputed domain name.

Therefore, the Panel finds that Complainant has satisfied Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Complainant accentuates its ownership of trademark rights on AMGEN prior to Respondent's registration of the disputed domain name. Complainant claims that it is implausible that Respondent was not aware of the reputation of the AMGEN trademark.

Prior UDRP decisions have already underlined that the trademark AMGEN enjoys a wide reputation (see *Amgen, Inc. v. Privacy service provided by Withheld for Privacy ehf / Aflora Network*, WIPO Case No. [D2022-2722](#): "The Panel has accepted that AMGEN trademark to be well known for the purposes of the UDRP" and also see *Amgen, Inc. v. He Nan An Jin Sheng Wu Ji Shu Gu Fen You Xian Gong Si*, WIPO Case No. [D2019-1221](#): "Being an invented name, AMGEN is indeed distinctive. The Panel accepts that the Complainant's trade mark has become well-known worldwide as a result of extensive use over the past 35 years.").

Bad faith can be found where Respondent "knew or should have known" of Complainant's trademark rights and, nevertheless registered a domain name in which they had no rights or legitimate interest (*Research In Motion Limited v. Privacy Locked LLC/Nat Collicot*, WIPO Case No. [D2009-0320](#); *The Gap, Inc. v. Deng Youqian*, WIPO Case No. [D2009-0113](#)).

The Panel agrees and considers that the well-known character of the AMGEN trademarks is established and thus that bad faith registration is characterized.

Complainant claims that Respondent may either sell the disputed domain name at a high price to make profit, or use the disputed domain name to make profit by redirecting it to the page promoting domain broker's services in bad faith.

Previous UDRP decisions have found that the use of disputed domain name to redirect users to the registrar's parking page of Godaddy.com can be evidence of bad faith use, depending on the surrounding circumstances (See *The Toronto-Dominion Bank v. Super Privacy Service LTD c/o Dynadot / Almila Yagmur*, WIPO Case No. [D2022-2849](#): "Moreover, the Panel finds that the current use of the disputed domain names, namely to redirect users to "www.godaddy.com", given the circumstances surrounding this case, cannot constitute good faith use"). In the present case, it appears that the disputed domain name was registered a few days after Complainant's disclosure of its project, and used to redirect the Internet users toward services facilitating the buying of a domain name from a third party.

The Panel thus finds that the disputed domain name has been registered and is being used in bad faith in accordance with 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 <amgenecovation.com> be transferred to the Complainant.

/Nathalie Dreyfus/

Nathalie Dreyfus

Sole Panelist

Date: November 10, 2022