

## **ADMINISTRATIVE PANEL DECISION**

**Amgen, Inc. v. Greg Yuro and Anne Steckel, Abbott Steck**  
**Case No. D2022-3627**

### **1. The Parties**

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

The Respondents are Greg Yuro, Portugal (the “First Respondent”); and Anne Steckel, Abbott Steck, Portugal (the “Second Respondent”).

### **2. The Domain Names and Registrar**

The disputed domain names <amgen-pharmaceutical.com> and <amgen-pharmaceuticals.com> are registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 29, 2022. On September 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name <amgen-pharmaceuticals.com>. On September 30, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name <amgen-pharmaceuticals.com> which differed from the named Respondent (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 3, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on October 3, 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 the First Respondent of the Complaint, and the proceedings commenced on October 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 24, 2022. The First Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 28, 2022.

The Center appointed Peter Burgstaller as the sole panelist in this matter on November 7, 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.

On the day of the Panel's appointment in this matter (November 7, 2022), the Complainant requested the addition of the disputed domain name <amgen-pharmaceutical.com> (the "Additional Domain Name") to this proceeding. On November 9, 2022, the Panel instructed the Center to send to the Registrar, NameCheap, Inc., a request for registrar verification in connection with the Additional Domain Name. On November 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Additional Domain Name. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Additional Domain Name, which differed from the First Respondent.

In order to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, the Panel ordered on November 16, 2022 (Administrative Panel Procedural Order No. 1), pursuant to paragraphs 10(a) and 10(b) of the Rules that:

- the Complainant is requested to provide an amended Complaint, including *inter alia* consolidation arguments regarding the disputed domain name and the Additional Domain Name by November 21, 2022;
- the Respondent for the Additional Domain Name is granted twenty (20) days to file a Response upon receipt of the amended Complaint; and
- the Center is requested to send the original Notification of Complaint emails, the Complainant's request for the Additional Domain Name, and the present Procedural Order to the Respondent of the Additional Domain Name.

The Panel reserved its rights to make a final determination regarding consolidation of the disputed domain name and the Additional Domain Name in the Decision pursuant to section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Administrative Panel Procedural Order No. 1 was notified to the Parties on November 16, 2022.

In accordance with the Administrative Panel Procedural Order No. 1, the Complainant submitted on November 21, 2022, an amended Complaint which included contentions and evidence with regard to the Additional Domain Name and its owner as well as arguments that the Additional Domain Name should be adjudicated to the same proceeding.

According to the Panel Procedural Order No.1 from November 16, 2022, the Respondent for the Additional Domain Name was granted twenty (20) days to file a Response upon receipt of the amended Complaint.

Given that the amended Complaint filed by the Complainant was received by email on November 21, 2022 by the Center, the due date for submission a Response was accordingly December 11, 2022. The Respondent for the Additional Domain Name did not submit any response. Accordingly, on December 14, 2022, the Center notified the Parties of the Respondent's default and the extended decision due date.

#### **4. Factual Background**

The Complainant is a global biopharmaceutical company; it owns various U.S. trademark registrations for the mark AMGEN, *inter alia*.

- U.S. Registration No. 1,621,967, registered on November 13, 1990, for the classes 5 and 42; and
- U.S. Registration No. 3,226,919, registered on April 10, 2007, for the classes 5, 35, 36, 41, 42, and 44 (Annex 3 to the Complaint).

The Complainant's company name is "Amgen, Inc." and it owns the domain name <amgen.com> since July 27, 1990, resolving to the Complainant's website (Annexes 4 and 5 to the Complaint).

The disputed domain names were registered on May 29, 2022 (<amgen-pharmaceuticals.com>) and on December 9, 2021 (<amgen-pharmaceutical.com>) (Annex 1 to the Complaint).

The disputed domain names currently resolve to error pages (Annex 6 to the Complaint).

## 5. Parties' Contentions

### A. Complainant

The Complainant is owner of the famous and federally registered trademark AMGEN. The Complainant is a global biopharmaceuticals leader focused on research, innovation, and treatment in the areas of cardiovascular disease, oncology, bone health, neuroscience, nephrology, and inflammation. The Complainant has offered a wide variety of goods and services under its AMGEN marks since as early as 1981. The Complainant's AMGEN-branded goods and services are advertised and sold on a global scale; it operates in approximately 100 countries, including the United States and Canada, and employs over 20,000 people worldwide. In 2021, the Complainant earned over USD 25 billion in worldwide revenue from its AMGEN-branded goods and services. Over the years, the Complainant has invested many millions of dollars advertising and promoting its goods and services under its AMGEN marks throughout the United States and around the world. As a result, the Complainant's AMGEN marks have acquired goodwill and recognition, and the public associates AMGEN-branded goods and services exclusively with the Complainant. The Complainant owns common law rights around the world in its AMGEN marks and owns numerous U.S. registrations for its AMGEN marks as well as in many jurisdictions around the world. Moreover, the Complainant has owned and continuously used the domain name <amgen.com> to offer and promote its biopharmaceuticals and related goods and services since 1990.

The disputed domain names are identical or confusingly similar to the Complainant's company name and its AMGEN marks, since they incorporate in full the Complainant's AMGEN marks. The addition of the descriptive terms "pharmaceuticals" and "pharmaceutical" does not reduce the substantial identity between the Complainant's AMGEN marks and the disputed domain names.

The Respondents have no rights or legitimate interests in the disputed domain names; there is no evidence that the Respondents are commonly known by Amgen, Amgen Pharmaceuticals, or Amgen Pharmaceutical. There is also no evidence that the Respondents have used or are preparing to use the disputed domain names in connection with the *bona fide* offering of goods or services or making a legitimate noncommercial or fair use of the disputed domain names. Finally, the Complainant has not authorized the Respondents to register or use the Complainant's AMGEN mark and there is no affiliation, connection, or association between the Respondents and the Complainant.

The disputed domain names were registered and are being used in bad faith: The Complainant owns numerous trademark registrations throughout the world for AMGEN and domain names containing the word "amgen" which registered long before the Respondents registered the disputed domain names. Given the Complainant's exclusive use of the AMGEN marks for decades, tens of billions of dollars in worldwide annual revenues for goods and services sold under those marks, dozens of U.S. and international trademark registrations and formatives thereof, and the AMGEN brand's reputation as among one of the most famous biopharmaceutical brands in the world, it is not plausible to conceive of a plausible circumstance in which the Respondents would have been unaware of these facts at the time the Respondents registered the disputed domain names.

The Respondents are also using the disputed domain names in bad faith in an attempt to defraud the Complainant and third parties. An individual posed as an employee of the Complainant by sending an email from the disputed domain name <amgen-pharmaceuticals.com> to engage with a recruiting company.

Similarly, an individual has used an email from the disputed domain name <amgen-pharmaceutical.com> in connection with a fraudulent vendor invoice. Moreover, the Respondents' prior use of the disputed domain names to redirect to the Complainant's legitimate website at <amgen.com> is further evidence that the Respondents are attempting to deceive others into believing that the Respondents are the Complainant or associated with the Complainant. The disputed domain names currently resolve to identical error pages.

Finally, the Complainant requests a consolidation of the Respondents regarding the disputed domain names since the Respondents are in some way connected or subject to common control; they provided addresses based in Lisbon, Portugal and Gmail email addresses when registering the disputed domain names. Both Respondents used the same registrar, Namecheap, and the same privacy protection service, Privacy Service provided by Withheld for Privacy ehf, when registering the disputed domain names. Moreover, both disputed domain names previously redirected to the Complainant's legitimate website at <amgen.com> and now resolve to the identical error webpage, and were similarly used as email addresses to engage in attempted fraud.

## **B. Respondents**

The Respondents did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

### **A. Preliminary Procedural Issue – Consolidation of the Respondents**

The Complainant has requested consolidation of multiple respondents and stated that the disputed domain names and the Respondents are in fact in some way connected or subject to common control and were used with the same intention, that is attempting to deceive others into believing that the Respondents are the Complainant or associated with the Complainant. No objection to this request were made by the Respondents.

Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Moreover, procedural efficiency would also underpin panel consideration of such a consolidation scenario (see section 4.11.2 of the [WIPO Overview 3.0](#)).

When determining whether a consolidation is appropriate, UDRP panels consider a range of factors, *e.g.*:

- the registrants' identity(ies) including pseudonyms;
- the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities;
- the nature of the marks at issue (*e.g.*, where a registrant targets a specific sector);
- any naming patterns in the domain names (*e.g.*, suffix/prefix);
- registrar (whether the registrar is the same or not); or
- other arguments made by the complainant and/or disclosures by the respondent(s) (*e.g.*, the same privacy protection service).

If some of these factors are present in some combination, a consolidation of respondents is appropriate (see section 4.11 of the [WIPO Overview 3.0](#)).

Following the Complainant's contentions in the present case, which left unrebutted by the Respondents, the Panel is convinced that the arguments and evidence provided by the Complainant demonstrate that the named Respondents and the disputed domain names are in some way connected and/or are under common control. In this respect, the Panel notes that the disputed domain names follow the same naming pattern, are all registered with the same Registrar and using the same privacy service. Finally, the disputed domain names currently resolve to the same error website.

Furthermore, both Respondents seem to be located in Lisbon, Portugal, reinforcing the fact that the Respondents are in some way connected.

Taking together these facts, the Panel finds that there is evidence that the disputed domain names are subject to common control, and that it is procedurally efficient, fair, and equitable to all Parties to accept the Complainant's consolidation request. The Panel further notes that the Respondents did not react in any way – the Respondents neither rejected the consolidation request nor filed a Response.

The Panel therefore accepts the Complainant's consolidation request. Hence, the Panel will refer to the Respondents in the singular, *i.e.*, the "Respondent".

## **B. Substantive Issues**

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

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

### **(i) Identical or Confusingly Similar**

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the trademark AMGEN.

The disputed domain names <amgen-pharmaceuticals.com> and <amgen-parmaceutical.com> are confusingly similar to the Complainant's registered trademark AMGEN since they entirely contain the distinctive AMGEN mark and only add

- the term "pharmaceuticals" (plural) regarding the disputed domain name <amgen-pharmaceuticals.com> separated by a hyphen; and
- the term "pharmaceutical" (singular) regarding the disputed domain name <amgen-pharmaceutical.com> separated by a hyphen.

It has long been established under UDRP panels that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the [WIPO Overview 3.0](#)). This is the case at present.

Finally, it has also long been held that generic or country-code Top-Level-Domains are generally disregarded when evaluating the confusing similarity of a disputed domain name.

Hence, the Complainant has satisfied paragraph 4(a)(i) of the Policy.

## **(ii) Rights or Legitimate Interests**

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain names, comprising the Complainant’s distinctive mark in its entirety together with the descriptive term “pharmaceutical” (singular and plural) cannot be considered fair as these falsely suggest an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)). That being said, the Respondent has used the disputed domain names in an apparent fraudulent email campaign, reinforcing the finding that the Respondent’s intent was to use the confusingly similar disputed domain names to confuse or mislead recipients of said emails as to their origin or affiliation to the Complainant. Such use can never confer rights or legitimate interests upon a respondent (see section 2.13 of the [WIPO Overview 3.0](#)).

Noting the above and all of the evidence put forward by the Complainant in the Complaint, as well as the Complainant’s contentions that the Respondent has no rights or legitimate interests in the disputed domain names, that the Respondent has no connection or affiliation with the Complainant, and the Respondent has not received any license or consent, express or implied, to use the Complainant’s trademark AMGEN in a domain name or in any other manner as well as the fact that the Respondent has not rebutted these allegations, it is undeniable for this Panel that the conditions set out in paragraph 4(a)(ii) of the Policy have been met by the Complainant.

## **(iii) Registered and Used in Bad Faith**

As stated in many decisions rendered under the Policy (e.g., *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated, consequently, the Complainant must show that:

- the disputed domain names were registered by the Respondent in bad faith; and
- the disputed domain names are being used by the Respondent in bad faith.

(a) The Complainant has rights and is the owner of the distinctive registered trademark AMGEN, which is registered and used in many jurisdictions, long before the registration of the disputed domain names. Moreover, the Complainant registered and is using the domain name <amgen.com> and has a strong Internet presence under its mark AMGEN.

It is inconceivable for this Panel that the Respondent registered and used the disputed domain names without knowledge of the Complainant’s rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain names incorporate the Complainant’s trademark and company name AMGEN entirely together with the term “pharmaceutical” (singular and plural). In fact, the use of the term “pharmaceutical” (singular and plural) in connection with the mark AMGEN rather strengthen the impression that the disputed domain names are in some way connected to the Complainant since the suffix refers to the Complainant’s business sector. Moreover, the disputed domain names previously redirected to the Complainant’s genuine domain name, reflecting the Respondent’s clear awareness of the Complainant. Similarly, considering the use of the disputed domain names for an email scheme impersonating the Complainant, the Respondent’s fraudulent use of the disputed domain names is *prima facie* evidence of bad faith registration and use of the disputed domain name.

Therefore, the Panel is convinced that the disputed domain names were registered in bad faith by the Respondent.

(b) Although the disputed domain names currently resolve to an error webpage and there is no evidence that the disputed domain names are being actively used in connection with a website, previous UDRP panels have found that bad faith use under paragraph 4(a)(iii) does not necessarily require a positive act on the part of the respondent – inaction is within the concept of paragraph 4(a)(iii) (see especially *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#)).

The Panel also concludes bad faith use, putting emphasis on the following:

- the Complainant's trademark and company name AMGEN is distinctive in the pharmaceutical sector;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain names;
- the disputed domain names incorporate the Complainant's trademark in its entirety, and are thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant's site);
- the disputed domain names moreover contain the suffix "pharmaceutical" (singular and plural) which refer to the business sector of the Complainant; and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain names.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain names have been registered and are being used in bad faith under 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 names <amgen-pharmaceuticals.com> and <amgen-pharmaceutical.com> be transferred to the Complainant.

*/Peter Burgstaller/*

**Peter Burgstaller**

Sole Panelist

Date: December 27, 2022