

ADMINISTRATIVE PANEL DECISION

Amgen, Inc. v. Michael Allender
Case No. D2023-3014

1. The Parties

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

Respondent is michael Allender, United States.

2. The Domain Name and Registrar

The disputed domain name <connect-amgen.com> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 13, 2023. On July 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On July 14, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in Complaint. The Center sent an email communication to Complainant on July 18, 2023 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 July 18, 2023.

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 July 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 9, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 17, 2023.

The Center appointed John C. McElwaine as the sole panelist in this matter on August 22, 2023. 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 a global biopharmaceuticals company. Complainant is the owner of numerous U.S. registrations for AMGEN trademarks and formatives, including relevant to this matter, a United States trademark registration for AMGEN, U.S. Reg. No. 1,621,197, registered on November 13, 1990 in International Classes 5 and 42.

Respondent registered the Domain Name on May 29, 2023. At the time of filing of the Complaint, the Domain Name redirects to Complainant's main website at "www.amgen.com".

5. Parties' Contentions

A. Complainant

As background, Complainant asserts that it is a global biopharmaceuticals leader focused on research, innovation, and treatment in the areas of cardiovascular disease, oncology, bone health, neuroscience, nephrology, and inflammation. Complainant further alleges that it operates in approximately 100 countries and employs over 20,000 people worldwide. Complainant asserts that in 2020, Complainant earned over USD 25 billion in worldwide revenue from its AMGEN®-branded goods and services. Complainant also contends that it has invested millions of dollars advertising and promoting its goods and services under its AMGEN trademark throughout the United States and around the world. Complainant alleges that it owns numerous U.S. trademark registrations for marks containing the term "amgen" and that Complainant is the only owner of registrations for AMGEN. Complainant further asserts that since 1990, it has owned and continuously used the domain name <amgen.com> to offer and promote its biopharmaceuticals and related goods and services. Complainant asserts that it owns common law rights around the world in its AMGEN trademark. Collectively, Complainant's registered and common law rights in the AMGEN trademark are referred to as the "AMGEN Mark."

With respect to the first element of the Policy, Complainant asserts that since 1990 it has used and owns exclusive rights to the AMGEN Mark. Complainant alleges that the Domain Name is identical to Complainant's AMGEN Mark differing only by the addition of the term "connect."

With respect to the second element of the Policy, Complainant asserts that the AMGEN Mark is a coined term that it created. Complainant also alleges that neither the Whois data for the Domain Name nor Respondent's use of the Domain Name supports an inference that Respondent is known by the Domain Name. Complainant contends that it has neither licensed or otherwise authorized Respondent to use the AMGEN Mark, nor does Respondent have any legal relationship with Complainant that would entitle Respondent to use the AMGEN Mark. Instead, Complainant alleges that the Domain Name redirects to Complainant's official website, without its authorization and that this redirection to Complainant's website is likely to mislead Internet users into believing that the Domain Name is connected to Complainant's business. Complainant further claims that an individual named Michael Allender is using the Domain Name to fraudulently hold itself as an Amgen IT Project Manager looking to procure IT assets for new departments by reaching out to third parties using the email address "[...].@connect-amgen.com".

With respect to the third element of the Policy, Complainant asserts that as a result of its use of the AMGEN Mark 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 the most famous biopharmaceutical brands in the world, it is not plausible to conceive of a plausible circumstance in which Respondent would have been unaware Complainant's AMGEN Mark when it registered the Domain Name. Complainant points out that Respondent

is also using the Domain Name in bad faith to redirect to Complainant's website. Lastly, Complaint re-asserts its claim that Respondent is using the Domain Name to send emails posing as an Amgen employee.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Even though Respondent did not formally reply to the Complaint, paragraph 4 of the Policy requires that, in order to succeed in this UDRP proceeding, Complainants must still prove their assertions with evidence demonstrating:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainants have rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

Because of the absence of a formal Response, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules ("If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint"). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules and applicable principles of law, the Panel's findings on each of the above cited elements are as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires Complainant show that the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights. Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2. On this point, Complainant has provided evidence that it is the owner of multiple registrations for the Amgen Mark, including a United States Trademark registration for AMGEN, U.S. Reg. No. 1,621,197, registered on November 13, 1990.

The Domain Name contains Complainant's AMGEN Mark in its entirety with the addition of the word, "connect-". The addition of other terms to a trademark in a domain name does not avoid a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8 ("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."); *Mastercard International Incorporated v. Dolancer Outsourcing Inc.*, WIPO Case No. [D2012-0619](#); *Air France v. Kitchkulture*, WIPO Case No. [D2002-0158](#); and *DHL Operations B.V. and DHL International GmbH v. Diversified Home Loans*, WIPO Case No. [D2010-0097](#). Here, the AMGEN Mark is clearly recognizable in the Domain Name.

Accordingly, the Panel finds that the Domain Name is confusingly similar to Complainant's AMGEN Mark in which Complainant has valid trademark rights. Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under the Policy, paragraph 4(a)(ii), Complainant has the burden of establishing that Respondent has no rights or legitimate interests in the Domain Name. Complainant need only make a *prima facie* showing on this element, at which point the burden of production shifts to Respondent to present evidence that it has rights or legitimate interests in the Domain Name. If Respondent has failed to do so, Complainant is deemed to have satisfied its burden under paragraph 4(a)(ii) of the Policy. See *Vicar Operating, Inc. v. Domains by Proxy, Inc. / Eklin Bot Systems, Inc.*, WIPO Case No. [D2010-1141](#); see also *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. [D2000-1415](#); *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. [D2000-0252](#).

Here, Complainant has demonstrated that there is no evidence in the Whois data for the Domain Name indicating that Respondent has been commonly known by the terms “Connect-Amgen” or “Amgen”, rather, the Whois data provided by the Registrar for the Domain Name indicates that the registrant’s name is Michael Allender. Complainant also has established that Respondent is not authorized to register or use the AMGEN Mark. Respondent failed to submit any arguments on this point. Accordingly, Complainant has made a *prima facie* showing that Respondent lacks any rights or legitimate interests in the Domain Name.

Respondent may establish a right or legitimate interest in the Domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- “(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.”

As noted above, as it pertains to Complainant’s allegation that Respondent is not authorized by Complainant to use the AMGEN Mark, although Respondent has been properly notified of the Complaint by the Center, Respondent failed to submit a formal response on this point. The silence of a respondent may support a finding that it has no rights or legitimate interests in respect of the domain name. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. [D2000-0007](#); *Ronson Plc v. Unimetal Sanayi ve Tic.A.S.*, WIPO Case No. [D2000-0011](#). Additionally, previous UDRP panels have found that when respondents have not availed themselves of their rights to respond to complainant, it can be assumed in appropriate circumstances that respondents have no rights or legitimate interests in the domain name at issue. See *AREVA v. St. James Robyn Limoges*, WIPO Case No. [D2010-1017](#); *Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. [D2003-0269](#).

The Panel also finds that Respondent is not making *bona fide* use of the Domain Name under paragraph 4(c)(i) or (iii), as the Domain Name is currently being used to redirect to Complainant’s official website without its permission. *Gilead Sciences, Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Krug Jr Robert John*, WIPO Case No. [D2020-2662](#) (Finding that the disputed domain name <gilead-sciences.net>, which redirected to complainant’s official website, not to be a *bona fide* use of the disputed domain name); *Bureau Veritas v. Xavier Garreau*, WIPO Case No. [D2017-1570](#) (“The disputed domain name redirects to the Complainant’s official website, without authorization, which is likely to mislead Internet users into believing that the disputed domain name is connected to the Complainant’s business. In the Panel’s opinion, this does not claim for a use of the disputed domain name in connection with a *bona fide* offering of goods or services.”)

Based on the foregoing, Complainant has made a *prima facie* showing of Respondent’s lack of any rights or legitimate interests and Respondent has failed to come forward to rebut that showing. As provided for by

paragraph 14 of the Rules, the Panel may draw such inference from Respondent's default as it considers appropriate. The Panel finds that Respondent does not have rights or legitimate interests in the Domain Name and that Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

Bad faith registration can also be found where respondents "knew or should have known" of complainant's trademark rights and nevertheless registered a domain name in which they had no right or legitimate interest. See *Accor v. Kristen Hoerl*, WIPO Case No. [D2007-1722](#). Here, the AMGEN Mark represents the goodwill of a well-known global pharmaceutical company. Based on Complainant's submission, which was not rebutted, Respondent must have known of Complainant's AMGEN Mark when it registered the Domain Name, which is comprised of Complainant's AMGEN Mark and was used to redirect to Complainant's website. See *WhatsApp Inc. v. Francisco Costa*, WIPO Case No. [D2015-0909](#) (finding that "it is likely improbable that Respondent did not know about Complainant's WHATSAPP trademark at the time it registered the Disputed Domain Name considering the worldwide renown it has acquired amongst mobile applications, and the impressive number of users it has gathered since the launch of the WhatsApp services in 2009".) Based on Complainant's submissions, which were not rebutted by Respondent, the Panel finds that Respondent knew or should have known of Complainant's AMGEN Mark, when it decided to register the Domain Name.

Respondent's use of the Domain Name in bad faith is further borne out by the fact that Complainant has also shown that Respondent's is using the Domain Name to redirect traffic to Complainant's official website located at "www.amgen.com". Prior UDRP panels have found that a respondent redirecting a domain name to the complainant's website without authorization can establish bad faith because the respondent retains control over the redirection thus creating a real or implied ongoing threat to the complainant. See [WIPO Overview 3.0](#), section 3.1.4; see also *Hyatt Corporation, Hyatt International Corporation v. Victoria Cameron*, WIPO Case No. [D2022-4171](#); *Skyscanner Limited v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. [D2019-0507](#) (Redirecting of a disputed domain name to a complainant's website supports a finding that respondent registered the disputed domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with complainant's mark and/or disrupt complainant's business). Noting the use of the Domain Name to fraudulently send emails while posing as a Complainant's employee, the Panel finds that the redirection of the Domain Name to Complainant's website may serve as furtherance of the impression of affiliation or connection with Complainant. The Panel is satisfied that Respondent is intentionally attempting to attract, for commercial gain Internet users to its website or other online location, by creating a likelihood of confusion with 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. According to Policy paragraph 4(b)(iv), this is evidence of registration and use in bad faith of the Domain Name.

Based upon the foregoing, Complainant has satisfied 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 Domain Name, <connect-amgen.com>, be transferred to Complainant.

/John C McElwaine/

John C McElwaine

Sole Panelist

Date: September 5, 2023