

ADMINISTRATIVE PANEL DECISION

Amgen, Inc. v. xuxu
Case No. D2023-3397

1. The Parties

The Complainant is Amgen, Inc., United States of America, represented by Snell & Wilmer, LLP, United States of America.

The Respondent is xuxu, China.

2. The Domain Name and Registrar

The disputed domain name <amgen-shop.org> is registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 9, 2023. On August 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 11, 2023, 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 (REDACTED FOR PRIVACY xuxu) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 11, 2023, 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 August 11, 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 the Respondent of the Complaint, and the proceedings commenced on August 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 4, 2023.

The Center appointed Tuukka Airaksinen as the sole panelist in this matter on September 11, 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

The Complainant is a global biopharmaceutical company operating in approximately 100 countries and employing over 20,000 people worldwide. The Complainant has used its trademark AMGEN since 1981. The Complainant's trademark has been registered in several countries, including in the United States of America under number 1621967 as of November 13, 1990.

The disputed domain name was registered on July 19, 2023. It used to resolve to a website featuring the Complainant's trademark and logo and a photo of the Complainant's employees soliciting investments. While drafting the decision and when the Complaint was filed, the disputed domain name resolves to an error page.

5. Parties' Contentions

A. Complainant

The disputed domain name incorporates in full the Complainant's trademark. The addition of the term "shop" does not reduce the substantial identity between the Complainant's trademark and the disputed domain name because it will not alter the fact that the disputed domain name is confusingly similar to the Complainant's trademark.

The Respondent has no rights or legitimate interests in the disputed domain name and is not commonly known by it. The Complainant's trademark is an arbitrary name coined by the Complainant and is therefore not one the Respondent would legitimately choose unless seeking to create an association with the Complainant. The disputed domain name previously resolved to a website featuring the Complainant's trademark. The Respondent's use of the disputed domain name in an attempt to defraud the public is not *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name.

The Complainant has not authorized the Respondent to register or use the Complainant's trademark.

Because the Complainant's trademark is one of the most famous biopharmaceutical trademarks in the world, the Respondent must have been aware of the Complainant when registering the disputed domain name. The disputed domain name resolved previously to a website containing the Complainant's trademark and logo as well as pictures of the Complainant's officers and employees and purported to offer investment services. The Complainant contends that this shows that the Respondent is likely using the disputed domain name as part of an investment fraud scheme.

B. Respondent

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

6. Discussion and Findings

In order to obtain the transfer of a domain name, a complainant must prove the three elements of paragraph 4(a) of the Policy, regardless of whether the respondent files a response to the complaint or not. The first element is that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The second element a complainant must prove is that the respondent has no

rights or legitimate interests in respect of the domain name. The third element a complainant must establish is that the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires that the Complainant establish that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Consequently, the Complainant must prove that it has rights to a trademark, and that the disputed domain names are identical or confusingly similar to this trademark.

According to section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”.

Furthermore, “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. The nature of such additional term(s) may however bear on assessment of the second and third elements”. See section 1.8 of the [WIPO Overview 3.0](#).

The disputed domain name is confusingly similar to the Complainant’s trademark as it includes the Complainant’s trademark in its entirety combined with the word “shop”. This does not prevent confusing similarity between the Complainant’s trademark and the disputed domain name.

This means that the disputed domain name is confusingly similar to the Complainant’s trademark and hence the first element of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests to the disputed domain name.

It is widely accepted among UDRP panels that once a complainant has made a *prima facie* showing indicating the absence of the respondent’s rights or legitimate interests in a disputed domain name the burden of proof shifts to the respondent to come forward with evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of the Policy. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#), and section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain name, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain name and is not commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy.

Moreover, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant’s trademark. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that has not been rebutted by the Respondent. Considering the Panel’s findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain name. Therefore, the Panel finds that the second element of the Policy is fulfilled.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain name has been registered and being used in bad faith. Paragraph 4(b) of the Policy provides that the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that [the respondent 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 that complainant, for valuable consideration in excess of [the respondent’s] documented out-of-pocket costs directly related to the domain name; or
(ii) [the respondent 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 respondent has] engaged in a pattern of such conduct; or
(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business or competitor; or
(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent’s] website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the respondent’s] website or location or of a product or service on [the respondent’s] website or location.”

Considering that the Complainant has been using and registering its trademark for many decades before the disputed domain name was registered, and taking into account the activity to which the disputed domain name has been put, the Respondent must have been aware of the Complainant and its trademark when registering the disputed domain name. See section 3.1.4 of the [WIPO Overview 3.0](#).

The disputed domain name resolves to an error page. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. This is particularly so with domain names incorporating the mark plus a descriptive term, as in this case. See section 3.1.4 of the [WIPO Overview 3.0](#).

The disputed domain name is not in active use, see *e.g.*, *Accenture Global Services Limited v. Domain eRegistration*, WIPO Case No. [D2018-1994](#). This, however, does not prevent the finding of bad faith under the doctrine of passive holding. See section 3.3 of [WIPO Overview 3.0](#).

Considering the reputation of the Complainant’s mark, the Respondent’s past use of the disputed domain name, it is not possible to conceive any plausible active use of the misleading disputed domain name that would not be illegitimate. The Panel considers, on balance, that the disputed domain name has been registered and is being used in bad faith.

Therefore, the Panel finds that the third element of the Policy is fulfilled.

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, <amgen-shop.org>, be transferred to the Complainant.

/Tuukka Airaksinen/

Tuukka Airaksinen

Sole Panelist

Date: September 25, 2023