

ADMINISTRATIVE PANEL DECISION

Amgen, Inc. v. Privacy service provided by Withheld for Privacy ehf / Aflora Networkd

Case No. D2022-2722

1. The Parties

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

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Aflora Networkd, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <amgenlaboratories.com> 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 25, 2022. On July 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 26, 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 the Complainant on July 27, 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 July 27, 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 Respondent of the Complaint, and the proceedings commenced on August 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 30, 2022.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on September 5, 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

The Complainant is an American pharmaceutical company doing business on research, innovation, and treatment in a number of health areas, such as and by way of example: cardiovascular disease, oncology, or bone health. The Complainant operates in approximately 100 countries and employs approximately 20,000 individuals worldwide.

The Complainant is the owner of a portfolio of AMGEN trademarks in different jurisdictions around the world. As such, United States (United States Patent and Trademark Office) for AMGEN, class 5 and 42, registration number 1,621,967, registered on November 13, 1990.

The Complainant owns <amgen.com> since July 27, 1990.

Previous panel decisions have recognized AMGEN as a well-known trademark. See, *Amgen, Inc. v. He Nan An Jin Sheng Wu Ji Shu Gu Fen You Xian Gong Si*, WIPO Case No. [D2019-1221](#).

The Respondent registered the disputed domain name on December 13, 2021, and resolves to a website where the Complainant's headquarters address is reproduced. Besides, the disputed domain name has been used in connection to purportedly attempt to impersonate the Complainant to defraud third parties where AMGEN trademark was well displayed in various emails.

5. Parties' Contentions

A. Complainant

The Complainant asserts that the disputed domain name is identical or confusingly similar its AMGEN registered trademarks. The Complainant points out that the disputed domain name incorporates in full its AMGEN marks. Indeed, the addition of the descriptive term "laboratories" to its mark does nothing to reduce the confusing similarity of the domain name <amgenlaboratories.com>. On the contrary, the Complainant is of the opinion that such additional term increases the confusing similarity given that "laboratories" relates to Complainant's pharmaceutical business. The Complainant refers to *Vertex Pharmaceuticals Incorporated v. Private Data Domains Ltd. / AnonymousSpeech, AnonymousSpeech, Michael Weber*, WIPO Case No. [D2019-1259](#).

Further, the Complainant insists that a generic Top-Level domain ("gTLD"), such as ".com" does not reduce the substantial identity between the Complainant's marks and the disputed domain name.

With regard to the second requirement, the Complainant contends that there is no evidence that the Respondent is commonly known by "amgen" or "amgen laboratories".

While AMGEN mark is a coined term, the Respondent's disputed domain name is seeking to create an impression of association with the Complainant. Notwithstanding, according to the Complainant's allegations, such association does not exist, since there is no affiliation, connection, or association between the Respondent and the Complainant.

The Complainant denies that the Respondent has used or is preparing to use the disputed domain name in connection with a *bona fide* offering of goods or services or, making 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 AMGEN registered mark.

Indeed, the Complainant finds that the Respondent does not have rights or legitimate interests in the disputed domain name because the Respondent is using the disputed domain name in bad faith, including in furtherance of a fraudulent phishing scheme, as it is described below.

Finally, the Respondent registered the disputed domain name because of the fame and use of the AMGEN trademarks. Indeed, the Complainant holds that it is not reasonable to conceive of a plausible circumstance in which the Respondent would have been unaware of the Complainant and its trademarks at the time Respondent registered the disputed domain name.

Moreover, the Complainant highlights the involvement of the disputed domain name in an attempt to defraud third parties by sending emails where it was using the Complainant's headquarters address in the signature block, as well as the Complainant's AMGEN logo. Further, the Complainant notes the display of its headquarters address in the disputed domain name, confirming that the Respondent is intentionally attempting to cause others to believe that it is the Complainant.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

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

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there from as it considers appropriate". This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

A. Identical or Confusingly Similar

Following WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[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".

While it is evident the complete reproduction of Complainant's trademark in the disputed domain name, the Panel finds that the addition of the term "laboratories" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark.

It is well established that gTLDs are generally irrelevant to the consideration of identity or confusing similarity between a trademark and a domain name.

Accordingly, the first requirement is met under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out non-exclusive examples in which the Respondent may establish rights or legitimate interests in the domain name, by demonstrating any of the following:

- (i) before any notice to it of the dispute, the Respondent's 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) the Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the Respondent is 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.

The Panel notes WIPO Overview section 2.1: "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".

What is on the file only refers to the Complainant's allegations. Namely, the Respondent is not commonly known by "amgen" or "amgen laboratories". The Respondent is not in any way associated with the Complainant and there is no affiliation, connection or association between the parties. Neither, the Respondent has not been authorized to use AMGEN in the disputed domain name. Further, the Respondent is seeking to create an impression of an association with the Complainant since it is using the disputed domain name in bad faith by way of impersonating the Complainant in a fraudulent phishing scheme. Indeed, the Respondent is using the Complainant's business headquarter address, trademark, and logo in an attempt to impersonate the Complainant in a seemingly fraudulent activity.

In the present case, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel emphasizes the phishing practice as an illegitimate undertaking that can never confer rights or legitimate interests on a respondent. See [WIPO Overview 3.0](#), section 2.13.1.

As noted, there has been no rebuttal on the Respondent's part. Accordingly, the Panel finds that the Complainant has carried its burden in respect of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of a disputed domain name in bad faith, namely:

- (i) circumstances indicating that the respondent has registered or acquired the disputed 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 trade mark or service mark or to a competitor of the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the respondent has registered the disputed domain name in order to prevent the owner of the trade mark 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 disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed 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.

The Panel has accepted that AMGEN trademark to be well known for the purposes of the UDRP. Persistently, previous panel decisions have found that the registration of a domain name identical or confusingly similar to a well-known trademark by an unaffiliated can by itself create a presumption of bad faith. See *Banca Akros S.P.A v. Privacy Service Provided by Withheld for Privacy ehf / bancaakros bancaakro*, WIPO Case No. [D2022-0898](#). Being that as it is in this case and, on balance of probabilities, the Panel finds that the Respondent was aware or at very least should have been aware of the Complainant, its business and trademarks at the time of the registration of the disputed domain name. Besides, the later use of the disputed domain name strengthens such finding.

The Complainant has provided evidence enough of the attempt to impersonate and deceive third parties by the Respondent. Therefore, the Panel finds that this use of the disputed domain name is to be deemed "illegitimate" or in bad faith for the purposes of this third requirement. In fact, the Respondent's use of the disputed domain name falls under paragraph 4(b)(iv) of the Policy: "By using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location". Nothing in the file allows the Panel to conclude otherwise.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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, <amgenlaboratories.com>, be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: September 19, 2022