

ADMINISTRATIVE PANEL DECISION

Amgen, Inc. v. Decourt Batrice
Case No. D2022-0986

1. The Parties

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

The Respondent is Decourt Batrice, France.

2. The Domain Name and Registrar

The disputed domain name <amgen.life> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 22, 2022. On March 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 24, 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 March 24, 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 March 24, 2022.

The Center verified that the Complaint together with 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 March 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 21, 2022.

The Center appointed Zoltán Takács as the sole panelist in this matter on May 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 a global biopharmaceutical company focused on research, innovation and treatment in the areas of cardiovascular disease, oncology, bone health, neuroscience, nephrology and inflammation.

The Complainant operates in approximately 100 countries and employs over 20,000 people worldwide.

Among others, the Complainant owns the United States Trademark Registration No. 1621,967 for the word mark AMGEN, registered since November 13, 1990, for goods and services of classes 5 and 42 of the Nice Agreement Concerning the International Classification of Good and Services for the Purpose of the Registration of Marks.

Since July 27, 1990, the Complainant owns the domain name <amgen.com>, which gives access to its official website.

The disputed domain name <amgen.life> was registered on March 9, 2022, and has been used for a fraudulent website reproducing without any authorization the layout, design and content of the Complainant's corporate website at "www.amgen.com".

5. Parties' Contentions

A. Complainant

The Complainant contends that excluding the applicable generic Top-Level Domain ("gTLD") the disputed domain name is identical to its AMGEN trademark.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii) or (iii) of the Policy.

The Complainant claims that the Respondent has registered and used disputed domain name in bad faith since it deceptively copied the look, feel, and content of and links to the Complainant's legitimate "www.amgen.com" website.

The Complainant requests that the disputed domain name <amgen.life> be transferred from the Respondent to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

It has been a consensus view in UDRP decisions that a respondent's default (*i.e.*, failure to submit a formal response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. See section 4.3 of the WIPO

Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

A complainant must satisfy each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely 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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

It has been a consensus view among UDRP panels that if the complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced proper evidence of having registered rights in the AMGEN trademark and for the purpose of this proceeding the Panel establishes that the United States Trademark Registration No. 1621,967 for the word mark AMGEN satisfies the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainant’s trademark rights in the AMGEN mark, the Panel next assessed whether the disputed domain name <amgen.life> is identical or confusingly similar to it.

According to section 1.7 of the [WIPO Overview 3.0](#), the standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain (“TLD”) in a domain name (e.g., “.com”, “.club”, “.nyc”, in this case “life”) is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

Since the disputed domain name comprises the Complainant’s AMGEN trademark and the “.life” gTLD, which is permissible for the Panel to disregard for comparison purposes, the Panel finds that the disputed domain name is identical to the Complainant’s trademark and that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;
- (ii) it has been commonly known by the domain name;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial

gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

In the present case, the Complainant has submitted uncontested evidence that it holds well-established rights in the AMGEN trademark.

The Complainant has never authorized the Respondent to use its trademark in any way, and its prior rights in the AMGEN trademark precede the date of registration of the disputed domain name.

According to section 2.1 of the [WIPO Overview 3.0](#), 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 the 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.

The Respondent defaulted and failed to respond, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter the Complainant’s *prima facie* case.

The website attached to the disputed domain name mimicked the Complainant’s corporate website and it appeared official. The Complainant has clearly not authorized the Respondent to use its AMGEN trademark in such a confusing way, which does not amount to a *bona fide* offering of goods and services.

In addition, UDRP panels have previously established that domain names identical to a complainant’s trademark carry a high risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)).

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

“(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

The Complainant's AMGEN trademark, which the disputed domain name incorporates in its entirety, has no dictionary meaning. It is a term coined by the Complainant and therefore highly distinctive for the corresponding goods and services. A basic Internet search against the disputed domain name returns solely the Complainant and its businesses.

The disputed domain name resolved to a "copycat" website with the same layout, design and content as the Complainant's official website at the <amgen.com> domain name.

These facts in view of the Panel show that the Respondent knew of the Complainant's AMGEN trademark when registering the disputed domain name, specifically targeting the Complainant in an attempt to deceive Internet users. This is a fraudulent conduct and as such, in accordance with paragraph 4(b)(iv) of the Policy straightforward evidence of registration and use of the disputed domain name in bad faith.

Further, since the courier package sent to the Respondent could not be delivered because the physical address that the Respondent provided was not a valid address, it appears that the Respondent has deliberately given false contact information.

The fact that the disputed domain name currently resolves to inactive website does not alter the Panel's conclusion. According to section 3.3 of the [WIPO Overview 3.0](#), passive holding of a disputed domain name does not prevent a finding of bad faith.

Therefore, the Panel finds that paragraph 4(a)(iii) of the Policy is satisfied.

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.life> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: May 16, 2022