

ADMINISTRATIVE PANEL DECISION

Amgen, Inc. v. Name Redacted
Case No. D2022-3600

1. The Parties

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

Respondent is Name Redacted¹.

2. The Domain Name and Registrar

The disputed domain name <amgenusa.com> (the “Domain Name”) is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 28, 2022. On September 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 30, 2022, 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 (Whois Privacy, Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on October 3, 2022, 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 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”).

¹ The Respondent appears to have used the name and/or contact details of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this Decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this Decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST 12785241 Attn. Bradescourgente.net / Name Redacted*, [WIPO Case No. D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on October 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 1, 2022. Respondent did not submit any response.

The Center appointed Harrie R. Samaras as the sole panelist in this matter on November 8, 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 October 25, 2022, the Center received correspondence from the representative of the individual Respondent stating that: (1) the email address identified in the unmasked information received by WIPO from the registrar is not that Respondent's email address; (2) he has no knowledge of this matter, is not the registrant of this Domain Name, and does not control this Domain Name; and (3) it appears that the registrant falsely provided the individual Respondent's name, postal mailing address, and phone number when registering the Domain Name and requested that the individual Respondent's name to be removed as a party in this matter.

4. Factual Background

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. It owns numerous U.S. trademark registrations for its AMGEN Mark and formatives thereof, many of which issued decades ago and the earliest of which registered in 1990, including U.S. Registration No. 1,621,967 (registered November 13, 1990); 2,170,735 (registered July 7, 1998) and 3,226,919 (registered April 10, 2007) (the "AMGEN Mark" or the "Mark"). Since 1990, Complainant has owned and continuously used the domain name <amgen.com> to offer and promote its biopharmaceuticals and related goods and services.

Complainant's AMGEN-branded goods and services are advertised and sold worldwide. Complainant operates in approximately 100 countries, including the USA and Canada, and employs over 20,000 people worldwide. In 2020, Complainant earned over USD 25 billion in worldwide revenue from its AMGEN-branded goods and services.

Over the years, Complainant has invested many millions of dollars advertising and promoting its goods and services under its AMGEN Mark throughout the USA and around the world. As a result, Complainant's AMGEN Mark has acquired goodwill and recognition, and the public associates AMGEN-branded goods and services exclusively with Complainant.

The Domain Name was registered on August 29, 2022. It resolves to Complainant's website at <amgen.com>.

5. Parties' Contentions

A. Complainant

The Domain Name <amgenusa.com> incorporates the entirety of the Mark. Adding the descriptive term "usa" does not reduce the substantial identity between the AMGEN Mark and the Domain Name <amgenusa.com>. And adding a generic top-level domain ("gTLD") such as ".com" to the Mark also does not reduce the substantial identity between the Mark and Domain Name.

Complainant has not authorized Respondent to register or use the AMGEN Mark. There is no affiliation, connection, or association between Respondent and Complainant. Also, there is no evidence that Respondent is commonly known by Amgen or Amgen USA. The Mark is an arbitrary term coined by Complainant and therefore the Domain Name is not one Respondent would legitimately choose unless

seeking to create an impression of an association with Complainant. The Domain Name deceptively redirects to Complainant's legitimate website at <amgen.com> and does not constitute use of a domain name in connection with a *bona fide* offering of goods or services. Also, Respondent's use of the Domain Name in connection with a fraudulent phishing scheme does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial fair use of the Domain Name.

Respondent does not have rights or legitimate interests in the Domain Name because Respondent is using it in bad faith, including in furtherance of a fraudulent phishing scheme.

Complainant owns numerous trademark registrations throughout the world for the Mark as well as domain names containing the word "amgen," which registered long before Respondent registered the Domain Name. Given Complainant's exclusive use of the 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 of the Mark when Respondent registered the Domain Name. Respondent is also using the Domain Name in bad faith by attempting to defraud Complainant and its vendors. Attached, as an exhibit is a true and correct copy of an email in which an individual impersonated Complainant's employee by sending an email from the Domain Name with a fake purchase inquiry for laptops to Complainant's third-party supplier for hardware and software equipment. The email utilized the name of an employee of Complainant and included a fake copy of Complainant's signature block which includes its logo. Respondent's use of the Domain Name to redirect to Complainant's legitimate website at <amgen.com> is further evidence that Respondent is attempting to deceive others into believing that Respondent is Complainant or associated with Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that Complainant has trademark rights in the AMGEN Mark by virtue of the trademark registrations mentioned above.

The Panel also finds that the Domain Name <amgenusa.com> is confusingly similar to Complainant's AMGEN Mark. The Domain Name incorporates the Mark in its entirety and merely adds the non-distinctive "usa". When a domain name wholly incorporates a complainant's registered mark, that is sufficient to establish identity or confusing similarity for purposes of the Policy. *Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#); see also, *C. & A. Veltins GmbH & Co. KG v. Heller Highwater Inc.*, WIPO Case No. [D2004-0466](#) ("[T]he addition of the geographical suffix 'usa', does not sufficiently alter the underlying mark to which it is added."); *PepsiCo, Inc. v. Kieran McGarry*, WIPO Case No. [D2005-0629](#) (finding addition of the geographically descriptive term "usa" does not negate the confusing similarity between <pepsiusa.com> and Complainant's PEPSI mark).

Furthermore, adding the gTLD ".com" is of no legal significance from the standpoint of comparing the Domain Name to the Mark because the use of a gTLD is required of domain name registrants. See, e.g., *Pomellato S.p.A v. Tonetti*, WIPO Case No. [D2000-0493](#) (finding the domain name <pomellato.com> identical to a UDRP complainant's mark because the addition of ".com" to the POMELLATO mark is not relevant to a Policy, Paragraph 4(a)(i) analysis).

For the foregoing reasons, the Panel finds that paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

It is uncontested that Respondent has no rights or legitimate interests in the AMGEN Mark. Complainant maintains that it did not authorize Respondent to use the Mark for any purpose and there is no affiliation, connection, or association between Respondent and Complainant. Also, there is no evidence that Respondent is commonly known by the AMGEN Mark. Indeed, Complainant alleges that the AMGEN Mark is an arbitrary term it coined and therefore the Domain Name is not one Respondent “would legitimately choose unless seeking to create an impression of an association with Complainant.” See *Sbarro Franchise Co., LLC v. Domain Admin Domain Admin whoisprotection.biz/Burc Caglayan*, WIPO Case No. [D2016-1837](#).

Complainant maintains that insofar as the Domain Name deceptively redirects Internet users to Complainant’s legitimate website at <amgen.com>, this does not constitute use of a domain name in connection with a *bona fide* offering of goods or services citing, *nVent Services GmbH v. Withheld for Privacy Purposes*, WIPO Case No. [D2021-2392](#) (no rights or legitimate interests in disputed domain name that redirected to complainant’s website). And Complainant argues that Respondent’s use of the Domain Name in connection with a fraudulent phishing scheme (see below) does not constitute a *bona fide* offering of goods or services or a legitimate noncommercial fair use of the disputed domain name citing, *Groupe Lactalis v. John Kleedofe / Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. [D2014-0133](#).

Where, as here, Complainant has raised a *prime facie* presumption of Respondent’s lack of any rights or legitimate interests in the Domain Name, and Respondent has failed to rebut that presumption, the Panel is satisfied that Complainant has carried its burden of proving that Respondent has no rights or legitimate interests in the Domain Name within the meaning of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Respondent registered and has been using a Domain Name that is confusingly similar to the AMGEN Mark. When Respondent registered the Domain Name in 2021, Complainant had been using the AMGEN Mark for at least 32 years in the USA and beyond. Given Complainant’s widespread and long-standing use of the AMGEN Mark worldwide with Complainant’s advertising investment in the many millions of dollars, the Panel finds it is highly unlikely Respondent was unaware of the Mark when it registered the Domain Name. See *Telstra Corp. Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Johnson & Johnson v. Daniel Wistbacka*, WIPO Case No. [D2017-0709](#) (finding bad faith registration where “the integral reproduction of [complainant’s trademark] within the disputed domain name can hardly be the result of coincidence”). Respondent’s bad faith registration is also evidenced by the facts that: (1) Respondent has not shown that it has any rights or legitimate interests in the Domain Name; and (2) Respondent registered a Domain Name that is exactly the same as Complainant’s registered Mark adding “usa” which does not distinguish the Domain Name from the Mark. On the uncontroverted evidence, the Panel finds that Respondent registered the Domain Name in bad faith.

Respondent is also using the Domain Name in bad faith in an attempt to defraud Complainant and its vendors. An email of record indicates that an individual impersonated one of Complainant’s employees by sending an email from the Domain Name with a fake purchase inquiry for laptops to Complainant’s third-party supplier for hardware and software equipment. The email utilized the name of one of Complainant’s employees and included a fake copy of Complainant’s signature block which includes its logo. “[T]he use of an email address associated with the disputed domain name to send a phishing email for the purposes of dishonest activity is in itself evidence that the disputed domain name was registered and used in bad faith.” *BHP Billiton Innovation Pty Ltd. v. Domains by Proxy LLC / Douglass Johnson*, WIPO Case No. [D2016-0364](#); see also, *Halliburton Energy Services, Inc. v. James Howard, Hhalliburton Technologies*, WIPO Case No. [D2020-1233](#) (bad faith found when Respondent sought to exploit Complainant’s prior trademark rights through “utiliz[ing] the Disputed Domain Name to send emails to the Complainant’s vendors . . . utilizing the name of an employee of the Complainant and an actual signature block of the Complainant, which incorporates the [Complainant’s] logo.”).

Moreover, Respondent's use of the Domain Name to redirect to Complainant's website at <amgen.com> is further evidence that Respondent is attempting to deceive others into believing that Respondent is Complainant or associated with Complainant. See, e.g., *nVent Services GmbH v. Withheld for Privacy Purposes*, WIPO Case No. [D2021-2392](#) (bad faith found where respondent used domain name to contact complainant's customers and to redirect to complainant's website).

For the foregoing reasons, the Panel finds that paragraph 4(a)(iii) of the Policy has been 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 Domain Name <amgenusa.com> be transferred to Complainant.

/Harrie R. Samaras/

Harrie R. Samaras

Sole Panelist

Date: November 15, 2022