

ADMINISTRATIVE PANEL DECISION

Amgen, Inc. v. Jena Bernardo
Case No. D2023-4741

1. The Parties

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

The Respondent is Jena Bernardo, United States.

2. The Domain Name and Registrar

The disputed domain name <amgencareer.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 November 14, 2023. On November 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 15, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 16, 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 the same day.

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 November 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 13, 2023.

The Center appointed Angela Fox as the sole panelist in this matter on December 28, 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 biopharmaceuticals company based in the United States but trading worldwide and focused on research, innovation, and treatment in the areas of cardiovascular disease, oncology, bone health, neuroscience, nephrology, and inflammation. It has been offering a wide variety of goods and services under the trademark AMGEN since as early as 1981.

The Complainant's AMGEN-branded goods and services are advertised and sold in approximately 100 countries, including the United States and China, and it employs over 20,000 people worldwide. In 2022, the Complainant earned over USD 25 billion in worldwide revenue from its AMGEN-branded goods and services. The Complainant has invested many millions of dollars advertising and promoting its goods and services under its AMGEN marks in the United States and around the world.

The Complainant owns numerous trademark registrations for AMGEN, and details of the following were annexed to the Complaint:

United States Trademark Registration No. 1621967 for AMGEN, registered on November 13, 1990;
United States Trademark Registration No. 2170735 for AMGEN [Stylised], registered on July 7, 1998;
United States Trademark Registration No. 3226919 for AMGEN, registered on April 10, 2007; and
United States Trademark Registration No. 3921146 for AMGEN, registered on February 15, 2011.

Since 1990, the Complainant has also owned and used the domain name <amgen.com> to offer and promote its biopharmaceuticals and related goods and services. The Complainant also owns the domain name <amgencareers.com>.

The disputed domain name was registered on August 24, 2023. It does not link to an active website, but has been used to send fraudulent emails to individuals, using the names of HR department employees of the Complainant, purporting to reply to individuals who, the emails suggest, have applied for jobs at the Complainant's company via the social media platform LinkedIn. Several individuals reported such emails to the Complainant, stating that they did not believe they had used LinkedIn to apply for such jobs. The emails in question emanated from the email address "[...].@amgencareer.com".

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's AMGEN trademark. It includes the Complainant's AMGEN trademark in its entirety, and the presence of the non-distinctive term "careers" does not prevent a finding of confusing similarity.

The Complainant also submits that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by a name corresponding to the disputed domain name, and the Complainant has not authorized the Respondent to register or use the Complainant's trademark. There is no affiliation, connection, or association between the Respondent and the Complainant. There is no evidence 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 is making a legitimate noncommercial or fair use of the domain name. On the contrary, the disputed domain name does not resolve to an active webpage at all, and there is evidence that it has been used in connection with the sending of fraudulent emails purporting to emanate from the Complainant.

Finally, the Complainant submits that the disputed domain name was registered and has been used in bad faith. Given the size and profile of the Complainant's business, it is implausible that the Respondent was not aware of the Complainant's AMGEN trademark when it registered the disputed domain name. Moreover, there is evidence that the disputed domain name has been used in connection with a phishing scheme, in the sending of fraudulent emails purporting to emanate from employees in the Complainant's HR department.

B. Respondent

The Respondent did not reply to the Complainant's contentions and is in default. No exceptional circumstances explaining the default have been put forward.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the panel finds 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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

All three elements must be present before a complainant can succeed in an administrative proceeding under the Policy. In accordance with paragraphs 14 (a) and (b) of the Rules, the Panel will decide the Complaint and shall draw such inferences as it considers appropriate from the Respondent's default.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the term "career" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity such as phishing can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. In this case, the Complainant has provided evidence that the Respondent has used the disputed domain name in connection with fraudulent impersonation of the Complainant's HR employees via the sending of emails to potential jobseekers, and the Respondent has not attempted to rebut this allegation. The Panel therefore concludes that the Respondent has used the disputed domain name in connection with illegitimate ends, and that such activities cannot form the basis of any rights or legitimate interests on the part of the Respondent in the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent has used the disputed domain name in connection with a scheme to falsely impersonate the Complainant in connection with alleged job opportunities at the Complainant's company by the sending of emails emanating from an address associated with the disputed domain name. The Complainant alleges that these fraudulent emails were sent with the intention of carrying out a phishing scheme, and the Respondent has not denied this.

The Panel notes [WIPO Overview 3.0](#), section 3.1.4, which states that "the use of a domain name for per se illegitimate activity such as [...] phishing [...] is manifestly considered evidence of bad faith"; and [WIPO Overview 3.0](#), section 3.4, which states that "use of a domain name for purposes other than to host a website may constitute bad faith," such as "sending email [or] phishing," especially where "the respondent's use of the domain name [is] to send deceptive emails" for purposes such as "to obtain sensitive or confidential personal information from prospective job applicants".

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity such as phishing or other types of fraud constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element 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, <amgencareer.com>, be transferred to the Complainant.

/Angela Fox/

Angela Fox

Sole Panelist

Date: January 14, 2024