

ADMINISTRATIVE PANEL DECISION

Amgen, Inc. v. Contact Privacy Inc. / PETER Griffith
Case No. D2022-0117

1. The Parties

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

Respondent is Contact Privacy Inc., Canada / PETER Griffith, United States.

2. The Domain Name and Registrar

The disputed domain name <amgenworldwide.com> (the “Domain Name”) is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 13, 2022. On January 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 13, 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 and contact information in the Complaint. The Center sent an email to Complainant on January 14, 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 January 18, 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 Respondent of the Complaint, and the proceedings commenced on January 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 15, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 28, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on March 3, 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

Complainant describes itself as a “global pharmaceuticals leader” operating in more than 100 countries. Complainant’s revenue in 2020 was USD 25 billion. Complainant has owned and used the domain name <amgen.com> since 1990 as its main commercial website.

Complainant holds numerous trademark registrations for the mark AMGEN, including United States Patent and Trademark Office Reg. No. 1,621,967, registered on November 13, 1990, in connection with “pharmaceutical preparations” and “genetic engineering research and development services,” with an April 1984 date of first use in commerce.

The Domain Name was registered on March 12, 2020. The Whois registration information shows that Respondent has listed the same street address as Complainant’s corporate office.

The Domain Name is redirected to Complainant’s website. According to Complainant, this redirection of the Domain Name is deceptive, because Respondent is using the Domain Name for a phishing scam. Complainant alleges that Respondent used the Domain Name to send a fake email, impersonating an employee of Complainant, to a supplier of Complainant with a fake purchase order for medical equipment.

According to Complainant, Respondent has no relationship with Complainant and was not authorized to use the AMGEN trademark in a domain name or otherwise.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

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

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the well-known and inherently distinctive trademark AMGEN, through registration and use demonstrated in the record. The Panel finds the Domain Name to be confusingly similar to the AMGEN mark. The mark is entirely reproduced in the Domain Name, and the additional word "worldwide" does not prevent the confusing similarity between the mark and the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your 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) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are 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 concludes that Respondent lacks rights or legitimate interests in the Domain Name. Respondent has not come forward to articulate any *bona fide* reason for registering the Domain Name, and he has not disputed any of Complainant's allegations. It is undisputed that Respondent has no authority from Complainant to register the Domain Name. It is also undisputed that Respondent has used the Domain Name to attempt a fraudulent phishing scam by impersonating one of Complainant's employees. Such conduct is clearly illegitimate.

Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that 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 Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's

website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section. The Panel finds it obvious that Respondent had Complainant's AMGEN mark in mind when registering the Domain Name. The mark is inherently distinctive (a coined word), and is a longstanding and well-known mark. Moreover, the use to which Respondent put the Domain Name (a fake email to impersonate Complainant in aid of a phishing scam) reinforces the conclusion that Respondent has targeted Complainant's trademark. Additionally, Respondent has used the Domain Name to redirect to Complainant's website, reinforcing the Panel's finding that Respondent was aware of Complainant. Prior panels have found that a respondent redirecting a domain name to the complainant's website can establish bad faith insofar as the respondent retains control over the redirection thus creating a real or implied ongoing threat to the complainant. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, section 3.1.4.

Respondent's use of the Domain Name is fraudulent and constitutes bad faith within the meaning of the above-quoted Policy paragraph 4(b)(iv), and hence constitutes bad faith use.

Complainant has established Policy paragraph 4(a)(iii).

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 <amgenworldwide.com> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: March 6, 2022