

ARBITRATION AWARD

Disputed Domain Name: www.amgen.in

The Parties

The Complainant in this arbitration proceeding is Amgen, Inc., having its office at One Amgen Center Drive, Thousand Oaks, CA 91320-1789, United States of America; represented by DePenning & DePenning.

The Respondents in this arbitration proceeding are Apex Consulting, Hong Kong and ZXM, No. 33, Tongji East Road, Chancheng, District Foshan, Guangdong, China Foshan, 528000 Hong Kong [hereinafter, the "Respondents"] as per the details given by the Whois database maintained by the National Internet Exchange of India [NIXI].

The Domain Name and Registrar

The disputed domain name is www.amgen.in. The said domain name is registered with Dynadot LLC.

Details of the disputed domain name

The dispute concerns the domain name www.amgen.in. The said domain name was registered on July 18, 2011. The particulars of the said domain name are as follows:

Registrant Organization: ZXM
Registrant Address: No. 33, Tongji East Road, Chancheng District, FoShan, Guangdong, China Foshan, 528000 Hong Kong
Registrant Email: nameshome@hotmail.com

Procedural History [Arbitration Proceedings]

This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy [INDRP] and the INDRP Rules of Procedure [the Rules], adopted by the National Internet Exchange of India. The Rules were approved by NIXI on 28th June 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the disputed domain name with a NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the .IN Dispute Resolution Policy and Rules framed thereunder.

According to the information provided by the National Internet Exchange of India ["NIXI"], the history of this proceeding is as follows:

In accordance with Rule 2(a), NIXI formally notified the Respondent of the Complaint, and appointed Rodney D. Ryder as the Sole Arbitrator for adjudicating upon the dispute in accordance with the Arbitration and Conciliation Act, 1996, and the Rules framed thereunder, .IN Domain Name Dispute Resolution Policy and the Rules framed thereunder. The Arbitrator submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI.



In this matter, the arbitration proceedings commenced on January 14, 2025. A copy of the complaint with the annexures was sent to the Respondent by NIXI through an e-mail dated January 14, 2025. Thereafter, the Panel sent an e-mail dated January 15, 2025, to the Respondent requesting for submission of a response to the complaint by February 5, 2025. The Respondent did not file a response or seek an extension. No further communication was received by any of the parties. Specifically, the Respondent did not submit any response or send a written communication during the entire duration of the proceedings.

Grounds for the administrative proceedings

1. The disputed domain name is identical or confusingly similar to a trademark in which the Complainant[s] has statutory/common law rights.
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name.
3. The disputed domain name has been registered or is being used in bad faith.

Parties Contentions

Complainant

The Complainant, Amgen Inc., [Hereinafter referred to as 'Complainant'] in their complaint, interalia, contended as follows:

The Respondent's domain name is identical or confusingly similar to a name, trademark or service in which the Complainant has rights.

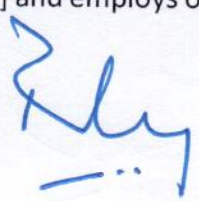
The Complainant, based on the business, common law rights and trademark registrations for the trademark 'AMGEN' and related variations, and based on the use of the said trademark in India and other countries, submitted that they are the lawful owner of the trademark 'AMGEN'.

The Complainant submits that as the disputed domain name is 'www.amgen.in', the disputed domain name is clearly identical/confusingly similar to the Complainant's trademark in which the Complainant has exclusive rights and legitimate interest.

Background of the Complainant and its statutory and common law rights adoption:

The Complainant, Amgen Inc., is a biotechnology company. It was founded in 1980 as Applied Molecular Genetics by scientists and venture capitalists to develop drugs based on molecular biology. The Complainant works in the biopharmaceuticals sector, with practice focused on research, innovation, and treatment in the areas of cardiovascular disease, oncology, bone health, neuroscience, nephrology, and inflammation.

The Complainant has a presence in around 100 countries [reaching 13 million patients annually] and employs over 20,000 people worldwide. As per 2020 statistics, the Complainant



earned over USD 25 billion in worldwide revenue from its AMGEN-branded goods and services. The Complainant's Indian operation is overseen by its subsidiary Amgen Technology Private Limited, incorporated on 8 March 2007.

The Complainant has several websites/domains containing the mark 'AMGEN', with registrations dating as far back as 1990.

Statutory rights:

The Complainant has registrations for the different variations of the mark 'AMGEN' in India, and various other countries. The mark is registered under classes 5, 10, 35, 41, 42 and 44 in India.

Respondent

The Respondents failed to reply to the notice regarding the complaint.

The Respondents do not have any relationship with the business of the Complainant or any legitimate interest in the mark/brand 'AMGEN'. Moreover, the Complainant has neither given any license nor authorized the Respondents to use the Complainant's mark. The Respondents have never been commonly known by the domain name in question and registered the domain name on July 18, 2011, which is subsequent to the Complainant's usage of the trademark 'AMGEN'.

The Complainant started its operations in 1980. The domain name <www.amgen.com> has been registered by the Complainant or its predecessors in title since 1990. The Complainant contends that the mark 'AMGEN' is extremely popular in India and around the world, and the Complainant has valid and subsisting trademark registrations for the mark 'AMGEN' in India and many other countries.

The disputed domain name contains the entirety of the Complainant's trademark 'AMGEN'. Furthermore, the addition of the top-level domain ".in" is irrelevant in determining whether the disputed domain name is confusingly similar to the Complainant's mark. It is well established that the specific top-level domain, such as ".com", ".net", ".in", ".co.in", ".org.in" etc. does not affect the domain name for the purpose of determining whether it is identical or confusingly similar [Relevant Decisions: *Magnum Piering, Inc. v. The Mudjacks and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525; *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. D2000-0429; *Aon PLC and Ors. v. Guanrui, INDRP/633*].

It is a well-established principle that once the Complainant makes a prima facie case showing that a Respondent lacks the rights to the domain name at issue, the Respondent must come forward with proof that it has some legitimate interest in the domain name to rebut this presumption.

The Respondents' Default



The INDRP Rules of Procedure require under Rule 13(b) that the arbitrator must ensure that each party is given a fair opportunity to present its case. Rule 13(b) reads as follows

"The Arbitrator shall at all times treat the Parties with equality and provide each one of them with a fair opportunity to present their case."

Rule 17 empowers the Arbitrator to proceed with an ex parte decision in case any party does not comply with the time limits or fails to reply against the complaint. Rule 17 reads as follows:

"In event any party breaches the provisions of INDRP rules and/or directions of the Arbitrator, the matter can be decided ex-parte by the Arbitrator and such arbitral award shall be binding in accordance to law."

The Respondents were given notice of this administrative proceeding in accordance with the Rules. The .IN Registry discharged its responsibility under Rule 2(a) to employ reasonably available means calculated to achieve actual notice to the Respondent of the Complaint.

As previously indicated, the Respondents failed to file any reply to the Complaint and have not sought to answer the Complainant's assertions, evidence or contentions in any manner. The Panel finds that the Respondents have been given a fair opportunity to present his case.

The 'Rules' under paragraph 13(a) provides that the Arbitrator shall decide the Complaint on the basis of the statements and documents submitted in accordance with the INDRP and any law that the Arbitrator deems fit to be applicable. In accordance with the Rules, paragraph 17, the Arbitrator may draw such inferences as are appropriate from the Respondents' failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, the Arbitrator's / Panel's decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondents' failure to reply.

The issues involved in the dispute

The Complainant in its complaint has invoked paragraph 4 of the INDRP which reads:

"Types of Disputes –

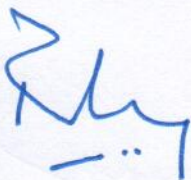
Any Person who considers that a registered domain name conflicts with his/her legitimate rights or interests may file a Complaint to the .IN Registry on the following premises:

(a) the Registrant's domain name is identical and/or confusingly similar to a Name, Trademark or Service Mark, etc. in which the Complainant has rights; and

(b) the Registrant has no rights or legitimate interests in respect of the domain name; and

(c) the Registrant's domain name has been registered or is being used in bad faith or for illegal/unlawful purpose."

Discussion and Findings



According to paragraph 4 of the INDRP, there are 3 essential elements of a domain name dispute which are being discussed hereunder in light of the facts and circumstances of this case.

The Registrant's domain name is identical and/or confusingly similar to a name, trademark or service mark in which the Complainant has rights.

It has been proved by the Complainant that it has intellectual property, particularly trademark rights, and other rights in the mark 'AMGEN' by submitting substantial documents. The disputed domain name contains the Complainant's registered trademark 'AMGEN' in its entirety.

Apart from trademark registrations, the Complainant has submitted a list of domain names owned by it containing the mark 'AMGEN'. The Complainant's website <www.amgen.com> under the 'AMGEN' mark has been registered since 1990.

It has been previously decided under the INDRP that incorporating a trademark in its entirety is sufficient to establish the identical and confusingly similar nature of the disputed domain name.

According to paragraph 3 of the INDRP, it is the responsibility of the Respondent to find out before registration that the domain name he is going to register does not violate the rights of any proprietor/brand owner.

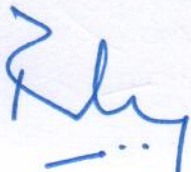
Paragraph 3 of the INDRP is reproduced below:

"The Registrant's Representations -

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant hereby represents and warrants that:

- (a) the credentials furnished by the Registrant for registration of Domain Name are complete and accurate;*
- (b) to the knowledge of Registrant, the registration of the Domain Name will not infringe upon or otherwise violate the rights of any third party;*
- (c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and*
- (d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations. It is the sole responsibility of the Registrant to determine whether their domain name registration infringes or violates someone else's rights."*

The Respondents have failed in their responsibility discussed above and in the light of the pleadings and documents filed by the Complainant, the Panel has come to the conclusion that the disputed domain name is identical with or deceptively similar to the Complainant's trademark 'AMGEN'. Accordingly, the Panel concludes that the Complainant has satisfied the



first element required by Paragraph 4 of the INDRP. [Relevant Decisions: *Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. D2000-1525; *Aon PLC and Ors. v. Gangadhar Mahesh*, INDRP/632; *Wells Fargo & Co. and Anr. v. DeepDas Kumar*, INDRP/628; *Natures Basket Limited & Ors. v. Dipti Singla*, INDRP/683; *General Motors India Pvt. Ltd. & Anr. v. Anish Sharma*, INDRP/799; *Havells India Limited and Anr. v. Whois Foundation*, WIPO Case No. D2016-1775; *Santa Fe Transport International Limited and Santa Fe Moving Services Private Limited v. Santa fe Packers, Packers Movers* WIPO Case No. D2017-0754; *Santa Fe Transport International Limited and Santa Fe Moving Services Private Limited v. Achyut Khare*, INDRP/886; *TransferWise Ltd. vs. Normand Clavet*, INDRP/1150]

The Registrant has no rights or legitimate interests in respect of the domain name

The second element that the Complainant needs to prove and as is required by paragraph 4(b) of the INDRP is that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has never assigned, granted or in any way authorised the Respondents to register or use the 'AMGEN' trademark or any other related mark. The Complainant has been using the 'AMGEN' mark for a bonafide purpose in relation to its business for several years.

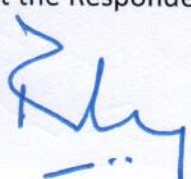
Moreover, the burden of proof on the Complainant regarding this element of the domain name dispute lies most directly within the Respondents' knowledge. Once the Complainant has made a prima facie case showing that the Respondents do not have any rights or legitimate interest in the domain name, the evidentiary burden shifts to the Respondents to rebut the contention by providing evidence of their rights or interests in the domain name.

The Respondents have not rebutted the contentions of the Complainant and have not produced any documents or submissions to show their interest in protecting their own rights and interests in the domain name.

The Respondents have no rights over the 'AMGEN' mark used in the disputed domain name and have not made any legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain. The Respondents are thus misleading consumers by using the Complainant's mark 'AMGEN' in the disputed domain name.

Moreover, the Respondents' use of the disputed domain name cannot be considered bona fide or legitimate since the Respondents have offered the impugned domain name for sale. This practice establishes that the disputed domain name was acquired with the sole *malafide* intention of offering it for sale, indicating that the Respondents have no legitimate interests in the disputed domain name whatsoever.

In addition to this, the very fact that the disputed domain name was registered by the Respondents subsequent to the Complainant's use of the mark 'AMGEN' clearly establishes that the Respondents must have registered the domain name to cash in on the popularity of



the Complainant's brand. Additionally, the fact that the Respondents have not submitted any response in their defence as well as the fact that the WHOIS details provided by the Respondents are either incomplete or incorrect indicates, under the present circumstances, the lack of rights and legitimate interests of the Respondents in the disputed domain name.

For these reasons, the Panel finds that the Respondents have no rights or legitimate interests in the disputed domain name. [Relevant Decisions: *Aon PLC and Ors. v. Guanrui*, INDRP/633; *Wells Fargo & Co. and Anr. v. SreeDas Kumar*, INDRP/666; *QRG Enterprises Limited & Anr. v. Zhang Mi*, INDRP/852; *Santa Fe Transport International Limited and Santa Fe Moving Services Private Limited v. Santa fe Packers, Packers Movers* WIPO Case No. D2017-0754; *Havells India Limited and Anr. v. Whois Foundation*, WIPO Case No. D2016-1775; *Mahendra Singh Dhoni and Anr. v. David Hanley*, WIPO Case No. D2016-1692]

The Registrant's domain name has been registered or is being used in bad faith.


It has been contended by the Complainant that the Respondents have registered and have used the disputed domain name in bad faith. The language of the INDRP paragraph 4(c) is clear enough and requires that either bad faith registration or bad faith use be proved.

Paragraph 7 of the INDRP provides that the following circumstances are deemed to be evidence that a Respondent has registered and used a domain name in bad faith:

"For the purposes of Clause 4(c), the following circumstances, in particular but without limitation, if found by the Arbitrator to be present, shall be evidence of the Registration and use of a domain name in bad faith:

- (a) circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the Trademark or Service Mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or*
- (b) the Registrant 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 the Registrant has engaged in a pattern of such conduct; or*
- (c) by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location; or*
- (d) The Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor."*

From the circumstances of the case and from the evidences put before the Panel by the Complainant, the Panel is of the opinion that the Respondents had no previous connection



with the disputed domain name or the mark 'AMGEN' and any use of the disputed domain name by the Respondents would result in confusion and deception of the trade, consumers and public, who would assume a connection or association between the Complainant and the Respondents, due to the use by the Respondent of the Complainant's trademark 'AMGEN' in the disputed domain name, which trademark has been widely used by the Complainant and which trademark is associated exclusively with the Complainant.

The Panel is prepared to accept the Complainant's contention that its mark is famous. With regard to famous names, successive UDRP panels have found bad faith registration because the Complainant's name was famous at the time of registration: *WIPO/D2000-0310 [choyongpil.net]*.

Based on the submissions and evidences put forth before the Panel, the Panel is of the belief that the Respondents would have definitely known about the Complainant's mark 'AMGEN' and its reputation at the time of registering the disputed domain name.

The domain name is deceptively similar to the trademark of the Complainant and will lead to confusion with the Complainant's mark 'AMGEN' as to the source, sponsorship, affiliation or endorsement of the Respondents' business by the Complainant. Moreover, the portrayal of an association with the Complainant's brand is, in view of the Panel, a constituent of bad faith on the part of the Respondents.

The fact that the disputed domain name was registered by the Respondents subsequent to the Complainant's use of the mark 'AMGEN' makes it apparent that the Respondents must have registered the domain name to cash in on the popularity of the Complainant's 'AMGEN' brand and websites, including <www.amgen.com>. Additionally, the fact that the Respondents have not submitted any response in their defence as well as the fact that the WHOIS details provided by the Respondents are either incomplete or incorrect, are both indicators of bad faith under the present circumstances.

On bad faith registration and use [generally], panels have noted: "Registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith": *NAF/FA95314 [thecaravanclub.com]*, *WIPO/D2000-0808* [very use of domain name by Respondent who had no connection whatsoever with Complainant's mark and product suggests opportunistic bad faith - *4icq.com*]; "Registration of a domain name that is confusingly similar or identical to a famous trademark....is itself sufficient evidence of bad faith registration and use" [*Wells Fargo & Co. and Anr. v. Krishna Reddy, INDRP/581; QRG Enterprises Limited & Anr. v. Zhang Mi, INDRP/852*].

Thus, all three conditions given in paragraph 4 of the INDRP are proved in the circumstances of this case and thus the registration of the impugned domain name by the Respondents/Registrants is a registration in bad faith.



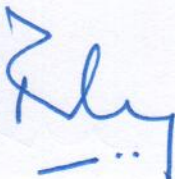
Decision

The Respondents have failed to comply with Para 3 of the INDRP which requires that it is the responsibility of the Respondent to ensure before the registration of the impugned domain name by him that the domain name registration does not infringe or violate someone else's rights.

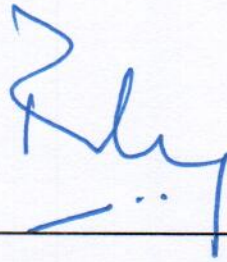
The Complainant has given sufficient evidence to prove extensive trademark rights over the disputed domain name. Further, the Respondents' adoption and registration of the disputed domain name is dishonest and malafide.

While the overall burden of proof rests with the Complainant, panels have recognized that this could result in the often-impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. Therefore, the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. In this case, the Respondents did not file any response in their defense. Based on the facts of the case, it is apparent that the Respondents are using the disputed domain name in bad faith and have registered the domain name to cash in on the reputation of the Complainant's mark and to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name.

[Relevant Decisions: *Lego Juris AS v. Robert Martin* INDRP/125; *Societe Air France v. DNS Admin* INDRP/075; *Kelemata SPA v. Mr Bassarab Dungaciu* WIPO D2003-0849; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.* WIPO D2003-0455; *Uniroyal Engineered Products, Inc. v. Nauga Network Services* WIPO D2000-0503; *Microsoft Corporation v. Chun Man Kam* INDRP/119; *AB Electrolux v. Liheng*, INDRP/700; *Equitas Holding Limited v. Sivadas K P*, INDRP/724; *BearingPoint IP Holdings B.V. v. Deborah R. Heacock*, INDRP/822; *Dell Inc. v. Jack Sun*, INDRP/312; *HID Global Corporation v. Zhaxia*, INDRP/652; *McDonald's Corporation v. Ravinder*, INDRP/746; *MontBlanc-Simplo G.M.B.H. v. M S Mohamed Salihu*, INDRP/678; *Orica Australia Proprietary Limited v. Bev Gran, D N Solutions*, INDRP/237; *Sopra Steria Group v. Xu Xiantao*, INDRP/796; *Panasonic Corporation v. Sun Wei*, INDRP/527; *Wal-Mart Stores, Inc. v. Machang*, INDRP/539; *PJS International S.A. v. Xiangwang*, INDRP/616; *Aon PLC and Ors. v. Gangadhar Mahesh*, INDRP/632; *Aon PLC and Ors. v. Guanrui*, INDRP/633; *Wells Fargo & Co. and Anr. v. Krishna Reddy*, INDRP/581; *Wells Fargo & Co. and Anr. v. SreeDas Kumar*, INDRP/666; *Wells Fargo & Co. and Anr. v. DeepDas Kumar*, INDRP/628; *Natures Basket Limited & Ors. v. Dipti Singla*, INDRP/683; *General Motors India Pvt. Ltd. & Anr. v. Anish Sharma*, INDRP/799; *QRG Enterprises Limited & Anr. v. Zhang Mi*, INDRP/852; *Santa Fe Transport International Limited and Santa Fe Moving Services Private Limited v. Santa fe Packers, Packers Movers* WIPO Case No. D2017-0754; *Santa Fe Transport International Limited and Santa Fe Moving Services Private Limited v. Achyut Khare*, INDRP/886]



The Respondents' registration and use of the domain name [www.amgen.in] is abusive and in bad faith. The Respondents have no rights or legitimate interests in respect of the domain name. In accordance with Policy and Rules, the Panel directs that the disputed domain name [www.amgen.in] be transferred from the Respondents to the Complainant; with a request to NIXI to monitor the transfer.



Rodney D. Ryder
Sole Arbitrator

Date: February 14, 2025