

ADMINISTRATIVE PANEL DECISION

ZB, N.A. dba Amegy Bank v. Above.com Domain Privacy / Host Master,
Transure Enterprise Ltd
Case No. D2017-1268

1. The Parties

The Complainant is ZB, N.A. dba Amegy Bank of Salt Lake City, Utah, United States of America (“United States”), represented by TechLaw Ventures, PLLC, United States.

The Respondent is Above.com Domain Privacy of Beaumaris, Victoria, Australia / Host Master, Transure Enterprise Ltd of Wilmington, Delaware, United States.

2. The Domain Name and Registrar

The disputed domain name <amgeybank.com> is registered with Above.com, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2017. On July 3, 2017, the Center transmitted, by email, to the Registrar a request for registrar verification in connection with the disputed domain name. On July 6, 2017, 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 July 7, 2017 providing the registrant and contact information disclosed by the Registrar and inviting the Complainant to submit an amendment to the Complaint. Later, on July 7, 2017, the Complainant filed an amendment to the Complaint.

The Center verified that the Complaint together with its amendment (hereinafter collectively the “Complaint”) satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), 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 July 13, 2017. In accordance with the Rules, paragraph 5, the due date for response was August 2, 2017. The Respondent did not submit any response. Accordingly, on August 3, 2017, the Center notified the Parties of the Respondent’s default.

The Center appointed Peter L. Michaelson as the sole panelist in this matter on August 9, 2017. 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

As reflected in the registration record for the disputed domain name in the public Whois database (a copy of that record appears in Annex 1 to the Complaint), the disputed domain name was registered on July 27, 2008.

A. The Complainant's AMEGY marks (collectively the "AMEGY Marks")

As indicated in the Complaint, the Complainant owns various United States service mark registrations for AMEGY in block letters and stylized fashion, both with and without another term. The Complainant has provided, in Annex 4 to the Complaint, a copy of its registration certificates for these marks, the pertinent details of which are:

1. AMEGY BANK

United States Registration No. 2,979,655

Registered on July 26, 2005; Renewed on July 11, 2015; Filed on December 8, 2003

This mark is registered for use in connection with; "Banking services; investment services, namely investment fund transfer and transaction services, funds investment, investment advice, investment brokerage, investment consultation, investment management, maintaining escrow accounts for investments, and securities brokerage; mortgage services, namely mortgage banking, mortgage lending, and maintaining mortgage escrow accounts", all in international class 36. This registration indicates that both first use of the mark in conjunction with these goods and first use in commerce commenced as of January 26, 2005.

2. AMEGY BANK (stylized)

United States Registration No. 3,105,196

Registered on June 13, 2006; Renewed on July 22, 2016; Filed on January 5, 2005

This mark is registered for use in connection with; "Banking services; on-line banking; investment banking, advice, brokerage and management services; securities brokerage services; insurance agency, administration and consultation services; mortgage banking and lending services; equipment financing services", all in international class 36. This registration indicates that both first use of the mark in conjunction with these goods and first use in commerce commenced as of January 26, 2005.

3. AMEGY

United States Registration No. 3,269,288

Registered on July 24, 2007; Renewed on October 13, 2016; Filed on January 5, 2005

This mark is registered for use in connection with; "Banking services; on-line banking; investment banking, advice, brokerage and management services; securities brokerage services; insurance agency, administration and consultation services; mortgage banking and lending services; equipment financing services", all in international class 36. This registration indicates that both first use of the mark in conjunction with these goods and first use in commerce commenced as of January 26, 2005.

B. The Complainant, and the Respondent's use of the disputed domain name

Since August 18, 2003, Zions Bancorporation, the parent of the Complainant, has been the registrant of the domain names; (a) <amegybank.com>, through which the Complainant advertises and offers its banking services, and (b) <amegy.com>. Copies of the Whois registration records for these domain names appear in

Annex 5 to the Complaint. The Complainant (and its predecessors) has been doing business under the name "Amegy Bank" since January 26, 2005.

The disputed domain name directs Internet users, either directly or indirectly, to the Respondent's website, a copy of the home page of which appears in Annex 6 to the Complaint, that displays the Complainant's mark AMEGY BANK together with a list of various banking topics, each with a link to additional information, and a list of pay-per-click links to financial services that compete with those offered by the Complainant. This page also specifically states that the disputed domain name may be for sale, though no sales price is given.

5. Parties' Contentions

A. Complainant

(i) Identical or Confusingly Similar

The Complainant contends that the disputed domain name is confusingly similar to its mark AMEGY BANK.

Specifically, the disputed domain name contains this mark but with its letters "e" and "g" transposed. This is an instance of typosquatting which not only causes user confusion between the disputed name and the mark but also through which the Respondent intentionally exploits this confusion for its own commercial gain.

Hence, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

The Complainant contends that, for any of several reasons, the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraphs 4(a)(ii) and 4(c) of the Policy.

Specifically, the respondent is not licensed or otherwise authorized by the Complainant to use any of its AMEGY Marks. The Respondent has neither used nor made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. In that regard, the Respondent's use of the disputed domain name to resolve to a web page that displays the Complainant's AMEGY Mark and contains third party pay-per-click links for financial services competitive with those offered by the Complainant, through which the Respondent capitalizes on the Complainant's reputation and goodwill of the Complainant's AMEGY Marks for the Respondent's own commercial gain, is not *bona fide* offering of services.

Additionally, the Respondent has never been commonly known by any name or trade name that incorporates the term "amegy".

Lastly, the Respondent is also not using the disputed domain name in connection with any legitimate noncommercial or fair use without intent for commercial gain.

(iii) Registered and Used in Bad Faith

The Complainant also contends that, for various reasons, the Respondent has registered and is using the disputed domain name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Specifically, the Respondent's intentional registration of the disputed domain name that is a typosquatted variation of the Claimant's mark AMEGY BANK evidences that the Respondent was well aware of the exclusive rights, goodwill and reputation which the Complainant possessed in its AMEGY Marks. Yet, in spite of that knowledge, the Respondent registered the disputed domain name to purposefully exploit the goodwill and reputation associated with those marks and, by so doing, also disrupt the Complainant's

business by diverting Internet users away from the Complainant's website – all for the Respondent's own pecuniary gain. By choosing such a domain name, the Respondent deliberately sought to create a likelihood of confusion in the minds of Internet users between the disputed domain name and the Complainant's marks such that those users are led to believe that the Complainant sponsors or endorses the Respondent's website or is somehow affiliated with the Respondent or its website – when, in fact, no such relationship or connection whatsoever exists between the Parties.

Furthermore, the Respondent's website, to which the disputed domain name resolves, displays the Complainant's mark AMEGY and contains pay-per-click links to third-party financial service offerings that compete with those provided by the Complainant. It is clearly evident that, by doing so, the Respondent is not only confusing those users but is intentionally and opportunistically exploiting that confusion for its own pecuniary gain by diverting those users, who would seek and otherwise reach the Complainant's website but for making an inadvertent typographical error in entering what those users then believed to be the Complainant's domain name, to the Respondent's site instead through which those users are presented with pay-per-click links through which the Respondent earns click-through revenue.

Additionally, the Respondent has stated on its website that the disputed domain name may be for sale. Taken alone, such an expression is not reflective of bad faith. However, when viewed in the totality of the Respondent's use of the disputed domain name, this expression further reflects bad faith use of the disputed domain name.

B. Respondent

In view of the lack of any Response, this administrative proceeding continued by way of default. Hence, under paragraphs 5(f), 14(a) and 15(a) of the Rules, the Panel decided this proceeding on the basis of the Complainant's undisputed factual allegations which the Panel finds are not inherently implausible.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's mark AMEGY BANK.

From a simple comparison of the disputed domain name to the Complainant's mark AMEGY BANK, no doubt exists that the disputed domain name is confusingly similar to it. The disputed domain name consists of a misspelled variant of the mark to which the generic Top-Level Domain ("gTLD") ".com" has been appended, with the addition of the gTLD being irrelevant in this case in assessing confusing similarity or identity under paragraph 4(a)(i) of the Policy and thus ignored.

It is now very well-established in UDRP precedent, including numerous decisions previously rendered by this Panel, that a minor variation to a mark is usually insufficient in and of itself, when used in forming a domain name that results from modifying the mark, to confer requisite and sufficient distinctiveness to that name to avoid user confusion. Here, the Respondent's misspelling of the Complainant's mark AMEGY as "amgey" (transposing the letters "e" and "g" in the mark) clearly resulted in such a minor variation. See, e.g., *SAP SE v. Lakshmi Reddy Bhumireddy and P. Hareesh*, WIPO Case No. D2017-0396; *Compagnie Générale des Etablissements Michelin v. Cameron Jackson*, WIPO Case No. D2016-2392; *Kumfs Brand Limited v. George*, WIPO Case No. D2016-1272; *Dubizzle Limited BVI v. Rana Anabtawi*, WIPO Case No. D2016-0843; *Chicago Mercantile Exchange Inc. and CME Group Inc. v. Domains By Proxy, LLC / Phupinder Gill*, WIPO Case No. D2015-1842; *Cummins Inc. v. Jamie Lent*, WIPO Case No. D2015-0188; *Staatliche Porzellan-Manufaktur Meissen GmbH v. Buy Meissen*, WIPO Case No. D2013-1687; *Forideas Pty Limited v. Movember Organization*, WIPO Case No. D2013-1385; *AlgaeCal Inc. v. AlgaeCal Fraud*, WIPO Case No. D2013-1248; *General Motors LLC v. Carol Schadt*, WIPO Case No. D2012-2106; *National Westminster Bank plc v. Steve Mart*, WIPO Case No. D2012-1711; *Tommy Bahama Group, Inc. v. Berno*

Group International, WIPO Case No. D2012-0531; *National Association of Realtors v. Hammerberg & Associates, Inc.*, WIPO Case No. D2012-0075; *Space Needle LLC v. Erik Olson*, WIPO Case No. D2011-0931; *Oakley, Inc. v. Kate Elsberry, Elsberry Castro*, WIPO Case No. D2009-1286; and *Clearwire Legacy, LLC v. Leon Ganesh*, WIPO Case No. D2010-0148.

Hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the evidence of record here, the Panel finds that no basis exists which would appear to legitimize a claim of rights or legitimate interests by the Respondent to the disputed domain name under paragraph 4(c) of the Policy.

The Complainant has never authorized the Respondent to utilize any of the Complainant's AMEGY Marks and does not have any relationship, affiliation or connection whatsoever with the Respondent.

Further, with respect to paragraph 4(c)(i) of the Policy, the Respondent never did and does not now use nor has it ever made any demonstrable preparations to use the disputed domain name to resolve to an operational website through which it presently does or will make a *bona fide* offering of any goods or services. The Respondent's actions in utilizing the disputed domain name that incorporates an intentionally misspelled version of the Complainant's mark, generally referred to as typosquatting, to deliberately cause and then exploit for the Respondent's own benefit the inevitable confusion of Internet users that results clearly does not constitute use of the disputed domain name in connection with a *bona fide* offering of goods or services. Specifically, the disputed domain name resolves to a page on the Respondent's website which displays not only the Complainant's mark AMEGY but also a list of pay-per-click third-party links, to financial services that compete with those offered by the Complainant, and through which the Respondent receives click-through revenue or other commercial benefit. Also, such use obviously fails to qualify, under paragraph 4(c)(iii) of the Policy, as a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or tarnish the trademark at issue.

Moreover, as to paragraph 4(c)(ii) of the Policy, the record is entirely devoid of any evidence which reflects that the Respondent is currently or has ever been commonly known by the disputed domain name or any of the Complainant's AMEGY Marks. Given that the Complainant's exclusive rights in its mark AMEGY predates, by some three and a half years, the date, July 27, 2008, on which the Respondent registered the disputed domain name, the Respondent could not legitimately acquire such a public association or even an association with any mark similar to any of those of the Complainant — at least for the services provided by the Complainant under any of its marks — without interfering with the exclusive trademark rights of the Complainant. See, e.g., *Alstom v. Zahir Khan, Palki Event Inc.*, WIPO Case No. D2017-1124; *Compagnie Générale des Etablissements Michelin v. Cameron Jackson, supra*; *Philip Morris USA Inc. v. Daniele Kanai, iKiss LLC*, WIPO Case No. D2015-1527; *Valero Energy Corporation and Valero Marketing and Supply Company v. Lisa Katz, Domain Protection LLC / Domain Hostmaster, Customer ID: 62520014085963*, WIPO Case No. D2015-0787; *Chicago Mercantile Exchange Inc. and CME Group Inc. v. Domains By Proxy, LLC / Phupinder Gill; Cummins Inc. v. Jamie Lent*; and *Staatliche Porzellan-Manufaktur Meissen GmbH v. Buy Meissen*, all *supra*.

Consequently, the Respondent does not satisfy any of paragraphs 4(c)(i)-(iii) of the Policy and thus has no rights or legitimate interests in the disputed domain name under paragraphs 4(a)(ii) and 4(c) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Respondent's actions, with respect to the disputed domain name, constitute bad faith registration and use.

The Panel infers, particularly from the lack of any substantive response and the Respondent's very choice of domain name — being a typosquatted version of the Complainant's mark AMEGY BANK, that the

Respondent was well aware not only of the Complainant and its mark, and the reputation and goodwill which that mark acquired and the exclusive rights which the Complainant held in that mark when the Respondent selected and then registered the disputed domain name, but also the significant potential which that domain name had to cause confusion of Internet users as to whether some association, affiliation or relationship existed between the Respondent's website and the Complainant – when, in fact, no such connection actually existed. There is simply no question that the Respondent registered the disputed domain name in bad faith.

Moreover, the Respondent opportunistically exploits that confusion by diverting those Internet users otherwise intent on reaching the Complainant's website but, for accidentally misspelling the Complainant's domain name, to the Respondent's site instead, where they are presented with a list of pay-per-click third-party links, to financial service offerings competing with those of the Complainant, and through which the Respondent receives click-through revenue or other commercial benefit. This diversion deprives the Complainant of the Internet traffic to the Complainant's website which those users would have provided and the business which these users would otherwise generate, and thus disrupts its business. This use is clearly in bad faith, specifically in violation of paragraphs 4(b)(iii) and 4(b)(iv) of the Policy.

Thus, the Panel concludes that the Complainant has provided sufficient evidence of its allegations, with respect to the disputed domain name to establish a case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

7. Decision

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel grants the relief sought by the Complainant.

The disputed domain name <amgeybank.com> is to be transferred to the Complainant.

Peter L. Michaelson
Sole Panelist
Date: August 22, 2017