

ADMINISTRATIVE PANEL DECISION

Modernatx, Inc. v. Manlidy, GNN

Case No. D2023-1094

1. The Parties

The Complainant is Modernatx, Inc., United States of America (“United States”), represented by SILKA AB, Sweden.

The Respondent is Manlidy, GNN, Singapore.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 12, 2023. On March 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 14, 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 (WhoisSecure) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 14, 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 amendment to the Complaint on March 15, 2023,

The Center verified that the Complaint together with the amendment to the 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 March 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 13, 2023.

The Center appointed John Swinson as the sole panelist in this matter on April 13, 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 an American-based biotechnology company that focuses on the development of medicines based on messenger RNA (mRNA). One of these medicines is the MODERNA COVID-19 vaccine, also known as Spikevax.

The Complainant owns a portfolio of trademark registrations for MODERNA, including United States Trademark Registration No. 4659803 registered on December 23, 2014, as well as registrations in China and Singapore.

The disputed domain name was registered on February 22, 2023.

The Respondent did not file a response, so little is known about the Respondent.

The Respondent has been a respondent in several prior cases under the Policy. These include *Hostelworld.com Limited v. Manlidy, GNN*, WIPO Case No. [D2022-3641](#) and *Loft Ipco LLC v. Manlidy, GNN*, WIPO Case No. [D2022-4627](#). The Respondent was unsuccessful in all prior cases known to the Panel.

At the present time and when the Complaint was filed, the disputed domain name resolves to a website promoting adult services and gambling services. This website is mostly in the Chinese language.

5. Parties' Contentions

A. Complainant

In summary, the Complainant makes the following submissions:

The Complainant owns trademark registrations for MODERNA.

The Complainant and its MODERNA brand have become extremely well known worldwide thanks to the success of the Complainant's COVID vaccine and its pioneering messenger RNA technology. Prior decisions under the Policy have recognized the global reputation of the Complainant and its MODERNA trademark.

The disputed domain name reproduces the Complainant's MODERNA mark in full. The trademark is clearly recognizable in the disputed domain name.

The Complainant has not authorized the Respondent to use its MODERNA trademark for any reason or in any manner, including in or as part of the disputed domain name. The Complainant is not affiliated or otherwise connected with the Respondent. The Complainant has found no evidence that the Respondent has been commonly known by the disputed domain name or by the term "modernametaverse". The Complainant has found nothing to suggest that the Respondent holds any trademark rights in respect of the disputed domain name or the term "modernametaverse". The disputed domain name and the terms "moderna" and "modernametaverse" do not seem to have any meaning in the Chinese language.

The disputed domain name has not been used in connection with any legitimate noncommercial or fair use, without intent for commercial gain.

The nature of the disputed domain name, wholly incorporating the Complainant's well-known MODERNA trademark with the term "metaverse", implies a high risk of implied false affiliation with the Complainant and its activities.

It is impossible to believe that the Respondent would have chosen the disputed domain name if it did not have the Complainant and its MODERNA mark in mind.

The disputed domain name resolves to a website which provides content of a pornographic nature and contains links to websites offering gambling services and to websites with pornographic content. This use (together with the structure of the disputed domain name and the fact that the terms “moderna” and “modernametaverse” do not have any meaning in Chinese language) evidence that the Respondent is making commercial gain from the website by attracting Internet users by creating a likelihood of confusion with the Complainant’s well-known MODERNA trademark.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (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 respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The *onus* of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

As set out in Section 4 above, the Complainant has registered trademarks for MODERNA.

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, disregarding the Top-Level Domain part of the domain name (e.g., disregarding the “.com” part of the domain name.)

Here, the disputed domain name includes the MODERNA registered trademark in its entirety. The addition of the word “metaverse” does not prevent a finding that the disputed domain name is confusingly similar to the Complainant’s MODERNA registered trademark. *Instagram, LLC v. Laremy Wade*, WIPO Case No. [D2022-1710](#).

The Complainant succeeds on the first element of the Policy.

B. Rights or Legitimate Interests

The Complainant’s allegations to support the Respondent’s lack of rights or legitimate interests in the disputed domain name are set out in Section 5A above.

There is no evidence that the Respondent is commonly known by the disputed domain name. The disputed domain name was registered well after the Complainant established its trademark rights in MODERNA.

In the circumstances of this case, use of the disputed domain name to operate a website advertising pornography or gambling, unrelated to the terms “moderna” or “moderna metaverse”, is not *bona fide* use of the disputed domain name. *Akzo Nobel N.V. v. Privacy Service Provided by Withheld for Privacy ehf / jennifer alonso, jennyart*, WIPO Case No. [D2021-4244](#).

The Respondent’s use of the disputed domain name to divert traffic to a website advertising adult services does not, absent further explanation from the Respondent, provide the Respondent with rights or legitimate interests in the disputed domain name. See *ManpowerGroup Inc. v. hongli wang*, WIPO Case No. [D2021-3891](#) and the cases cited therein.

Having regard to all these matters, the Panel finds that the *prima facie* case established by the Complainant has not been rebutted by the Respondent and the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant. *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

The Complainant’s trademark is well-known throughout the world due to its success with the COVID vaccine. It is highly likely that the Respondent knew of the Complainant or the Complainant’s trademark when registering the disputed domain name.

The disputed domain name resolves to a website advertising pornographic and gambling services, which likely disrupted the Complainant’s business and potentially tarnished its trademark. This is indicia of bad faith. See, for example, *Captain Fin Co. LLC v. Private Registration, NameBrightPrivacy.com / Adam Grunweg*, WIPO Case No. [D2021-3279](#); *International Business Machines Corporation v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Xie Gege*, WIPO Case No. [D2021-0245](#).

The Panel finds that the Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website under paragraph 4(b)(iv) of the Policy.

The Complainant has also provided evidence suggesting that the Respondent has engaged in a pattern of abusive registrations.

The Complainant succeeds on the third element of the Policy in relation to the disputed domain name.

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 <modernametaverse.com> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: April 27, 2023