

ADMINISTRATIVE PANEL DECISION

Modernatx, Inc. v. ktwpj mkfwb
Case No. D2023-1319

1. The Parties

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

The Respondent is ktwpj mkfwb, Singapore.

2. The Domain Name and Registrar

The disputed domain name <moderna369.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 27, 2023. On March 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 29, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 31, 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 April 3, 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 April 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 26, 2023.

The Center appointed Christian Gassauer-Fleissner as the sole panelist in this matter on May 5, 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. According to its most recent Annual Report, the Complainant's global sales in 2022 were approximately USD 18.45bn, with more than 3,900 employees worldwide in 17 locations across North America, Europe and Asia Pacific. Thus, the Complainant and its MODERNA brand have become well known worldwide thanks to the success of its COVID vaccine.

The Complainant is the owner of the trademark MODERNA ("MODERNA trademark"), including:

- United States of America Trademark Registration MODERNA No. 4659803, registered on December 23, 2014;
- China Trademark Registration MODERNA (combined) No. 36738656, registered on December 7, 2019;
- International Registration MODERNA (combined) No. 1543457, registered on April 23, 2020;
- United States of America Trademark Registration MODERNA (combined) No. 4675783, registered on January 20, 2015;
- United Kingdom Trademark Registration MODERNA (combined) No. UK00801543457, registered on December 21, 2020;
- International Registration MODERNA (combined) No. 1293063, registered on January 7, 2016; and
- Australia Trademark Registration MODERNA (combined) No. 1759485, registered on January 7, 2016.

The Respondent registered the disputed domain name on March 18, 2023. At the time of the decision and when the Complaint was filed, the disputed domain name resolved to a website which displayed the MODERNA trademark, a photograph of the Complainant's CEO and apparently, as indicated by the images, pharmaceutical content.

5. Parties' Contentions

A. Complainant

The arguments put forward by the Complainant can be summarized as follows:

On the first element of the Policy, the Complainant claims that the disputed domain name is identical or confusingly similar to the Complainant's MODERNA trademark. The disputed domain name includes the entire MODERNA trademark, with only the addition of the number "369" and the generic Top-Level Domain ("gTLD") ".com". The addition of the number "369", does not distinguish the disputed domain name from the MODERNA trademark.

On the second element of the Policy, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with the Complainant in any way and has not been authorized by the Complainant to use its MODERNA trademark. Based on all available information, the Respondent did not demonstrate any legitimate noncommercial or fair use of the disputed domain name. Furthermore, the Complainant has found no evidence that the Respondent has been commonly known by the disputed domain name or by the term "moderna369". Moreover, since the Complainant became aware of the disputed domain name, it has resolved to an active

website which displays on top the Complainant's well-known MODERNA trademark and a photograph of the CEO of the company. Besides, the website provides information in Chinese language about the Complainant's vaccine and some of its products. In this regard, the website does not contain any disclaimer disclosing the complete absence of any relationship between the disputed domain name and the Complainant. Given the extensive use and reputation of the Complainant's MODERNA trademark, it can be concluded that this use of the disputed domain name causes confusion for customers, deceiving them into thinking that the Respondent's website is operated by or associated with the Complainant. This deceptive, confusing and unlawful use of the disputed domain name cannot in any way amount to a *bona fide* offering of goods or services.

On the third element of the Policy, the Complainant asserts that the Respondent registered and used the disputed domain name in bad faith. The Respondent's bad faith registration and use of the disputed domain name are established by the fact that the disputed domain name incorporates the Complainant's entire MODERNA trademark, with only the addition of the number "369", and the disputed domain name was registered years after the Complainant's MODERNA trademark. Since the disputed domain resolves to a website which prominently displays the Complainant's MODERNA trademark on top, a photograph of the Complainant's CEO and information about the Complainant's products, it is more than likely that the Respondent registered the disputed domain name in bad faith, in order to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's MODERNA trademark. Furthermore, the MODERNA trademark has become well-known worldwide thanks to the success of the COVID vaccine. Even the mere registration of a domain name identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can itself create a presumption of bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "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".

It has been a consensus view in previous UDRP decisions that a respondent's default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true (see section 4.3 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the Complaint, namely that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a)(i) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trademark or a service mark in which it has rights.

The Complainant is registered as the owner of several trademarks containing MODERNA. Suitable evidence was submitted. Consequently, the Panel finds that the Complainant has proven that it has rights in the MODERNA trademark.

The disputed domain name contains the MODERNA trademark entirely with the addition of the number “369” and the gTLD “.com”. Section 1.8 of [WIPO Overview 3.0](#) states: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements.” Further, section 1.11.1 of [WIPO Overview 3.0](#) states: “The applicable TLD in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” The gTLD “.com” will therefore be discounted in the Panel’s consideration of confusing similarity. The Panel finds that the relevant trademark MODERNA within the disputed domain name is recognizable, so that the number “369” does not prevent a finding of confusing similarity.

For the reasons above, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks, and that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second element the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Regarding the second element of the Policy, section 2.1 of [WIPO Overview 3.0](#) states, “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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element”.

According to the Complainant, the Complainant has not authorized the Respondent to use the Complainant’s trademarks, the Respondent is not commonly known by the disputed domain name, and the Respondent has not used the disputed domain name for a legitimate noncommercial or fair use, nor used it in connection with a *bona fide* offering of goods or services. Further, the Respondent has not attempted to justify why the disputed domain name was registered. Moreover, the Panel finds that the composition of the disputed domain name, adding the number “369” to the Complainants’ MODERNA trademark, coupled with the use of the disputed domain name to resolve to a website which displayed the MODERNA trademark, a photograph of the Complainant’s CEO and apparently, as indicated by the images, pharmaceutical content, affirms the Respondent’s intention of taking unfair advantage of the likelihood of confusion between the disputed domain name and the Complainant as to the origin or affiliation of the website at the disputed domain name.

Accordingly, the Panel finds that the Complainant has made a *prima facie* showing of the Respondent’s lack of rights or legitimate interests in respect of the disputed domain name, which has not been rebutted by the Respondent. The Panel therefore finds that the Complainant has established the second element of the Policy in accordance with paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires that the Complainant demonstrate that the Respondent registered and is using the disputed domain name in bad faith. Section 3.1 of [WIPO Overview 3.0](#) states, “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”. Section 3.2.2 of the [WIPO Overview 3.0](#) reads: “Noting the near instantaneous and global reach of the Internet and search engines and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers),

panels have been prepared to infer that the respondent knew, or have found that the respondent should have known that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark."

Considering the reputation and public presence of the Complainant, it is unlikely that the Respondent had no knowledge of the MODERNA trademark. The incorporation of the MODERNA trademark within the disputed domain name as well as the fact that the disputed domain resolved to a website which displayed the MODERNA trademark, a photograph of the Complainant's CEO and apparently, as indicated by the images, pharmaceutical content demonstrates the Respondent's actual awareness of and intent to target the Complainant. In light of the lack of any rights to or legitimate interests in the disputed domain name by the Respondent and in the absence of any conceivable good faith use, the Panel finds from the present circumstances that the Respondent has intentionally attempted to attract Internet users to its website or affect the commercial activities of the Complainant by creating a likelihood of confusion with the Complainant's trademarks.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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, <moderna369.com>, be transferred to the Complainant.

/Christian Gassauer-Fleissner/

Christian Gassauer-Fleissner

Sole Panelist

Date: May 19, 2023