

ADMINISTRATIVE PANEL DECISION

Modernatx, Inc. v. Gro En
Case No. D2023-1748

1. The Parties

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

The Respondent is Gro En, Singapore.

2. The Domain Name and Registrar

The disputed domain name <cryptomoderna.com> is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 21, 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 (privacy service, Redacted For Privacy) and contact information in the Complaint.

The Center sent an email communication to the Complainant also on April 21, 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 23, 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 May 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 30, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on June 2, 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

Established in 2010, 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. The Complainant’s vaccine, which relies on pioneering mRNA technology, is one of the most widely administered vaccines in the history of medicine, with more than 800,000,000 doses shipped globally in 2021. The health authorities in more than 70 other countries, including the U.S., Japan, the European Union, the United Kingdom, Switzerland, Australia and Israel, have approved the vaccine. According to its most recent Annual Report, the Complainant’s global sales in 2022 were approximately USD18.45bn, with more than 3,900 employees worldwide in 17 locations across North America, Europe and Asia Pacific.

The Complainant owns a global portfolio of MODERNA registered trademarks, including for instance, the U.S. trademark registration No. 4659803), registered on December 23, 2014.

The disputed domain name was registered on March 2, 2023, and resolved to a website in Chinese language that provided content of a pornographic nature, and also contained links to websites offering gambling services and to websites with pornographic materials. At the time of rendering the decision, the disputed domain name does not resolve to any active website.

5. Parties’ Contentions

A. Complainant

The disputed domain name is identical or confusingly similar to the Complainant’s trademark.

The Complainant’s trademark is incorporated in its entirety in the disputed domain name. Although the disputed domain name also incorporates the terms “crypto” (which is the short for “cryptocurrency”), this addition does not prevent a finding of confusing similarity between the Complainant’s trademark and the disputed domain name. Although the disputed domain name includes the generic Top-Level Domain (“gTLD”) “.com”, the applicable Top Level Domain (“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 Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not a licensee of the Complainant, and it has not received any consent, permission or acquiescence from the Complainant to use its trademark in association with the registration of the disputed domain name. The Complainant has found no evidence that the Respondent has been commonly known by the disputed domain name or by the term “cryptomoderna”. The Complainant has found nothing to suggest that the Respondent holds any trademark rights on the disputed domain name or the term “cryptomoderna”. The disputed domain name and the terms “moderna” and “cryptomoderna” do not seem to have any meaning in English or 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 disputed domain name resolves to a website in Chinese language that provides content of a pornographic nature and contains links to websites offering gambling services and to websites with pornographic materials. Given the extensive use and reputation of the Complainant’s trademark worldwide, it can be concluded that the Respondent has registered and used the disputed domain name to exploit the goodwill of the Complainant’s trademark and to attract Internet users to its website. Such conduct is not legitimate, cannot be considered in any way a *bona fide* offering of goods and services, and does not give rise to rights and legitimate interests of the Respondent in the disputed domain name. The terms “moderna” and “cryptomoderna” do not have any meaning in English or Chinese language. Hence, it is more than likely, given the current common naming conventions and patterns in use on the Internet, that an Internet user who seeks information about any activity of the Complainant in relation to cryptocurrencies would form a domain name by appending the term “crypto” to the MODERNA mark and then add the common gTLD “.com” to yield the resulting disputed domain name. By doing so, the user reasonably and naturally assumes that the site to which the domain

name resolved would be legitimately affiliated in some manner with the Complainant. However, the result here is that the user's action would cause that person not to be taken to the Complainant's website, but rather, and without that user realizing the diversion, to the Respondent's website instead. Therefore, the nature of the disputed domain name, wholly incorporating the Complainant's well-known trademark with the generic term "crypto", implies a high risk of implied false affiliation with the Complainant and its activities.

The disputed domain name was registered and is being used in bad faith. The Complainant is a world leader in developing and manufacturing medicines based on mRNA and its COVID-19 Vaccine is one of the most widely administered vaccines in the history of medicine. Besides, its well-known trademark has been in use well before the disputed domain name registration date. The disputed domain name reproduces in full the well-known Complainant's trademark, without the consent or authorization of the Complainant. In view of the popularity of the Complainant and the fact that, the Complainant has an established Internet presence under, *inter alia*, the domain name <modernatx.com>, registered on September 7, 2010 (that is, almost thirteen years before the disputed domain name registration date), which hosts a website that displays information about 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's trademark and activities in mind. The Complainant's trademark has become extremely well-known worldwide thanks to the success of its COVID vaccine. The mere registration of a domain name that is identical or confusingly similar to a famous trademark, as it is the case here with the Complainant's trademark, by an unaffiliated entity can by itself create a presumption of bad faith. The disputed domain name not only reproduces in full the Complainant's trademark, but it is also the generic term "crypto", which has become extremely popular in infringing domain name registrations. In view of the circumstances of the case and the use of the disputed domain name, it is impossible to believe that the Respondent would have chosen the disputed domain name if it did not have the Complainant and its trademark 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 "cryptomoderna" do not have any meaning in English or Chinese languages, and the popularity of the Complainant's trademark) evidences that Respondent is making commercial gain from the website by attracting Internet users by creating a likelihood of confusion with Complainant's well-known trademark. The pornographic materials on the website hosted by the disputed domain name tarnish the Complainant and its well-known trademark. The Respondent's use of a privacy registration service for the disputed domain name is an additional indication for a finding of bad faith registration and use in view of the circumstances of this case.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

According to section 1.11.1 of the [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#) (the "[WIPO Overview 3.0](#)") the applicable generic Top-Level Domain ("gTLD") 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. Thus, the Panel disregards gTLD ".com" for the purposes of the confusing similarity test.

According to section 1.7 of the [WIPO Overview 3.0](#) in cases where a domain name incorporates the entirety of a trademark the domain name will normally be considered identical or confusingly similar to that mark for purposes of UDRP standing. The Panel finds that in the present case the disputed domain name incorporates the entirety of the Complainant's trademark.

According to section 1.8 of the [WIPO Overview 3.0](#) 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 Panel finds that the addition of a term “crypto” in the present case does not prevent finding the disputed domain name confusingly similar to the Complainant’s trademark.

Considering the above the Panel finds the disputed domain name is confusingly similar to the Complainant’s trademark, therefore, the Complainant has established its case under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name.

Furthermore, the Respondent did not reply to the Complainant’s contentions, and provided no evidence that it holds rights or legitimate interests in the disputed domain name.

The available evidence do not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

The initial use of the disputed domain names to redirect to the website with adult sexually explicit content is, given the circumstances, not a *bona fide* offering of goods or services (see, e.g., *International Business Machines Corporation v. chenaibin*, WIPO Case No. [D2021-0339](#)).

Considering the above the Panel finds the Respondent does not have rights or legitimate interests in the disputed domain name. Therefore, the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to section 3.1.4 of the [WIPO Overview 3.0](#) the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is convinced that the Complainant’s trademark is well established through long and widespread use and the Complainant has acquired a significant reputation and level of goodwill in its trademark both in the U.S. and internationally. Thus, the Panel finds that the disputed domain name confusingly similar to the Complainant’s trademark was registered in bad faith.

According to paragraph 4(b)(iv) of the Policy the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith: by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location. Using the disputed domain name confusingly to the Complainant’s well-known trademark to host links to gambling and pornographic websites creates a likelihood of confusion with the Complainant’s trademark and potentially obtains revenue from this practice. Under such circumstances the Panel finds that the disputed domain name was being used in bad faith.

The fact that the website at the disputed domain name provided adult sexually explicit content with pornography elements is a clear indication that the domain name has been registered and used in bad faith (see, e.g., *Six Continents Hotels, Inc. v. Seweryn Nowak*, WIPO Case No. [D2003-0022](#); *Miroglio S.p.A. v. Mr. Alexander Albert W. Gore*, WIPO Case No. [D2003-0557](#)).

Although at the time of this decision the disputed domain name resolves to inactive webpage, its previous bad faith use and lack of explanation of possible good faith use from the Respondent makes any good faith use of the disputed domain name implausible. Thus, the current passive holding of the disputed domain name does not prevent a finding of bad faith (see section 3.3 of the [WIPO Overview 3.0](#)).

Considering the above the Panel finds the disputed domain name was registered and is being used in bad faith. Therefore, the Complainant has established its case under 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 <cryptomoderna.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: June 16, 2023