

ADMINISTRATIVE PANEL DECISION

Modernatx, Inc. v. Ariel Mann, MannWeb
Case No. D2023-2905

1. The Parties

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

Respondent is Ariel Mann, MannWeb, United States of America.

2. The Domain Name and Registrar

The disputed domain name <modernatx-zoom.com> is registered with Nicenic International Group Co., Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 7, 2023. On July 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 7, 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 (Redacted For Privacy, MannWeb) and contact information in the Complaint. The Center sent an email communication to Complainant on July 25, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on July 27, 2023.

The Center verified that the Complaint together with the amended 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 Respondent of the Complaint, and the proceedings commenced on July 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 17, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 24, 2023.

The Center appointed Timothy D. Casey as the sole panelist in this matter on September 12, 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

Complainant is a biotechnology company, founded in 2010, focused on developing medicines based on messenger RNA, such as a Covid-19 vaccine, of which more than 800,000,000 doses were shipped in 2021. In 2022, Complainant had approximately USD 18.45 billion in revenue and more than 3,900 employees in more than 17 locations in North America, Europe, and Asia.

Complainant is the owner of numerous trademark registrations that include “moderna” as the trademark or part of the trademark (the “MODERNA Marks”), including the following:

Mark	Jurisdiction	Class(es)	Registration No.	Registration Date
MODERNA	United States of America	1, 5	4659803	December 23, 2014
MODERNA	United States of America	5	4675783	January 20, 2015
MODERNA	China	5	32738656	December 7, 2019
MODERNA	International	1, 42	1543457	April 23, 2020
MODERNA	International	1, 5	1533637	April 23, 2020
MODERNA	United Kingdom	1, 5	UK00801533637	June 4, 2021

Complainant’s domain name, registered on September 2, 2010, is <modernatx.com>.

The disputed domain name was registered June 28, 2023.

Complainant provided evidence showing that the disputed domain name had been identified as being associated with phishing and had been used by Respondent in connection with a website that uses Complainant’s MODERNA Marks in its favicon and in a logo associated with a sign-in area that would collect login credentials. Respondent’s website also included images of medication or chemical bottles.

5. Parties’ Contentions

A. Complainant

Complainant contends it has rights in trademarks per the MODERNA Marks, that the disputed domain name is confusingly similar to the MODERNA Marks because the MODERNA Marks are incorporated in their entirety in the disputed domain name, that the abbreviation “tx” is part of Complainant’s company name and is known to mean “treatment”, which relates to Complainant’s business, that “zoom” is a generic term, and that the hyphen and Top-Level Domain are inconsequential to a similarity determination.

Complainant contends it has not authorized Respondent to use the MODERNA Marks, including as part of the disputed domain name, that Respondent holds no trademark rights in the disputed domain name, that Respondent is not known by the disputed domain name, that the terms “moderna” and “modernaltx-zoom” have no meaning in the English language, and that the disputed domain name has not been used in connection with any legitimate noncommercial or fair use, without intent for commercial gain, at least as evidenced by the phishing usage and in connection with Respondent’s website. Complainant further notes that the disputed domain name is currently not being used with an active website.

Complainant contends that it is not possible to conceive of a plausible situation in which Respondent would have been unaware of Complainant and the MODERNA Marks at the time of registration of the disputed domain name, that the current non-use of the disputed domain name constitutes passive holding in bad faith, and that Respondent's prior website for phishing purposes and in an effort to impersonate Complainant and mislead Internet users in order to collect information and passwords from Complainant's customers constitutes use in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

Complainant's use of the MODERNA Marks for more than 10 years and registrations for the same are more than sufficient to establish that Complainant has trademark rights in the MODERNA Marks prior to registration of the disputed domain name.

Complainant contends that the disputed domain name is confusingly similar to the MODERNA Marks.

Given that Complainant's MODERNA Marks are recognizable in the disputed domain name the Panel agrees and finds that the disputed domain name is confusingly similar to the MODERNA Marks.

B. Rights or Legitimate Interests

The Panel finds that Respondent has no rights or legitimate interests in the disputed domain name. Respondent does not appear to be commonly known by the disputed domain name. Complainant has not permitted Respondent to use the MODERNA Marks.

Respondent's prior use of the disputed domain name in association with a website impersonating Complainant, appearing to be associated with medicine or scientific research, and attempting to collect information from Complainant's customers is not a *bona fide* offering of goods or service that would give rise to rights or a legitimate interest in the disputed domain name.

Furthermore, the nature of the disputed domain name, comprising the MODERNA Marks and adding a hyphen, an abbreviation of a descriptive term associated with Complainant's business, and another descriptive term carries a risk of implied affiliation with Complainant as it effectively impersonates or suggests sponsorship or endorsement by Complainant, and accordingly cannot constitute a fair use in these circumstances. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The addition of the descriptive terms in the disputed domain name only serves to further increase the level of falsely suggested sponsorship or endorsement by Complainant.

Respondent has not rebutted Complainant's *prima facie* case and has provided no arguments or evidence showing potential rights or legitimate interests in the disputed domain name. For these reasons, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Given i) the timing of Complainant's first use of the MODERNA Marks and the numerous prior registrations of the MODERNA Marks, predating registration of the disputed domain name by years, Complainant being located in the United States of America where Respondent reportedly resides, and Complainant's use of the MODERNA Marks in association with an impersonating website, ii) the inherently misleading nature of the

disputed domain name as a combination of the MODERNA Marks with insignificant or descriptive terms, in combination with a deceptive website engaged in potentially disreputable activity, and iii) Respondent's prior use and current passive holding of the disputed domain name, indicates that Respondent had clear knowledge of the MODERNA Marks and Complainant's business prior to registration.

The Panel finds that Respondent's registration of the disputed domain name was in bad faith.

In addition, the Panel finds Respondent's prior usage of the disputed domain name to attract consumers to a website associated with the disputed domain name by falsely associating the website with Complainant constitutes use in bad faith consistent with paragraph 4(b)(iv) of the Policy. The current passive holding of the disputed domain name does not prevent a finding of bad faith.

The Panel concludes that the disputed domain name was registered and has been used in bad faith.

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 <modernatx-zoom.com> be transferred to Complainant.

/Timothy D. Casey/

Timothy D. Casey

Sole Panelist

Date: October 16, 2023