

ADMINISTRATIVE PANEL DECISION

Modernatx, Inc. v. Host Master, 1337 Services LLC
Case No. D2024-1276

1. The Parties

The Complainant is Modernatx, Inc., United States of America (“United States”), internally represented.

The Respondent is Host Master, 1337 Services LLC, Saint Kitts and Nevis.

2. The Domain Name and Registrar

The disputed domain name <modernastx.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 23, 2024. On March 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 26, 2024, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 28, 2024, 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 30, 2024.

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 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 26, 2024.

The Center appointed Gill Mansfield as the sole panelist in this matter on May 10, 2024. 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 a biotechnology company with a registered business address in Cambridge, Massachusetts, United States. The Complainant focusses on the development of messenger RNA (“mRNA”) medicines, including the Moderna Covid-19 vaccine. Launched in 2021 the Moderna Covid-19 vaccine is approved for distribution in more than 70 jurisdictions worldwide including the United States, Japan, the European Union, the United Kingdom, Switzerland, Australia, and Israel. The Complainant states that sales of the vaccine exceed USD 15 billion with in excess of 800,000,000 doses shipped.

The Complainant is the owner of a global portfolio of MODERNA and MODERNA-formative trademark registrations, including (but not limited to) the following:

- United States Trademark Registration Number 4659803 for MODERNA (wordmark) registered on December 23, 2014, in classes 1 and 5.

- United States Trademark Registration Number 4811834 for MODERNA (wordmark) registered on September 15, 2015, in class 42.

- International Trademark Registration Number 1293063 for MODERNA (wordmark and device) registered on January 7, 2016, in classes 1, 5, and 42.

- Canada Trademark Registration Number TMA1079224 for MODERNA (wordmark and device) registered on June 2, 2020, in classes 1, 5, and 42.

The Complainant registered the domain name <modernatx.com> on September 7, 2010, and operates a corporate website at “www.modernatx.com”.

The disputed domain name was registered on October 14, 2023, and the Complainant states in its Complaint that the disputed domain name resolved to the Complainant’s corporate website.

At the time of this decision the disputed domain name resolves to an error page.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant’s widely used and registered MODERNA mark as it contains the MODERNA mark in its entirety. The Complainant relies on the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, third edition, (“[WIPO Overview 3.0](#)”) section 1.8, in contending that the addition of the letters “stx” in the disputed domain name does not alleviate the confusing similarity to the Complainant’s MODERNA mark where the relevant trademark is recognizable within the disputed domain name. In summary the Complainant states that the inclusion of its trademark in its entirety within the disputed domain name coupled with the Complainant’s significant trademark rights and global reputation establish the confusing similarity required under the paragraph 4(a)(i) of the Policy.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has no authorization to register or use the Complainant’s trademark in any manner. The Respondent is not commonly known by the disputed domain name. In

addition, the Complainant asserts that at the time of the Complaint the disputed domain name resolved to the Complainant's corporate website at "www.modernatx.com" and that the direction of the disputed domain name to the Complainant's own website negates any claim of rights or claim to legitimate interests in the disputed domain name.

The Complainant contends that as the disputed domain incorporates the entire MODERNA mark and resolves to the Complainant's website the Respondent is seeking to capitalize on the Complainant's goodwill and reputation and mislead customers into thinking that it is affiliated with, or operated by, the Complainant.

Finally, as the disputed domain name is almost identical to the Complainant's domain name <modernatx.com>, with the exception of one letter, the Respondent is a "typosquatter" and cannot have any claim of rights or legitimate interests.

With respect to bad faith registration, the Complainant points to the reputation that the Complainant has under the MODERNA name and states that the registration of a domain that is confusingly similar to the Complainant's famous and widely known trademark is an act of bad faith. Further, as the Complainant's trademark registrations pre-date the disputed domain name by a significant margin the Respondent cannot have been unaware of the Complainant's fame and rights in the MODERNA trademark.

With respect to bad faith use, the Complainant contends that the disputed domain name was pointed at the Complainant's corporate website to disrupt its relationship with its customers and to improperly attract Internet users for potential gain which establishes bad faith. Further, the configuration of mail exchange ("MX") servers associated with the disputed domain name is further evidence of bad faith as it allows the Respondent to send email with the address ending in "@modernastx.com" thereby mimicking the Complainant's emails address ending in "@modernatx.com". The Complainant submits that the ability to mimic the Complainant's email is strongly indicative of deceptive actions, phishing and other frauds.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy the Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, and
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here the addition of “stx”) may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In particular, the Respondent is not licensed or authorized by the Complainant to register or use any of its trademarks in any manner. There is no evidence that the Respondent is commonly known by the disputed domain name, nor is there any evidence of use, or demonstrable preparations to use the disputed domain name for a bona fide offering of goods and services. There is also no evidence of legitimate noncommercial fair use.

It is the Complainant’s undisputed evidence that at the time of the Complaint the disputed domain name resolved to the Complainant’s corporate website. The Panel finds that the use of the disputed domain name was not in connection with a bona fide offering of goods and services.

The disputed domain name <modernastx.com> consists of the Complainant’s registered trademark MODERNA in its entirety with the addition of the letters “stx”. The Panel notes that the Complainant’s registered domain name is <modernatx.com> and its registered corporate identity is Modernatx, Inc. The disputed domain name is almost identical to the Complainant’s domain name <modernatx.com>, with the exception of the addition of one letter, an “s” inserted between “moderna” and “tx” and is an example of typosquatting and is thus inherently misleading (as set out in [WIPO Overview 3.0](#), section 1.9). Panels have recognised that typosquatting is a further indication of a lack of rights or legitimate interests in a domain name.

Further, according to paragraph 14(b) of the Rules the Panel may draw from the lack of response of the Respondent such inferences as it considers appropriate. The Panel is of the view that the lack of response from the Respondent corroborates the absence of any rights or legitimate interests in the disputed domain name.

Given that the disputed domain name is confusingly similar to the Complainant's trademark, is almost identical to the Complainant's domain name (save for a deliberate misspelling – by the addition of an “s”) and that MX records associated the disputed domain name have been configured so as to allow email to be sent from the disputed domain name, the Panel concludes that the disputed domain name represents an implied ongoing threat to the Complainant due to its inherently misleading nature, which renders any fair use implausible under the circumstances of this proceeding.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have consistently found that the mere registration of a domain that is identical or (as in this case) confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. WIPO Overview section 3.1.4.

In the present case, the Panel notes that the disputed domain name was registered in October 2023 many years after the first registration of the Complainant's trademark (December 2014). Having reviewed the available record, the evidence shows that the Complainant's trademarks are widely known worldwide following the Covid-19 pandemic and have achieved significant fame and reputation. The fact that the trademark is widely known means that it is highly unlikely that the Respondent was unaware the Complainant's trademark or registered the disputed domain name without knowledge of the Complainant's trademark. The Respondent has no rights or legitimate interests in the disputed domain name, and it is implausible that there is any good faith use that the disputed domain name could be put to.

The Complainant's evidence that the disputed domain name resolved to the Complainant's website supports this finding and is an indication of bad faith.

Further, the Complainant's evidence that MX servers associated with the disputed domain name were configured to allow email to be sent with an address ending “@modernastx.com” (which is almost identical to the Complainant's “@modernatx.com” email suffix) thereby enabling the Respondent to mislead or deceive potential recipients is a further clear indication of bad faith.

The Panel finds that the Respondent has targeted the Complainant's well-known trademark and domain name in an act of typosquatting. Panels have previously found that typosquatting itself is evidence of bad faith registration and use.

In addition, panels have found that a respondent redirecting a domain name to the complainant's website can establish bad faith insofar as the respondent retains control over the redirection thus creating a real or implied ongoing threat to the complainant. [WIPO Overview 3.0](#), section 3.1.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <modernastx.com> be transferred to the Complainant.

/Gill Mansfield/

Gill Mansfield

Sole Panelist

Date: May 24, 2024