

ADMINISTRATIVE PANEL DECISION

ModernaTx, Inc. v. Contact Privacy Inc., Customer 12411534420 / Emily Pray
Case No. D2022-0426

1. The Parties

Complainant is ModernaTx, Inc., United States of America, represented by MSA IP – Milojevic Sekulic & Associates, Serbia.

Respondent is Contact Privacy Inc., Customer 12411534420, Canada / Emily Pray, United States of America.

2. The Domain Name and Registrar

The disputed domain name <modernatx.biz> (the “Domain Name”) is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 8, 2022. On February 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 8, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email to Complainant on February 14, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on February 17, 2022.

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 February 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 13, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 4, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on April 11, 2022. 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 major global pharmaceuticals firm, and in the past two years has acquired worldwide renown because of its MODERNA COVID-19 vaccine. Complainant shipped more than 800,000,000 doses of the MODERNA vaccine in 2021. Its vaccine has received regulatory approval in more than 70 countries.

Complainant holds numerous trademark registrations for the mark MODERNA, including United States Patent and Trademark Office Reg. No. 4,659,803, registered on December 23, 2014 in connection with, among other things, “medical, biological and pharmaceutical preparations.”

The Domain Name was registered on November 16, 2021. The Domain Name resolves to Complainant’s actual commercial website. According to Complainant, however, this is done in aid of Respondent’s fraudulent scheme to impersonate a nonexistent employee of Complainant. According to Complainant, and as corroborated by documentary evidence annexed to the Complaint, Respondent has used the Domain Name for a bogus email on at least two occasions, with the goal of duping the unwitting email recipient into providing his or her personal and financial information to Respondent.

Respondent has not denied any of the foregoing allegations.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

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

A. Identical or Confusingly Similar

The Panel concludes that Complainant has rights in the unregistered trademark MODERNA through registration and use demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to the MODERNA mark. The entire mark is incorporated within the Domain Name, and the additional letters “tx” do not prevent confusing similarity between the mark and the Domain Name.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. Respondent has not come forward in this proceeding to articulate or prove any legitimate reason for registering the Domain Name, which is identical to Complainant's mark. The undisputed record here shows that Respondent registered the Domain Name with the goal of impersonating a nonexistent employee of Complainant to send bogus emails in furtherance of a phishing scam. Such conduct is obviously illegitimate.

The Panel concludes that Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Domain Name is identical to the Complainant's corporate name and also couples together the Complainant's famous MODERNA mark with the letters "tx", which are shorthand for the "therapeutics" offered by Complainant. Further, the Panel incorporates its discussion above in the "Rights or Legitimate Interests" section. The Panel concludes that Respondent clearly targeted Complainant when registering the Domain Name, and did so to perpetrate a fraud, in violation of the above-quoted Policy paragraph 4(b)(iv).

Complainant has established Policy paragraph 4(a)(iii).

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 Domain Name <modernatx.biz> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: April 19, 2022