

ADMINISTRATIVE PANEL DECISION

ModernaTx, Inc. v. Sarah Anderson

Case No. D2022-1098

1. The Parties

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

The Respondent is Sarah Anderson, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <modernatx.ltd> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 30, 2022. On March 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 31, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 27, 2022.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on May 3, 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

The Complainant, ModernaTx, Inc., is a company active in the biotechnology sector which manufactures COVID-19 vaccines among others. The Complainant claims to have sold over 800,000,000 doses of COVID-19 vaccines in more than 70 countries and was named the world's most innovative company of 2021 by Fast Company.

The Complainant holds many trademarks which include the term "Moderna", including:

- United States verbal trademark MODERNA, registered under number 4659803 on December 23, 2014, in classes 1 and 5;
- United States verbal trademark MODERNA, registered under number 4811834 on September 15, 2015, in class 42;
- United States semi-figurative trademark MODERNA, registered under number 5543197 on August 21, 2018, in classes 1, 5, and 42; and
- United States semi-figurative trademark MODERNA, registered under number 4675783 on January 20, 2015, in class 1.

The Complainant operates the domain name <modernatx.com>, registered on September 7, 2010.

The disputed domain name was registered on February 21, 2022.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's MODERNA trademarks. In particular, the Complainant argues that its trademarks are the dominant and readily recognized portion of the disputed domain name. Furthermore, the Complainant contends that the addition of the term "tx" further enhances the likelihood of confusion arising from the disputed domain name, as "tx" is widely understood to mean "therapy" or "therapeutics", whereas the addition of the ".ltd" generic Top-Level Domain ("gTLD") is irrelevant to assess confusing similarity.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name, as the Respondent allegedly operates a "sham website", which previous UDRP panels have held cannot confer legitimate interests in a domain name. Additionally, the Complainant claims that there is no evidence of the Respondent's use or preparation to use the disputed domain name in connection with a *bona fide* offering of goods, nor that the Respondent is commonly known by the disputed domain name. Finally, the Complainant asserts that it has not authorised the Respondent to register or use its trademarks or the disputed domain name.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith. According to the Complainant, the content of the disputed domain name demonstrates an intent to deceive or confuse the Complainant's potential investors and disrupt the Complainant's business by diverting traffic from its official website. Further, the Complainant claims that the composition of the disputed domain name demonstrates that the Respondent was aware of and targeted the Complainant when registering the disputed domain name. Finally, the Complainant contends that its trademarks are well-known and that the allegedly fraudulent use of the disputed domain name is strong evidence of registration in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must demonstrate that the disputed domain name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

On the basis of the evidence presented, it is established that the Complainant owns several MODERNA verbal and semi-figurative trademarks.

The disputed domain names entirely incorporate the Complainant's MODERNA trademarks, albeit with the addition of the term "tx". Previous UDRP Panels have consistently held that, in circumstances where the disputed domain name incorporates the entirety of a trademark or its dominant feature is recognizable, the disputed domain name will be considered confusingly similar to the trademark (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7; *Fondation Le Corbusier v. Monsieur Bernard Weber, Madame Heidi Weber*, WIPO Case No. [D2003-0251](#); *Bayerische Motoren Werke AG ("BMW") v. Registration Private, Domains By Proxy, LLC / Armands Piebalgs*, WIPO Case No. [D2017-0156](#)).

Additionally, it is well established that the applicable gTLDs, here ".ltd", is typically not to be taken into account for the purpose of assessing confusing similarity under the Policy, as it is merely a standard registration requirement ([WIPO Overview 3.0](#), section 1.11).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's MODERNA trademarks and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, evidence of the Respondent's rights or legitimate interests in the disputed domain name for the purposes of paragraph 4(a)(ii) may be established, in particular, by any of the following circumstances:

- (i) prior to becoming aware of the dispute, the respondent has used the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services, or made serious preparations to do so;
- (ii) the Respondent is known by the disputed domain names in question, even without having acquired trademark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the disputed domain names without intent to divert consumers for profit by creating confusion or to tarnish the trademark or service mark at issue.

Where the Complainant establishes *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production on this element is on the Respondent and it is up to the Respondent to provide relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent does not provide such relevant evidence, the Complainant is deemed to have satisfied the second element ([WIPO Overview 3.0](#), section 2.1).

The Complainant provides *prima facie* evidence that the Respondent has not acquired trademark rights in the terms "Moderna" or "Modernatx" and that the Respondent is not commonly known by these terms either. Additionally, the Complainant contends that the Respondent uses its MODERNA trademarks without any license or authorization.

Further, the Complainant provides *prima facie* evidence that the Respondent has not, before the original filing of the Complaint, used or made preparations to use the disputed domain name in relation to a *bona fide* offering of goods or services. On the contrary, the Respondent is making use of the disputed domain name in a manner that virtually identically reproduces the domain name operated by the Complainant, with the intent to deceive or confuse the visitor to the disputed domain name for profit. This use of the disputed domain name is not *bona fide* and therefore cannot generate any rights or legitimate interests (*Associated Newspapers Limited v. WhoisGuard, Inc. / Paul Baso*, WIPO Case No. [D2020-3261](#)).

The Complainant has established *prima facie* that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not exercised its right to defend itself and has not asserted the existence of a legitimate use of the disputed domain name, so the Panel must conclude that the second condition of paragraph (4)(a) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides that relevant circumstances are established where:

(iv) by using such domain name, [the Respondent has] knowingly attempted to attract, for profit, Internet users to a website or other online space [it] owns, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsor, affiliation, or endorsement of [its] website or web space or a product or service offered therein.

The disputed domain name was registered on February 21, 2022, which is later than the registration of the Complainant's MODERNA trademarks between 2014 and 2021. The disputed domain name directs visitors to a page that almost identically reproduces the domain name operated by Complainant. The Complainant asserts that "this demonstrates an intent to deceive or confuse Complainant's potential investors and thus disrupt Complainant's business by diverting traffic from Complainant by creating a likelihood of confusion as to source, sponsorship, affiliation, or endorsement of Respondent's website". Such use of the disputed domain name constitutes bad faith (*Associated Newspapers Limited v. WhoisGuard, Inc. / Paul Baso*, WIPO Case No. [D2020-3261](#)).

Additionally, previous UDRP panels have consistently found that 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 ([WIPO Overview 3.0](#), section 3.1.4). In this case, given the economic activity of the Complainant in 2020 and 2021, the Panel finds that the Respondent knew or should have known that it was registering the disputed domain names in violation of the Complainant's trademarks. This sufficiently establishes the registration in bad faith of the disputed domain names.

Moreover, the construction of the disputed domain name is not only identical to the Complainant's corporate name but also combines the Complainant's distinctive MODERNA trademark with the descriptive acronym "tx" which is widely understood to mean "therapy" or "therapeutics", referring directly to the primary characteristics of the classes of services designated by the Complainant's trademark and its industry. Previous UDRP panels have found that such an addition can reinforce the impression that the disputed domain name is linked to the Complainant in some way, or at least that the Respondent is taking unfair advantage of the Complainant's trademarks (*Compagnie Générale des Etablissements Michelin v. Trendimg*, WIPO Case No. [D2010-0484](#); *Telstra Corporation Limited c. Peter Lombardo, Marino Sussich et Ray Landers*, WIPO Case No. [D2000-1511](#); *Swarovski Aktiengesellschaft c. www.swarovski-outlet.org*, WIPO Case No. [D2013-0335](#); *Milipol v. Herbert Szekely*, WIPO Case No. [D2013-1752](#)). At the very least, this constitutes additional indicia that the Respondent was clearly aware of and intended to target the Complainant when registering and using the disputed domain name ([WIPO Overview 3.0](#), section 3.2.1).

Accordingly, and in the absence of any arguments to the contrary raised by the Respondent, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith and hence the third

condition of paragraph 4(a) of the Policy has been fulfilled.

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.ltd>, be transferred to the Complainant.

/Benoit Van Asbroeck/

Benoit Van Asbroeck

Sole Panelist

Date: May 17, 2022