

ADMINISTRATIVE PANEL DECISION

Modernatx, Inc. v. Yang Zhi Chao (杨智超)

Case No. D2022-1674

1. The Parties

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

The Respondent is Yang Zhi Chao (杨智超), China.

2. The Domain Names and Registrar

The disputed domain names <commodernatx.com>, <mmodernatx.com>, <modernatx.com>, <modernatxs.com>, <modernatxx.com>, <modernnatx.com>, and <modetnatx.com> are registered with eName Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 9, 2022. On May 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 10, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 11, 2022, 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 in English on May 11, 2022.

On May 11, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 11, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on May 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 7, 2022.

The Center appointed Jonathan Agmon as the sole panelist in this matter on June 17, 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 an American-based biotechnology company that focuses on the development of medicines based on messenger RNA (mRNA). One of the Complainant's medicines is the MODERNA COVID-19 Vaccine, also known as Spikevax. 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 last year. In 2021, the Complainant was judged one of the world's most innovative companies. It was also judged one of the most well-respected companies in the United States. Health authorities in more than 70 other countries, including the United States, Japan, the European Union, the United Kingdom, Switzerland, Australia, and Israel, have approved the vaccine. The Complainant's global sales in 2021 were approximately USD18.5 billion. Thus, the Complainant and its MODERNA brand have become extremely well known worldwide thanks to the success of its COVID-19 Vaccine and its pioneering mRNA technology.

The Complainant is the owner of numerous trademark registrations comprising or containing the MODERNA mark, including but not limited to the following (the "MODERNA Marks"):

- China Trademark Registration No. 36738656 for  gistered on December 7, 2019;
- China Trademark Registration No. 56921483 for MODERNA EARLY DEVELOPMENT ENGINE, registered on January 28, 2022;
- United States Trademark Registration No. 4659803 for MODERNA, registered on December 23, 2014;
- United States Trademark Registration No. 4675783 for  registered on January 20, 2015;
- International Trademark Registration No. 1293063 for  registered on January 7, 2016;
- Canadian Trademark Registration No. TMA1079224 for  registered on June 2, 2020; and
- European Union Trade Mark Registration No. 018241405 for MODERNA BIOTECHNOLOGY, registered on September 23, 2020.

The Complainant also states that it registered its domain name <modernatx.com> on September 7, 2010, which displays information about the Complainant and its activities.

The disputed domain names, <commodernatx.com>, <mmodernatx.com>, <modernattx.com>, <modernatxs.com>, <modernatxx.com>, <modernnatx.com>, and <modetnatx.com>, were registered on April 14, 2022, and resolve to websites displaying Pay-Per-Click ("PPC") links.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain names are confusingly similar to the Complainant's registered MODERNA Marks as the disputed domain names comprise of the Complainant's MODERNA mark and the addition or substitution of letters such as "t", "x", "m", "n", or "com" and generic Top-Level Domain ("gTLD") ".com".

The Complainant also argues that the Respondent has no rights or legitimate interests in respect of the disputed domain names as it has not licensed or permitted the Respondent to use any of its trademarks or register the disputed domain names. The Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods or services and is not making a legitimate noncommercial or fair use of the disputed domain names.

The Complainant further argues that the disputed domain names were registered and are being used in bad faith as the Respondent was well aware of the Complainant and its MODERNA Marks at the time of registration of the disputed domain names and there is no plausible good faith use to which the disputed domain names can be put to.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11 of the Rules provides that: "(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The language of the Registration Agreement for the disputed domain names is Chinese.

The Complainant requested that the language of the proceeding be English.

The Respondent did not comment on the language of the proceeding.

The Panel cites the following with approval:

"Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time, and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (See *Groupe Auchan v. xmxzl*, WIPO Case No. [DCC2006-0004](#)).

The Panel finds that in the present case, the following should be taken into consideration upon deciding on the language of the proceeding:

- (i) the Complainant is unable to communicate in Chinese and may be unduly disadvantaged by having to conduct the proceeding in the Chinese language;
- (ii) the disputed domain names are comprised of Latin characters, rather than Chinese characters;
- (iii) the disputed domain names resolve to websites with PPC links in the English language;
- (iv) if translation is required, the Complainant would incur considerable costs and there would be an undue delay of the proceeding; and
- (v) the Respondent appears to be able to understand English and undergo the proceeding in the English language as he was part of several UDRP proceedings where English was the language of the proceeding.

Upon considering the above, the Panel determines that English be the language of the proceeding.

6.2 Substantive Issues

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the complainant to show that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the MODERNA Marks.

The disputed domain names, <commodernatx.com>, <mmodernatx.com>, <modernatx.com>, <modernatxs.com>, and <modernatxx.com>, each consists of the Complainant's MODERNA mark in full, except the disputed domain name <modetnatx.com> which includes a substitution of the letter "t" for "r" in MODERNA, which are letters located next to each other on the qwerty keyboard, and <modernnatx.com>, which includes an additional "n". The disputed domain names each also consists of additional letters such as "t", "x", "m", "n", or "com" which can be considered as typographical errors when typing the Complainant's MODERNA mark. The combination of the letters "tx" is an abbreviation in the medical field for "therapeutics".

It is established that where a trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element. (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8). It is further established that the applicable gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test ([WIPO Overview 3.0](#), section 1.11.1). The addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see *Accor v. Noldc Inc.*, WIPO Case No. [D2005-0016](#); *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. [D2006-0451](#); *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *L'Oréal v. Tina Smith*, WIPO Case No. [D2013-0820](#); *Titoni AG v. Runxin Wang*, WIPO Case No. [D2008-0820](#); and *Alstom v. Itete Peru S.A.*, WIPO Case No. [D2009-0877](#)).

The disputed domain names consist of the Complainant's MODERNA mark, the addition or substitution of the letters such as "t", "x", "m", "n", "tx", or "com" and gTLD ".com" which in the Panel's view does not prevent a finding of confusing similarity with the Complainant's trademark.

Therefore, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the disputed domain names. Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain names, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect of the disputed domain names (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant provided evidence that it owns trademark registrations of the MODERNA Marks long before the date that the disputed domain names were registered, and that it is not affiliated with nor has it licensed or otherwise permitted the Respondent to use the Complainant's trademarks (see *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

The Complainant also provided evidence that the Respondent is not commonly known by the disputed domain names (see [WIPO Overview 3.0](#), section 2.3). The Complainant also submitted evidence that its registrations and use of the MODERNA Marks predate the registration of the disputed domain names, and that the disputed domain names are typosquatted versions of the Complainant's own domain name <modernatx.com> which is further proof that the Respondent has no rights or legitimate interests under the Policy (see *JCDecaux SA v. Pascal Ijeoma, Billcoin Company*, WIPO Case No. [DCO2018-0040](#); *Redbox Automated Retail, LLC d/b/a Redbox v. Milen Radumilo*, WIPO Case No. [D2019-1600](#); *River Light V, L.P., Tory Burch LLC v. Kung Chen Chang, PRIVATE*, WIPO Case No. [D2018-0046](#)).

The Complainant further submitted evidence that the disputed domain names resolve to parking pages with PPC links which past UDRP panels have found is not a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the disputed domain names (see *Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe*, WIPO Case No. [D2007-1695](#)).

The Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names sufficient to rebut the Complainant's *prima facie* case. In the particular circumstances of the present case, the Respondent's use of the disputed domain names to host parked pages comprising PPC links which appear to generate click-through commissions does not represent a *bona fide* offering of goods or services.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain names and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain names in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain names resolve to parked pages comprising PPC links which appear to generate click-through commissions.

In this case, the evidence shows that the Complainant's marks have attained significant goodwill and reputation. The significant goodwill and reputation of the Complainant's marks is evidence that the Respondent is unlikely to have registered the disputed domain names without sight and knowledge of the Complainant's marks and it is implausible that there is any good faith use to which the disputed domain names may be put to. It is also the Complainant's evidence that the Respondent could not have registered

the disputed domain names without prior knowledge of the Complainant's marks as the Respondent's name has no connection with the Complainant's MODERNA Marks which were registered long ago. This is another indicator of bad faith on the part of the Respondent (see *Boursorama SA v. Estrade Nicolas*, WIPO Case No. [D2017-1463](#)).

The Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith, which was considered by the Panel.

In the particular circumstances of the present case and based on the fact that the disputed domain names' websites display several links in relation to the Complainant's biotech and Moderna pharmaceuticals, it is clear to the Panel that the Respondent specifically targeted the Complainant and its marks and registered the disputed domain names to divert traffic and benefit commercially from unsuspecting Internet users seeking out the Complainant.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain names and the Complainant's marks, the fact that the disputed domain names are being used to host parked pages comprising PPC links to generate click-through commissions, the fact that no Response was submitted by the Respondent in response to the Complaint, and the fact that the Respondent has a long history of abusive domain name registrations against third-party trademark owners, the Panel finds that the disputed domain names were registered and are being 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 names, <commodernatx.com>, <mmodernatx.com>, <modernattx.com>, <modernatxs.com>, <modernatxx.com>, <modernnatx.com>, and <modetnatx.com> be transferred to the Complainant.

/Jonathan Agmon/
Jonathan Agmon
Sole Panelist
Date: July 1, 2022