

ADMINISTRATIVE PANEL DECISION

Modernatx, Inc. v. Emily Pray
Case No. D2023-0692

1. The Parties

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

Respondent is Emily Pray, USA.

2. The Domain Name and Registrar

The disputed domain name <modernatu.com> (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 15, 2023. On February 15, 2023, the Center also transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. That same day, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to Complainant on February 17, 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 February 24, 2023.

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 Respondent of the Complaint, and the proceedings commenced on March 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 23, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 28, 2023.

The Center appointed Harrie R. Samaras as the sole panelist in this matter on April 4, 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 an American-based biotechnology company that focuses on the development of medicines based on messenger RNA (mRNA), for example, the well-known MODERNA COVID-19 Vaccine. That vaccine is one of the most widely administered and well-known vaccines in the world. Complainant and its MODERNA brand have become well-known worldwide because of the success of its COVID vaccine.

Complainant owns a global portfolio of MODERNA-formative registered trademarks, including: U.S. Trademark Registration No. 4,659,803 for MODERNA (registered December 23, 2014) the “MODERNA Mark” or the “Mark”).

Complainant has an online presence under the domain name <modernatx.com> that it registered on September 7, 2010, which hosts a website that displays information about Complainant and its activities.

The Domain Name <modernatu.com> was registered on January 23, 2023. It resolves to Complainant's website “www.modernatx.com”.

5. Parties' Contentions

A. Complainant

Complainant's MODERNA Mark is incorporated in its entirety in the Domain Name and is clearly recognizable in it. Thus, the Domain Name is confusingly similar to the Mark. Although the Domain Name incorporates the letters “tu”, this addition does not alleviate the confusing similarity. The Domain Name is almost identical to Complainant's Domain Name <modernatx.com>. Also, although the Domain Name includes the Top-Level Domain (“gTLD”) “.com”, that addition is irrelevant because such element is a standard registration requirement and it does not diminish the confusing similarity.

Respondent has no legitimate interest in the Domain Name as set forth below in 6(B).

The Domain Name was registered on January 23, 2023, whereas the MODERNA Mark has been registered in the United States since 2014 and in Canada (country where Respondent appears to be located) since 2020. The prevalence of Complainant and its MODERNA Mark on search engines and on the web makes it implausible that Respondent was unaware of them when the Domain Name was registered. Furthermore, the Domain Name not only reproduces in full the MODERNA Mark, but it is also a misspelling of the relevant part of Complainant's company name (“modernatx”) and of its domain name <modernatx.com>, under which Complainant establishes its online presence. That the Domain Name redirects to Complainant's website supports the inference that Respondent was aware of Complainant.

That the Domain Name redirects to Complainant's website is bad faith use. Also, the MX servers related to the Domain Name are configured in a way which indicates a risk that Respondent potentially can use the Domain Name to create an email address, with the suffix “@modernatu.com” (almost identical to Complainant's domain name <modernatx.com>) for deceitful purposes. And Respondent's use of a privacy registration service for the Domain Name is an additional indication for a finding of bad faith registration and use.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

Complainant has rights in the MODERNA Mark by virtue of the aforementioned US trademark registration for MODERNA.

The Domain Name <modernatu.com> is confusingly similar to Complainant's well-known MODERNA Mark because: Complainant's MODERNA Mark is clearly recognizable within the Domain Name; the Top-Level Domain is generally not determinative in establishing whether the Domain Name is confusingly similar to a complainant's mark; and adding "tu" does not prevent a finding of confusing similarity to Complainant's Mark (See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8 ("Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."); see also, *Modernatx, Inc. v. YangZhiChao*, WIPO Case No. [D2022-1552](#) (holding that because the disputed domain name consists of Complainant's MODERNA Mark in full, the addition of the letters "yx" and gTLD ".com" does not prevent a finding of confusing similarity with Complainant's Mark).

For the foregoing reasons, the Panel concludes that Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant contends that Respondent has no rights or legitimate interests in the Domain Name because: (1) Complainant has not licensed Respondent to use the MODERNA Mark and Complainant has not consented or given permission to, or acquiesced in, Respondent's use of the MODERNA Mark in registering the Domain Name; (2) Complainant has found no evidence that Respondent has been commonly known by the Domain Name or by the term "modernatu"; (3) Complainant has found nothing to suggest that Respondent holds any trademark rights in the Domain Name or the term "modernatu"; (4) the Domain Name and the term "modernatu" do not seem to have any meaning in the English language; and (5) because the Domain Name redirects Internet users to Complainant's website <modernatx.com>, this would not support a claim to rights or legitimate interests. See, section 2.5.3 of [WIPO Overview 3.0](#) ("Similarly, a respondent's use of a complainant's mark to redirect users (e.g., to a competing site) would not support a claim to rights or legitimate interests.").

In addition, Complainant argues that, considering the fact that the Domain Name wholly incorporates the MODERNA Mark, which is almost identical to Complainant's domain name <modernatx.com>, and the Domain Name resolves to Complainant's website, the Domain Name seeks to capitalize on the reputation and goodwill of Complainant's MODERNA Mark, misleading consumers into thinking that the Domain Name is operated by or affiliated with Complainant. Thus, the Domain Name carries a high risk of implied false affiliation with Complainant and its activities which cannot constitute fair use. See section 2.5.1 of [WIPO Overview 3.0](#). And, because the Domain Name is almost identical to Complainant's domain name with the exception of just one letter, it is more than likely that this is a typosquatting case, which is also an indication of a lack of rights or legitimate interests. See *The Wikimedia Foundation, Inc. v. Danesco Trading Ltd/ Igor Burdukovskij*, WIPO Case No. [D2021-3354](#).

Where, as here, Complainant has raised a *prima facie* presumption of Respondent's lack of any rights or legitimate interests in the Domain Name, and Respondent has failed to rebut that presumption, the Panel is satisfied that Complainant has carried its burden of proving that Respondent has no rights or legitimate interests in the Domain Name within the meaning of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Respondent registered the Domain Name on January 23, 2023, well after Complainant began using the Mark and obtained the aforementioned trademark registration for it in 2014. It is further undisputed: (1) Complainant and its MODERNA Mark are prevalent on search engines and on the web, especially considering the enormous notoriety of Complainant and its MODERNA Mark during the many months of the COVID pandemic, which occurred before the registration of the Domain Name; (2) the Domain Name not only reproduces in full the MODERNA Mark, but it is also a misspelling of the relevant part of Complainant's company name ("modernatx") and of its domain name <modernatx.com>, under which Complainant has established its online presence; and (3) the Domain Name redirects Internet users to Complainant's website.

Given this undisputed evidence, the Panel finds it is more likely than not Respondent was aware of Complainant and its MODERNA Mark when it registered the Domain Name. Respondent's bad faith registration is also evidenced by the facts that the Domain Name: (1) is confusingly similar to the Mark; and (2) Respondent has no rights or legitimate interest in the Domain Name.

Respondent has also been using the Domain Name in bad faith by redirecting Internet users to Complainant's website. See [WIPO Overview 3.0](#), section 3.1.4. Further evidence of bad faith use is how MX servers are configured in the Domain Name, which indicates a risk that Respondent potentially can use the Domain Name to create an email address, with the suffix "@modernatu.com" (almost identical to Complainant's domain name <modernatx.com>) for purposes of deceiving the public. See *Equinor ASA v. Domain Synergy*, WIPO Case No. [D2022-3957](#); *Television Francaise 1 v. Gilmore Thompson*, WIPO Case No. [D2022-4442](#).

For the foregoing reasons, the Panel finds that Complainant has satisfied 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 Domain Name, <modernatu.com> be transferred to Complainant.

/Harrie R. Samaras/

Harrie R. Samaras

Sole Panelist

Date: April 12, 2023