

## **ADMINISTRATIVE PANEL DECISION**

Modernatx, Inc. v. Whois Privacy, Private by Design, LLC / hggfdd  
bchgugugh  
Case No. D2022-2111

### **1. The Parties**

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

The Respondent is Whois Privacy, Private by Design, LLC, United States / hggfdd bchgugugh, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <modernatxinc.com> (the “Domain Name”) is registered with Porkbun LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 10, 2022. On June 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 14, 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 communication to the Complainant on June 16, 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 on June 21, 2022.

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 June 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 12, 2022. On June 30, 2022, a third party contacted the Center regarding the unauthorized use of its contact details in relation to the registration of the Domain Name in the

present proceedings. The Respondent did not submit any response. Accordingly, the Center notified the commencement of Panel appointment process on July 13, 2022.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on July 25, 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 is a biotechnology corporation established under Delaware law in 2010 and headquartered in Cambridge, Massachusetts, United States. The Complainant focuses on developing medicines based on messenger RNA (mRNA). Its chief commercial product is the MODERNA COVID-19 vaccine (“Spikevax”), with more than 800 million doses shipped globally in 2021. The Complainant reports 2021 sales of approximately USD 18.5 billion.

The record includes evidence of widespread global recognition of the MODERNA brand associated with the highly publicized COVID vaccine and RNA technology, including approvals by medical authorities for mass distribution in some 70 countries and recognition in 2021 as the “most innovative company” in the world and as the third most “well-respected company” in the United States.

The Complainant operates a website at “www.modernatx.com”, registered in 2010. The Complainant’s website has a dropdown menu offering multiple country / language versions and also displays links to several social media sites that are similarly labelled “modernatx”, “moderna tx”, or “moderna\_tx”.

The Complainant holds the following MODERNA-formative trademark registrations:

MARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE
MODERNA (word)	United States	4659803	December 23, 2014
MODERNA (word and design)	United States	4675783	January 20, 2015
MODERNA (word and design)	International Trademark	1293063	January 7, 2016
MODERNA (word and design)	China	36738656	December 7, 2019
MODERNA (word and design)	Canada	TMA1079224	June 2, 2020
MODERNA BIOTECHNOLOGY (word)	European Union	018241405	September 23, 2020

“Moderna” is not a dictionary term in English. Some of the Complainant’s trademark registrations state that “moderna” could be translated in English as “modern”. The Complainant’s website indicates that the term is coined and meant to be suggestive of modernity: it explains that “Moderna’s name combines the words ‘modified’ and ‘RNA’, which happens to contain the word ‘modern.’” The Complaint explains that the initials “tx” added to “moderna” in the Complainant’s corporate name and domain name is the acronym for “therapeutics” in international medical practice.

According to the Registrar’s Whols database, the Domain Name was created on May 26, 2022. The Registrar reported that it was registered in the name of a domain privacy service. After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent “hggfdd bchguguh”, which is patently not a real name or organization. The postal address given is actually that of Regeneron Pharmaceuticals, Inc., a biopharmaceutical company in Tarrytown, New York, United States, whose counsel corresponded with the Center to deny that the company had any involvement with the Domain Name. The email address given in the Domain Name registration is not in Regeneron’s domain but is instead a Microsoft Outlook email domain address. The telephone number provided is in the State of Idaho, not New York. In sum, the registrant details for the Domain Name appear to be entirely false.

At the time of this Decision, the Domain Name does not resolve to an active website. However, the Complainant shows that the Domain Name formerly redirected to a page on the Complainant's website.

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant asserts that the Domain Name is confusingly similar to its registered MODERNA-formative trademarks, adding only the "tx" initials that are also found in the Complainant's company name and domain name and the "inc" suffix that is commonly used as an abbreviation for "incorporated" and is also found in the Complainant's company name.

The Complainant contends that the Respondent has no permission to use the Complainant's trademarks and no apparent rights or legitimate interests in the confusingly similar Domain Name. There is no record of the Respondent's true identity or indication of any *bona fide* commercial activities or preparations for such in connection with the Domain Name, nor of fair use noncommercial use of the Domain Name.

### **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following: (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and (ii) the 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. Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

### **A. Identical or Confusingly Similar**

The first element of a UDRP complaint "functions primarily as a standing requirement" and entails "a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. The Domain Name incorporates the Complainant's registered MODERNA mark in its entirety and adds the terms "tx" and "inc", which do not avoid a finding of confusing similarity. See *id.*, section 1.8. (As usual, the Top-Level Domain ".com" is disregarded as a standard registration requirement. See *id.* section 1.11.1.)

The Panel finds, therefore, that the Domain Name is confusingly similar to the Complainant's MODERNA mark for purposes of the first Policy element and concludes that the Complainant has established the first element of the Complaint.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

(i) before any notice to it of the dispute, the respondent's 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) that the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is 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.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant has established trademark rights, a lack of permissive use, and the Respondent's use of the Domain Name to redirect to the Complainant's official website. Thus, the Complainant has made a *prima facie* case, and the burden of production shifts to the Respondent. The Respondent has failed to file a response to prove its rights or legitimate interests in the Domain Name. Currently, the Domain Name does not resolve to an active website. The Panel concludes, therefore, that the Complainant prevails on the second element of the Complaint.

### **C. Registered and Used in Bad Faith**

The Policy, paragraph 4(b), furnishes a list of circumstances that "shall be evidence of the registration and use of a domain name in bad faith", but this list is expressly non-exclusive. There are, in fact, other *indicia* of bad faith in this case.

The Respondent was clearly aware of the Complainant and the MODERNA mark. The Complainant's MODERNA-formative marks are very well known in the United States and globally, due to the COVID-19 pandemic and the Complainant's successful vaccine. The mark is not a dictionary word or phrase, and the Domain Name adds to it initials ("tx" for therapeutics and "inc" for incorporated) that are used precisely in the Complainant's company name, domain name, and social media site labels. The Respondent used the Domain Name to redirect Internet users to the Complainant's official website. In short, the Respondent was plainly familiar with the Complainant and took steps to create the impression that the Domain Name was associated with the Complainant.

At the same time, the Respondent furnished patently false registration details - a nonsensical name and organization, the postal address of a competing biopharmaceutical company, with a telephone number and email address that did not match that source. This violated the registration agreement, which provides as follows:

"You must provide certain current, complete and accurate information about You with respect to Your Account information and with respect to the WHOIS information for Your domain name(s). Within seven (7) days of any change to such information, You must update such information as needed to keep it current, complete and accurate."

UDRP panels have found that the "mere registration of a domain name that is identical or 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 3.0](#), section 3.1.4. UDRP panels have also found that the redirection of confusingly similar domain names to the complainant's own website also reflects bad faith. *Id.* One reason for this is that it falsely suggests association with the Complainant, which then can be used to promote false advertising and endorsements or illicit activity such as fraudulent emails and phishing attacks using the same domain name, which has the appearance of being connected to the trademark holder. The fact that the Domain Name does not currently resolve to an active website does not prevent a finding of bad faith.

The Panel finds bad faith in the registration and use of the Domain Name on this record, based particularly on the false registration information, the Respondent's failure to reply and offer any legitimate reasons for

selecting the Domain Name emulating so closely the Complainant's mark, company name, and domain name, and the Respondent's redirection of the Domain Name to the Complainant's own website.

The Panel concludes that the Complainant has established the third element of the Complaint.

## **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, <modernatxinc.com>, be transferred to the Complainant.

*/W. Scott Blackmer/*

**W. Scott Blackmer**

Sole Panelist

Date: August 8, 2022