

ADMINISTRATIVE PANEL DECISION

Modernatx, Inc. v. Horizon Tech

Case No. D2023-2718

1. The Parties

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

The Respondent is Horizon Tech, India.

2. The Domain Name and Registrar

The disputed domain name <modernatz.com> (the “Domain Name”) is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 26, 2023. On June 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 27, 2023, 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 (Not Disclosed) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 3, 2023, 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 July 3, 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 the Respondent of the Complaint, and the proceedings commenced on July 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 16, 2023.

The Center appointed Nicholas Smith as the sole panelist in this matter on August 18, 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

The Complainant is an American-based biotechnology company focused on the development of medicines based on messenger RNA (“mRNA”), the most well-known being the MODERNA Covid-19 vaccine, also known as Spikevax, with more than 800,000,000 doses shipped globally in 2021. The Complainant’s global sales in 2022 were approximately USD 18.45 billion and operates in 17 locations globally. The Complainant promotes its operations through various means including from its website at “www.modernatx.com” (the “Complainant’s Website”).

The Complainant has held a trademark registration for the MODERNA Mark in various jurisdictions since 2014, including United States trademark registration number 4,659,803, registered on December 23, 2014, for goods in classes 1 and 5.

The Domain Name was registered on May 11, 2023. The Domain Name is presently inactive but prior to the commencement of the proceeding the Domain Name resolved to a website (the “Respondent’s Website”) that prominently reproduced the MODERNA Mark and logo and represented itself to be an official corporate website of the Complainant. The Complaint contains evidence of the Respondent’s Website and email accounts in the address format “[name]@modernatz.com” being used in connection with a phishing scam where the Respondent impersonates the Complainant and contacts individuals requesting that they provide personal information for the purpose of applying for non-existent jobs with the Complainant.

5. Parties’ Contentions

A. Complainant

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

Notably, the Complainant contends that:

- a) It is the owner of the MODERNA Mark, having registered the MODERNA Mark in the United States. The Domain Name is confusingly similar to the MODERNA Mark as it reproduces the word mark MODERNA in its entirety and adds the non-distinctive element “tz”.
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the MODERNA Mark. The Respondent is not commonly known by the MODERNA Mark, nor does it use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose. Rather, the Domain Name is used for emails and a website impersonating the Complainant as part of a broader illegal scheme to acquire confidential information from misled job applicants, which does not provide the Respondent with rights or legitimate interests in the Domain Name.
- c) The Domain Name was registered and is being used in bad faith. The Domain Name is being used for a website and emails that impersonate the Complainant as part of a broader scheme to exploit potential job applicants by encouraging them to apply for non-existent employment opportunities and thereby provide the Respondent with their personal information. This amounts to an attempt to perpetuate fraud.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the mark is reproduced within the Domain Name. Accordingly, the Domain Name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here "tz", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. The conclusion is affirmed by the similarity between the Domain Name and the Complainant's domain name <modernatx.com> and the use to which the Domain Name has been put. [WIPO Overview 3.0](#), section 1.15.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name.

The Panel considers that the record of this case reflects that:

Before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.

The Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

The Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

The record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

Furthermore, the Respondent's use of the Domain Name is in connection with a phishing scheme, namely for a website and to send emails passing itself off as the Complainant to prospective job applicants, as part of a broader scheme to encourage those applicants to apply for non-existent employment opportunities with the Complainant and thereby providing the Respondent with the prospective applicant's personal information and other details. Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the Domain Name constitutes bad faith under the Policy. The Domain Name has been used for a website impersonating the Complainant and to create an email account from which the Respondent sent emails purporting to be emails from the Complainant in order to improperly acquire personal information for the commission of a fraud.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <modernatz.com>, be transferred to the Complainant.

/Nicholas Smith/
Nicholas Smith
Sole Panelist
Date: August 22, 2023