

ADMINISTRATIVE PANEL DECISION

Modernatx, Inc. v. 石磊 (shi lei)

Case No. D2022-1669

1. The Parties

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

The Respondent is 石磊 (shi lei), China.

2. The Domain Name and Registrar

The disputed domain name <www.modernatx.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (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 name. On May 10, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 10, 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 10, 2022, the Center transmitted another 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 Chinese and English of the Complaint, and the proceedings commenced on May 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 20, 2022.

The Center appointed Douglas Clark as the sole panelist in this matter on July 21, 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 an America-based biotechnology company that focuses on the development of medicines based on messenger RNA (mRNA). One of the medicines the Complainant is involved in developing is the MODERNA Covid-19 vaccine, also known as Spikevax. The Complainant is also the owner of the domain name <modernatx.com>.

The Complainant is the owner of several trade mark registrations, including the following:

Trade Mark	Registration Number	Registration Date	Class	Jurisdiction
	36738656	December 7, 2019	5	China
MODERNA (word mark)	4659803	December 23, 2014	1, 5	United States
	4675783	January 20, 2015	1, 42	United States
	1293063	January 7, 2016	1, 5, 42	International
	TMA1079224	June 2, 2020	1, 5, 42	Canada
MODERNA BIOTECHNOLOGY (word mark)	018241405	September 23, 2020	1, 5, 42	European Union

The disputed domain name <wwwmodernatx.com> was registered on November 30, 2020. At the date of this Decision, the disputed domain name resolved to a webpage containing a list of pay-per-click ("PPC") links in English to unrelated third-party websites.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

(a) The disputed domain name is confusingly similar to its trade mark MODERNA. The term "tx" is an abbreviation for "therapeutics" in the medical field and also part of the Complainant's company name, and "www" stands for "world wide web" as a standard protocol. The suffix ".com" is generic Top-Level Domain ("gTLD"). The use of these terms in the disputed domain name does not eliminate the overall notion that the designation is connected to the trade mark MODERNA creating a likelihood of confusion that the disputed domain name and the trade mark are associated;

(b) The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant in any way and the Complainant has never granted any authorization or license to use the Complainant's trade mark. The Respondent is not commonly known by the disputed domain name, and has not made a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name; and

(c) The disputed domain name was registered and is being used in bad faith. The Respondent has registered the disputed domain name that incorporates the MODERNA trade mark primarily to attract Internet users for commercial gain. In particular, the Respondent seeks to replicate the Complainant's domain name registered in 2010, namely, <modernatx.com>, and the fame that the MODERNA mark now has due to is Covid-19 vaccine.

The Complainant requests the transfer of the disputed domain name to the Complainant.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue – Language of the Proceeding

According to paragraph 11(a) of the Rules, 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.

In this case, the language of the Registration Agreement for the disputed domain name is Chinese. There is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Respondent did not respond as to the language of the proceeding. The Complainant has filed its Complaint in English and has requested that English be the language for the proceeding under, *inter alia*, the following grounds:

- a) the disputed domain name is formed by Roman characters and not Chinese script;
- b) the disputed domain name is a misspelling of Complainant's trade mark and it resolves to a website with PPC links;
- c) the content on the website to which the disputed domain name resolves is in English language. Therefore, it can be concluded that the Respondent is familiar with English language; and
- d) in order to proceed in Chinese, the Complainant would have had to retain specialised translation services that would cause an unnecessary burden to the Complainant and delay the proceeding.

In accordance with paragraph 11(a) of the Rules and taking into consideration paragraph 10(b) and (c) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English after considering the following circumstances:

- the Center has notified the Respondent of the proceeding in both English and Chinese;
- the Respondent has not commented on the language of the proceeding nor has it otherwise participated in this proceeding;
- the content on the website to which the disputed domain name resolves is entirely in English; and

- an order for the translation of the Complaint and other supporting documents will result in significant expenses for the Complainant and a delay in the proceeding.

Further, this Panel decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. [D2008-1191](#), that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceeding "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint".

6.2 Substantive Issues

The Complainant must satisfy all three elements of paragraph 4(a) of the Policy in order to succeed in its action:

- (i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark. The disputed domain name incorporates the MODERNA trade mark in full along with the letter combinations "www" and "tx". It is then accompanied with the gTLD ".com". Among them, "www" is an acronym for the "world wide web" and commonly used when typing internet domain names, and "tx" is a common abbreviation for "therapeutics" in the medical field. The use of "www" and "tx" does not prevent a finding of confusing similarity. The gTLD is generally disregarded when considering the first element. (See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"))

The Complainant has therefore satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent has no business with and is in no way affiliated with the Complainant. The Respondent has not been authorized nor licensed to use the Complainant's MODERNA trade mark or to apply for registration of the disputed domain name. There is no evidence that the Respondent is commonly known by the name "Moderna". There is also no other evidence that the Respondent has used or is planning to use the disputed domain name for a *bona fide* offering of goods or services.

The Respondent has not asserted any rights or legitimate interests in relation to the disputed domain name. Moreover, given the Complainant's corporate name and use of its domain name <modernatx.com>, which resolves to its main website "www.modernatx.com", the composition of the disputed domain name is such to carry a risk of implied affiliation that cannot constitute fair use.

Section 2.1 of the [WIPO Overview 3.0](#) provides:

"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.”

The Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests, which has not been rebutted by the Respondent. Accordingly, the Respondent has no rights or legitimate interests in regard to the disputed domain name.

C. Registered and Used in Bad Faith

Based on the given evidence, the disputed domain name was registered and is being used in bad faith.

The disputed domain name was registered long after the Complainant has registered the MODERNA trade mark and the use of the Complainant’s MODERNA trade mark in the disputed domain name cannot be a coincidence. The association of the MODERNA trade mark, the letters “tx”, which is an abbreviation internationally recognized in the medical field as “therapeutics”, and also part of the Complainant’s company name, creates a further likelihood that consumers will conclude that the disputed domain name refers to the Complainant and its products, particularly given the Complainant uses the domain name <modernatx.com>.

The Panel is satisfied that the Respondent was aware of the Complainant and its MODERNA trade mark when it registered the disputed domain name and that by use of PPC advertising the Respondent is seeking to monetise the disputed domain name. The Panel has no hesitation in concluding the Respondent has registered the disputed domain name for commercial gain in breach of paragraph 4(b)(iv) of the Policy.

For the above reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

The Complainant has therefore satisfied the third element under paragraph 4(a) 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 disputed domain name <wwwmodernatx.com> be transferred to the Complainant.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: July 26, 2022