

ADMINISTRATIVE PANEL DECISION

Moderna, Inc. and ModernaTX, Inc. v. Super Privacy Service LTD c/o
Dynadot / 石磊 (Lei Shi)
Case No. D2022-2124

1. The Parties

The Complainants are Moderna, Inc. and ModernaTX, Inc. (collectively “the Complainant”), United States of America (“United States”), represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States.

The Respondent is Super Privacy Service LTD c/o Dynadot, United States / 石磊 (Lei Shi), China.

2. The Domain Names and Registrars

The disputed domain names <modernarewardssurvey.com> and <modernatotalsurvey.com> are registered with Cloud Yuqu LLC; and the disputed domain names <modernatotalrewardsurvey.com> and <modernatotarewardssurvey.com> are registered with Dynadot, LLC (collectively “the Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 11, 2022, with regards the disputed domain names <modernarewardssurvey.com> and <modernatotalsurvey.com>. On June 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 15, 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 June 15, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On June 16, 2022, the Center received an email communication from the Complainant, in which the Complainant requested the addition of the disputed domain names <modernatotalrewardsurvey.com> and <modernatotarewardssurvey.com> to this proceeding. The Complainant filed the first amendment to the Complaint in English on June 17, 2022. In response to the Center’s request, the Complainant filed the second amendment to the Complaint in English on June 21, 2022.

On June 15, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on June 17, 2022. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendments 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 June 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 12, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 13, 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 a public company founded in 2010 and is the developer of the MODERNA COVID-19 vaccine. More than 70 countries have approved the Complainant’s vaccine. The Complainant is the registrant of the domain name <modernatx.com>, and also uses the domain name <modernatotalrewardssurvey.com> in connection with communications with its employees.

The Complainant owns several trade mark registrations for MODERNA in the United States, including the following:

Trade Mark	Registration Number	Registration Date
MODERNA	4,675,783	January 20, 2015
MODERNA	4,811,834	September 15, 2015
MODERNA MESSENGER THERAPEUTICS	4,675,775	January 20, 2015
MODERNA UNIVERSITY	5,311,631	October 17, 2017
MODERNA UNIVERSITY	5,311,632	October 17, 2017
MODERNA MODERNA COVID-19 VACCINE	6,389,465	June 15, 2021

The Complainant also has a number of trade marks for MODERNA in a number of countries. These registrations includes a registration in China under registration no. 36738656 in Class 5. (This trade mark was not referred to in the case file for this Complaint, however, the Panel is aware of it because it was the panelist in *Modernatx, Inc. v. 石磊 (shi lei)*, WIPO Case No. [D2022-1669](#), where the Complainant did produce evidence of this registration).

The disputed domain names were registered on May 21, 2022, one day after the Complainant registered the domain name <modernatotalrewardssurvey.com>. At the time of filing this complaint and at the date of this Decision, all the disputed domain names <modernarewardssurvey.com>, <modernatotalsurvey.com> and <modernatotalrewardsurvey.com> 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 names are confusingly similar to its trade mark. The use of the generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. The addition of generic or descriptive words "rewards", "total", and "survey" do not prevent a finding of confusing similarity.

(b) The Respondent has no rights or legitimate interests in the disputed domain names. 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 names, and has not made a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain names.

(c) The disputed domain names were registered and are being used in bad faith. The Respondent has registered disputed domain names that incorporate the MODERNA trade mark. The Respondent is using the disputed domain names to attract Internet users for commercial gain, creating a likelihood of confusion with the Complainant's trade mark. The Respondent is a serial cybersquatter who has registered the domain names incorporating the trade marks of others and being the unsuccessful respondent to a number of domain name complaints in 2021 and 2022.

The Complainant requests the transfer of the disputed domain names.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue

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 names <modernarewardssurvey.com> and <modernatotalsurvey.com> is Chinese. The language of the Registration Agreement for the other disputed domain names is English. 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 the Complaint in English and has requested that English be the language for the proceeding under the following grounds:

- a) the disputed domain names contain English words;
- b) the websites the disputed domain names resolve to are in the English language;
- c) previous proceedings involving the Respondent have been conducted in English; 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;
- the content on the Respondent's websites is entirely in English;
- the Registration Agreement for two of the disputed domain names is 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 to;
- (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 are being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the disputed domain names <modernarewardssurvey.com>, <modernatotalrewardssurvey.com>, <modernatotalsurvey.com>, and <modernatotarewardssurvey.com> are confusingly similar to the Complainant's trade mark. The disputed domain names incorporate the MODERNA trade mark in full along with the words "rewards", "total", and "survey" in various combinations. They are then accompanied with the gTLD ".com". The addition of the generic or descriptive words does not prevent a finding of confusing similarity. The gTLD is generally disregarded when considering the first element. (See section 1.11.1 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 is not authorized nor licensed to use the Complainant's MODERNA trade mark or to apply for registration of the disputed domain names. 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 names for a *bona fide* offering of goods or services. In addition, the Respondent has not responded to any of the Complainant's contentions.

The Respondent has not asserted any rights or legitimate interests in relation to the disputed domain names.

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 names.

C. Registered and Used in Bad Faith

Based on the evidence, the Panel has not hesitation in concluding the disputed domain names were registered and are being used in bad faith.

The disputed domain names were registered long after the Complainant has registered the MODERNA trade mark. The disputed domain names were also registered one day after the Complainant registered its domain name <modernatotalrewardssurvey.com>. The similarity of the disputed domain names with the Complainant’s domain name <modernatotalrewardssurvey.com> cannot be a coincidence. The Panel is satisfied that the Respondent was aware of the Complainant and its MODERNA trade mark when it registered the disputed domain names. It also appears to the Panel that the Respondent has registered the disputed domain names for commercial gain in accordance with paragraph 4(b)(iv) of the Policy by the use of PPC sites. It also appears to the Panel that that the Respondent is a serial cybersquatter having being the unsuccessful respondent to a number of domain disputes in the past year.

For the above reasons, the Panel finds that the disputed domain names were registered and are 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 names, <modernarewardssurvey.com>, <modernatotalrewardsurvey.com>, <modernatotalsurvey.com>, and <modernatotarewardssurvey.com>, be transferred to the Complainant.

/Douglas Clark/

Douglas Clark

Sole Panelist

Date: August 6, 2022