

## ADMINISTRATIVE PANEL DECISION

Modernatx, Inc. v. Yang Zhi Chao (杨智超)  
Case No. D2022-2499

### 1. The Parties

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

The Respondent is Yang Zhi Chao (杨智超), China.

### 2. The Domain Names and Registrar

The disputed domain names <modernapx.com>, <modernatax.com>, <modernatx.com>, <moodernatx.com>, and <mosernatx.com> are registered with eName Technology Co., Ltd. (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 8, 2022. On July 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On July 11, 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 July 12, 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 July 13, 2022.

On July 12, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On July 13, 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 English and Chinese of the Complaint, and the proceedings commenced on July 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 8, 2022.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on August 16, 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 USA-based biotechnology company that focuses on the development of medicines based on messenger RNA (mRNA), established in 2010. The Complainant claims to be globally well-known on account of its MODERNA COVID-19 vaccine, also known as "Spikevax", which it claims is one of the most widely administered vaccines in the history of medicine, with more than 800,000,000 doses shipped globally in 2021. The Complainant's global sales in 2021 amounted to approximately USD18.5 billion.

The Complainant owns an international portfolio of trademark registrations for MODERNA, for instance, Chinese trademark registration number 36738656 for the logo mark MODERNA, registered on December 7, 2019, and USA trademark registration number 4659803 for the word mark MODERNA, registered on December 23, 2014. The Complainant also maintains an Internet presence through its primary official website located at its domain name <modernatx.com>, registered on September 7, 2010, which hosts a website that displays information about the Complainant and its activities.

The disputed domain names <modernapx.com>, <modernatax.com> and <modernatx.com> were registered on June 2, 2022 and the disputed domain names <moodernatx.com> and <mosernatx.com> were registered on April 14, 2022 and all disputed domain names are therefore of a later date than the abovementioned registered trademarks of the Complainant. The disputed domain names are currently linked to active websites, each displaying what are presumed to be pay-per-click hyperlinks to purported products and services of the Complainant as well as to third party providers of similar products and services.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant essentially contends that the disputed domain names are confusingly similar to its prior trademarks for MODERNA, that the Respondent has no rights or legitimate interests in respect of the disputed domain names, and that the disputed domain names were registered, and are being used in bad faith.

The Complainant claims that its trademarks are distinctive and internationally well-known, and provides evidence of its official website contents, marketing materials and previous UDRP decisions in which panels have considered the Complainant's MODERNA trademarks to be internationally well-known, including *Modernatx, Inc. v. YangZhiChao*, WIPO Case No. [D2022-1552](#). The Complainant essentially contends that the Respondent chose to register the disputed domain names that include the Complainant's MODERNA marks or a misspelling of said mark and of the Complainant's domain name <modernatx.com> to create consumer confusion and to obtain unlawful financial gains through placing pay-per-click hyperlinks at the websites connected to the disputed domain names. The Complainant contends that such use does not grant the Respondent any rights or legitimate interests in the disputed domain names. The Complainant also contends (in its email of July 13, 2022 by which it amended its Complaint) that the Respondent was involved in a number of previous domain name disputes where bad faith use and registration was found by the panels in those cases, and argues that the Respondent has engaged in a pattern of trademark-abusive conduct.

The Complainant essentially contends that the registration and use of the disputed domain names in such circumstances constitutes registration and use in bad faith.

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: Language of the administrative proceeding**

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreements, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

According to the Registrar's verification response, the language of the Registration Agreements for the disputed domain names is Chinese. Nevertheless, the Complainant filed its Complaint and its amendment to the Complaint in English, and requests that English be the language of the proceeding. The Panel notes that the Respondent did not comment on the language of the proceeding and did not submit any arguments on the merits of this proceeding.

The Panel has carefully considered all elements of this case, and considers the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comments on the language of the proceeding and the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited in a timely manner by the Center to present its comments and response in either English or Chinese, but chose not to do so); the fact that the websites hosted at the disputed domain names contain links only in English and that the disputed domain names are written in Latin letters and not in Chinese characters; and, finally, the fact that Chinese as the language of this proceeding could lead to unwarranted delays and additional costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and decides that the language of this administrative proceeding shall be English.

### **6.2. Discussion and Findings on the merits**

The Policy requires the Complainant to prove three elements:

- (i) the disputed domain names are 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 disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

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

The Panel finds that the Complainant has shown sufficient evidence that it has valid rights in the mark MODERNA, based on its intensive use and registration of the same as a trademark in several jurisdictions.

Moreover, as to confusing similarity, the Panel considers that the following disputed domain names, <modernapx.com>, <modernatax.com>, and <modernatx.com>, each incorporate the entirety of the

Complainant's MODERNA trademark. In this regard, the Panel refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, which states: "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing". The Panel finds that the aforementioned disputed domain names all incorporate the entirety of the Complainant's trademark for MODERNA, combined with the elements "px", "tax", or "xtx", which do not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.8). The Panel therefore considers all of the aforementioned disputed domain names confusingly similar to the Complainant's trademark for MODERNA.

As to the disputed domain names <mosernatx.com> and <moodernatx.com>, the Panel refers to the [WIPO Overview 3.0](#), section 1.9, which states: "[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element". In this case, the Panel considers that these two particular disputed domain names were clearly selected by intentionally misspelling the Complainant's trademark for MODERNA, incorporating such trademark in its entirety, except that in the case of the disputed domain name <mosernatx.com> the letter "d" is replaced by the letter "s", which is in fact the letter placed next to the letter "d" on a QWERTY-keyboard, or by adding an extra the letter "o" to the Complainant's trademark in the case of the disputed domain name <moodernatx.com>. The Panel also considers that in spite of the intentional misspelling, the Complainant's MODERNA trademark remains clearly recognizable in these two disputed domain names. Accordingly, this is a clear case of intentional misspelling of the Complainant's trademark, also known as typosquatting, and the Panel therefore considers these two disputed domain names also confusingly similar to the Complainant's trademarks for MODERNA.

Furthermore, the Panel notes that each of the applicable generic Top-Level Domains ("gTLDs") (".com" in this case) are viewed as standard registration requirements for the disputed domain names, and may as such be disregarded by the Panel, see in this regard the [WIPO Overview 3.0](#), section 1.11.1.

Accordingly, the Panel concludes that the disputed domain names are all confusingly similar to the Complainant's trademark and finds that the Complainant has satisfied the requirements of the first element under the Policy.

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

On the basis of the evidence and arguments submitted, the Panel finds that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant, is not a *bona fide* provider of goods or services under the disputed domain names and is not making legitimate noncommercial use or fair use of the disputed domain names. The Panel also notes that the Respondent is not commonly known by the disputed domain names. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, the Respondent did not provide any Response or evidence in this administrative proceeding.

Furthermore, upon review of the facts, the Panel notes that the disputed domain names direct to active webpages containing what are presumed to be pay-per-click hyperlinks to purported products and services of the Complainant as well as to third party providers of similar products and services. The Panel concludes that this shows the Respondent's intention to compete with, or capitalize on the reputation and goodwill of the Complainant's trademark for MODERNA (see also [WIPO Overview 3.0](#), section 2.9 and previous UDRP decisions in this sense such as *Maker Studios, Inc. v. ORM LTD / Contact Privacy Inc. Customer 0137258808*, WIPO Case No. [D2014-0918](#) and *Comerica Incorporated v. Balticsea LLC / Contact Privacy Inc. Customer 0131519121*, WIPO Case No. [D2013-0932](#)).

Additionally, the Panel agrees with the Complainant that the nature of the disputed domain names, being typographical variations of the Complainant's trademarks or containing the Complainant's trademarks for MODERNA in their entirety, carry a risk of implied affiliation and cannot constitute fair use as they effectively

impersonate or suggest sponsorship or endorsement by the Complainant (see also [WIPO Overview 3.0](#), section 2.5.1).

On the basis of the foregoing, the Panel finds that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

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

The Panel finds that the registration of the disputed domain names, containing the entirety of the Complainant's internationally well-known mark or constituting typosquatting of the Complainant's well-known mark (and also being similar to its main official domain name "www.modernatx.com") by the Respondent, who is entirely unaffiliated with the Complainant, is, by itself, sufficient to create a presumption of bad faith of the Respondent (see in this regard also *Alain Afflelou Franchiseur v. Lihongbo*, Lihongbo WIPO Case No. [D2020-2075](#) and *Randstad Holding nv v. Pinaki Kar*, WIPO Case No. [D2013-1796](#)). Furthermore, the Panel also considers that the Respondent clearly and consciously targeted the Complainant's prior registered trademarks for MODERNA by registering the disputed domain names, which are all confusingly similar to such trademarks. The Panel also notes that the Complainant's MODERNA marks are distinctive, having acquired a strong international reputation (this fact has also been accepted by panels in earlier UDRP cases, such as *Modernatx, Inc. v. YangZhiChao*, WIPO Case No. [D2022-1552](#)) and that the Complainant also owns trademark registrations for this mark in China, where the Respondent is located. The Panel deduces from the Respondent's efforts to consciously target the Complainant's well-known registered trademarks that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain names. In the Panel's view, the preceding elements clearly indicate the bad faith of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain names in bad faith.

As to use of the disputed domain names in bad faith, the websites linked to the disputed domain names currently display pay-per-click hyperlinks to purported products and services of the Complainant as well as to third party providers of similar products and services. This shows that the Respondent is misleading and diverting consumers for commercial gain to such websites. Moreover, the Panel also finds that the Complainant sufficiently proves that the Respondent has been engaged in a pattern of trademark-abusive domain name registrations. In this regard, the Panel refers to a number of prior UDRP decisions involving the Respondent, where the Respondent had engaged in similar acts of cybersquatting, see for instance *Modernatx, Inc. v. Yang Zhi Chao (杨智超)*, WIPO Case No. [D2022-1674](#) and *TEVA Pharmaceuticals International GmbH v. 杨智超 (Yang Zhi Chao aka Zhi Chao Yang)*, WIPO Case No. [D2022-1158](#). The preceding elements lead the Panel to conclude that the Respondent is using the disputed domain names in bad faith.

Finally, the Respondent has failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore rules that the Complainant has satisfied the requirements of the third element under 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, <modernapx.com>, <modernatax.com>, <modernatx.com>, <modernatx.com>, and <mosernatx.com>, be transferred to the Complainant.

/Deanna Wong Wai Man/

**Deanna Wong Wai Man**

Sole Panelist

Date: August 24, 2022