

ADMINISTRATIVE PANEL DECISION

Moderna, Inc. and ModernaTX, Inc. v. Hermann Spiker, Name Redacted Case No. D2022-3154

1. The Parties

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

Respondent is Hermann Spiker, Name Redacted¹, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 26, 2022. On August 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 26, 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 (Registration Private, Domains By Proxy, LLC, United States) and contact information in the Complaint. The Center sent an email communication to Complainants on August 26, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainants to submit an amendment to the Complaint. The Center received Complainants’ email communication on August 30, 2022.

The Center verified that 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”).

¹ Respondent appears to have used the name of a third party as the registrant’s organization when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted Respondent’s organization name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the organization name of Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on September 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 21, 2022. On September 7, 2022, the Center received an email communication from Respondent in which Respondent indicated his willingness to transfer the Domain Name to Complainants. On September 8, 2022, the Center informed the Parties that if they would like to explore settlement options, Complainants should submit a request to suspend the proceeding. Shortly after the Center's email communication of September 22, 2022 informing the Parties that it would proceed to panel appointment, Complainants requested to suspend the proceeding. The proceeding was therefore suspended on September 22, 2022 for the parties to engage in settlement. On October 11, 2022, Complainants requested the proceedings to be reinstated.

Since the time to file a Response had already passed, the Center appointed John C. McElwaine as the sole panelist in this matter on October 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

Complainants in this administrative proceeding are Moderna, Inc., and ModernaTX, Inc., each of which is a Delaware corporation with its principal place of business located in Cambridge, Massachusetts, United States.

ModernaTX, Inc., is a subsidiary of Moderna, Inc., and the owner of multiple trademark registrations in at least 42 jurisdictions around the world for marks that consist of or contain "Spikevax." A schedule of these registrations was attached to the Complaint as Annex 9. Relevant to this proceeding Moderna TX, Inc.'s three oldest registrations for the SPIKEVAX trademark are as follows:

- SPIKEVAX, Hong Kong, China Reg. No. 305,577,328 (registered March 29, 2021);
- SPIKEVAX, International Reg. No. 1,593,707 (registered April 5, 2021); and
- SPIKEVAX, International Reg. No. 1,627,199 (registered October 5, 2021).

Collectively, Complainants' trademark rights are referred to herein as the "SPIKEVAX Mark."

In addition to the aforementioned trademark registrations, since August 14, 2020, ModernaTX, Inc. has owned the <spikevax.com> domain name, which Complainants have used in connection with a website for their COVID-19 vaccine known as "Spikevax".

The Domain Name was registered by Respondent on November 25, 2021. The Domain Name has been used to resolve to a website featuring pay-per-click advertisements for third-party products and services (the "Website").

5. Parties' Contentions

A. Complainants

By way of background, Complainants allege that Moderna, Inc. is pharmaceutical company founded in 2010 and employs more than 3,000 people. Complainants further contend that their pioneering COVID-19 vaccine is one of the most widely administered vaccines in the history of medicine. Complainants further assert that they have manufactured and shipped millions of doses of vaccines in 2021 and that global sales in 2021 were approximately USD 18.5 billion.

With respect to the first element of the Policy, Complainants assert that ModernaTX, Inc., is the owner of number trademark registrations worldwide for the SPIKEVAX trademark. Complainants further allege that

the Domain Name is confusingly similar to the SPIKEVAX Mark because it contains the SPIKEVAX trademark in its entirety, with the addition of the letter “m” at the beginning.

With respect to the second element of the Policy, Complainants allege that Respondent has no rights or legitimate interests in the Domain Name and that Complainants have not licensed or in any way authorized Respondent to register the Domain Name or use the SPIKEVAX Mark in any manner. Complainants further allege that use of the Domain Name by Respondent in connection with the Website that has links for various goods and services is not a *bona fide* offering of goods or services under the Policy and, therefore, Respondent cannot demonstrate rights or legitimate interests under paragraph 4(c)(i) of the Policy. In addition, Complainants contend that Respondent has never been commonly known by the Domain Name and has never acquired any trademark or service mark rights in the Domain Name. Complainants also assert that the Website is not a noncommercial or fair use of the SPIKEVAX Mark.

With respect to the third element of the Policy, Complainants allege that SPIKEVAX Mark is famous and/or widely known given that (i) it is protected by at least 50 trademark registrations in at least 42 jurisdictions worldwide, (ii) Complainants’ global sales in 2021 were approximately USD 18.5 billion, and (iii) Complainants manufactured and shipped 800 million doses of its COVID-19 vaccine in 2021 becoming one of the most widely administered vaccines in the history of medicine. Complainants assert that because of their significant presence and brand recognition it is likely that Respondent knew of the SPIKEVAX Mark when he sought to register the Domain Name, and has sought to obtain a commercial benefit by attracting Internet users based on that confusion. In addition, Complainants allege that the use of the Domain Name to resolve to the Website, which contains pay-per-click links is use of the Domain Name in bad faith. Further to this point, Complainants contend that fact that the pay-per-click links on the Website may be unrelated to the SPIKEVAX Mark is irrelevant because Respondent will have achieved his objective of attracting Internet users to the Website in order to seek to earn revenue from such visits. Complainants point out that another indicator of bad faith is the fact that most of Complainants’ registrations for the SPIKEVAX Mark were registered before Respondent’s registration of the Domain Name and were used for a COVID-19 vaccine that has become one of the most widely administered vaccines in the history of medicine.

B. Respondent

Apart from Respondent’s email communication of September 7, 2022, Respondent did not formally reply to Complainants’ contentions.

6. Discussion and Findings

Even though Respondent did not formally reply to the Complaint, paragraph 4(a) of the Policy requires that, in order to succeed in this UDRP proceeding, Complainants must still prove their assertions with evidence demonstrating:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainants have rights;
- (ii) 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.

Because of the absence of a formal Response, the Panel may accept as true the reasonable factual allegations stated within the Complaint and may draw appropriate inferences therefrom. See *St. Tropez Acquisition Co. Limited v. AnonymousSpeech LLC and Global House Inc.*, WIPO Case No. [D2009-1779](#); *Bjorn Kassoe Andersen v. Direction International*, WIPO Case No. [D2007-0605](#); see also paragraph 5(f) of the Rules (“If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint”). Having considered the Complaint, the Policy, the Rules, the Supplemental Rules and applicable principles of law, the Panel’s findings on each of the above cited elements are as follows.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires Complainants show that the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainants have rights.

As an initial matter, Complainants both have standing to bring this proceeding because Modena, Inc. is the parent company of the trademark registration owner, Moderna TX, Inc. “A trademark owner’s affiliate such as a subsidiary of a parent or of a holding company [...] is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint.” WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.4.1; see also *Grupo Televisa, S.A., Televisa, S.A. de C.V., Estrategia Televisa, S.A. de C.V., Videoserpel, Ltd. v. Party Night Inc., a/k/a Peter Carrington*, WIPO Case No. [D2003-0796](#) (“Paragraph 4(a)(i) of the Policy requires, as one element to be proved, that the disputed domain name be identical or confusingly similar to a trademark or service mark in which Complainants have rights. These words do not require that Complainants be the owner of the mark and would include, for example, a licensee of the mark.”); *Kao Brands Company, John Frieda, John Frieda Professional Hair Care Inc. v. Evgeniy Sechin*, WIPO Case No. [D2010-2247](#) (As the wholly owned subsidiary of its parent company, Kao Kabushiki Kaisha (also t/a Kao Corporation), the complainant was considered to have rights in the trademarks owned by such parent company); and *Yamaha Motor Corporation, U.S.A. v. Domain Admin, Hush Whois Protection Ltd.*, WIPO Case No. [D2018-1359](#).

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2. Complainants have provided evidence that the SPIKEVAX Mark has been registered in numerous countries.

While each case is judged on its own merits, 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 disputed domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. See [WIPO Overview 3.0](#), section 1.7. Here, the SPIKEVAX Mark is clearly identifiable in the Domain Name. Furthermore, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. See [WIPO Overview 3.0](#), section 1.8. Here, the addition of the letter “m” does not prevent a finding of confusing similarity under the first element.

Accordingly, the Panel finds that the Domain Name is confusingly similar to Complainants’ SPIKEVAX Mark in which Complainants possess valid trademark rights under the UDRP. Therefore, Complainants have satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, Complainants have the burden of establishing that Respondent does not have rights or legitimate interests in the Domain Name. Complainants must make only a *prima facie* showing of this element. See *The Wikimedia Foundation, Inc. v. Abid Karmali*, WIPO Case No. [D2018-0708](#). The burden then shifts to Respondent to present evidence that he has rights or legitimate interests in the Domain Name. If Respondent fails to meet this burden, then Complainants are deemed to have shown that Respondent has no rights or legitimate interests in the Domain Name. See *Wikimedia Foundation, Inc. v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Olive Digital*, WIPO Case No. [D2021-3336](#).

A lack of substantive response allows the Panel to infer that the evidence would not be favorable to Respondent. See *Alcoholics Anonymous World Services, Inc., v. Lauren Raymond*, WIPO Case No. [D2000-0007](#); *Ronson Plc v. Unimetal Sanayi ve Tic. A.S.*, WIPO Case No. [D2000-0011](#). Additionally, due to the lack of substantive response, it may be assumed that a respondent has no rights or legitimate interests in the domain name at issue. See *Osram GmbH v. Nguyễn Trần Dũng*, WIPO Case No. [D2021-0304](#). Here, Respondent was properly served by the Center and Respondent simply expressed his

willingness to transfer the Domain Name to Complainants. Inferences made from this lack of a substantive response support the findings below.

As stated in paragraph 4(c) of the Policy, Respondent may demonstrate rights or legitimate interests in the Domain Name: (i) if the Domain Name is used in connection with a *bona fide* offering of goods or services; (ii) if Respondent has been commonly known by the Domain Name; or (iii) if Respondent is making a legitimate noncommercial or fair use of the Domain Name.

Respondent cannot satisfy paragraph 4(c) of the Policy. First, the Domain Name is not used in connection with a *bona fide* offering of goods or services. Past UDRP panels have recognized that the use of a domain name to host a parked page with pay-per-click links is not a *bona fide* offering of goods or services when “such links compete with or capitalize on the reputation and goodwill of [...] complainant’s mark or otherwise mislead Internet users.” See [WIPO Overview 3.0](#), section 2.9; *Express Scripts, Inc. v. Windgather Instruments Ltd. / Mr. Cartwright*, WIPO Case No. [D2007-0267](#). However, the Panel notes that parking webpages may be permissible in some circumstances, as discussed in section 2.9 of the [WIPO Overview 3.0](#). Nevertheless, none of those factors are seen here. The Domain Name is not a dictionary term rather it incorporates Complainants’ distinctive SPIKEVAX Mark. Due to the similarity of the Domain Name when compared to Complainants’ SPIKEVAX Mark, Respondent’s use of the Domain Name is an attempt to redirect Internet users to its pay-per-click advertising site. Thus, it is evident that Respondent sought to capitalize on Complainants’ SPIKEVAX Mark and mislead Internet users.

Second, Respondent is not commonly known by the Domain Name. Absent other information, it is reasonable to infer when a Whois search reveals no correlation between the domain name and a respondent that the respondent is not commonly known by that domain name. See *LK International AG v. Fundacion Private Whois*, WIPO Case No. [D2013-0135](#). Here, the Whois search identified Respondent as Hermann Spiker, Name Redacted. There is no evidence that Respondent is known as “M Spike Vax”. Thus, it is reasonable to infer that Respondent is not commonly known by the Domain Name.

Third, Respondent cannot show that his use is a “legitimate noncommercial or fair use” under paragraph 4(c)(iii) of the Policy. The Domain Name resolves to a website with pay-per-click links, which is commercial use. Such activity is not considered a fan site, criticism, or other activity that may be considered legitimate noncommercial or fair use. See *Overstock.com, Inc. v. Metro Media*, WIPO Case No. [DME2009-0001](#) (respondent’s use of the disputed domain name to establish a parking page was “plainly not noncommercial”).

Therefore, the Panel finds that Complainants have made a *prima facie* showing of Respondent’s lack of rights or legitimate interests in the Domain Name. Respondent failed to rebut this showing. For these reasons, the Panel finds that pursuant to paragraphs 4(a)(ii) and 4(c) of the Policy, Respondent has no rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

Complainants must show that according to paragraph (a)(iii) of the Policy, Respondent registered and is using the Domain Name in bad faith. The Policy under paragraph 4(b) provides a non-exhaustive list of factors that may be used when considering whether Respondent has registered and used the Domain Name in bad faith. There are several indications here that the Domain Name was registered and is being used in bad faith.

In this matter, Complainants contend that the registration by Respondent of a domain name, which contains Complainants’ well-known SPIKEVAX Mark establishes that Respondent was aware of the existence of Complainants’ vaccine. Further, UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4; *Sodexo v. Larry Johnson, Arvato Global Group*, WIPO Case No. [D2019-1773](#) (“Complainant has demonstrated that the SODEXO mark is distinctive and well-known internationally. The Panel thus infers that Respondent must

have been aware of this trademark and its reputation when it registered the disputed domain name, so that the disputed domain name (<sodexo-global.com>) was registered in bad faith”); *LEGO Juris A/S v. Reiner Stotte*, WIPO Case No. [D2010-0494](#); *Sanofi-Aventis v. Nevis Domains, LLC*, WIPO Case No. [D2006-0303](#). Here, Respondent has registered a unique set of words and placed this Domain Name with a website service that creates links to products and services that, while not competitive to Complainants’ vaccines, are also not related to any meaning or other fair use of the Domain Name. Furthermore, and as also detailed above, Respondent is not commonly known by the Domain Name and does not have any rights or legitimate interests in the Domain Name. Accordingly, on the record there is no explanation or legitimate interests to justify Respondent’s choice to register the Domain Name other than to attract Internet users seeking information concerning Complainants’ vaccine. With no substantive response from Respondent, this claim is undisputed and the Panel infers bad faith registration.

Previous UDRP panels have found that while a parked domain name is not always necessarily an activity of bad faith, it may be considered bad faith “where the registrant is using the domain name in this manner because of its similarity to a mark [...] in the hope and expectation that that similarity would lead to confusion on the part of Internet users and result in an increased number of Internet users being drawn to that domain name parking page.” See *Blue Cross and Blue Shield Association, Empire HealthChoice Assurance, Inc. dba Empire Blue Cross Blue Shield and also dba Empire Blue Cross v. Private Whois Service / Search and Find LLC. / Michigan Insurance Associates / 4 Letter Domains Inc. / New York Health Ins.*, WIPO Case No. [D2010-1699](#). Moreover, “it does not matter that when the Internet user arrives at the pay-per-click site that it then becomes clear that the website is unconnected with the trade mark holder.” See *id.* As seen above, the Domain Name is confusingly similar to Complainants’ SPIKEVAX Mark. Here, the Domain Name consists of a trademark of a uniquely named vaccine that has been distributed worldwide. Thus, it can be inferred that Respondent’s registration and use of the Domain Name is bad faith because it is likely that Respondent intentionally choose a confusingly similar domain name to Complainants’ SPIKEVAX Mark in order to draw Internet users to the parked page. Such bad faith is further demonstrated given that world remains in the midst of a global pandemic for which Complainants’ SPIKEVAX vaccine is designed to combat. See, e.g., *Biological E. Ltd v. Domains By Proxy, LLC / Young Jin Hong, ITL*, WIPO Case No. [D2022-3112](#) (finding bad faith registration and use of <corbevax.com> domain name to link to a parked webpage).

Moreover, according to paragraph 4(b)(iv) of the Policy, bad faith may be shown if “by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location”. See *MathForum.com, LLC v. Weiguang Huang*, WIPO Case No. [D2000-0743](#) (finding bad faith under paragraph 4(b)(iv) of the Policy where the respondent registered a domain name confusingly similar to the complainant’s mark and the domain name was used to host a commercial website that offered similar services offered by the complainant under its mark); *CEAT Limited, CEAT Mahal, v. Vertical Axis Inc. / Whois Privacy Services Pty Ltd*, WIPO Case No. [D2011-1981](#) (finding bad faith as a result of respondent’s general offer to sell the domain name); *Virgin Enterprises Limited v. Balticsea LLC / Contact Privacy Inc. Customer 0134432592*, WIPO Case No. [D2016-2148](#) (finding that a general offering to sell the domain name was evidence of registration of the domain name in bad faith). Here, Respondent used a confusingly similar Domain Name in order to direct Internet users to his website with pay-per-click links. Thus, it is clear that Respondent intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with Complainants’ SPIKEVAX Mark.

Although Respondent did not formally respond to Complainant, the Panel may draw conclusions from the established facts in the Complaint. See *Harvey Norman Retailing Pty Ltd v. Oxford-University*, WIPO Case No. [D2000-0944](#). Accordingly, the Panel holds that Complainants have shown a preponderance of the evidence that Respondent registered and is using the Domain Name in bad faith under paragraphs 4(a)(iii) and 4(b)(iv) 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 Domain Name, <mspikevax.com>, be transferred to Complainants.

/John C. McElwaine/

John C. McElwaine

Sole Panelist

Date: November 4, 2022