

ADMINISTRATIVE PANEL DECISION

Modernatx, Inc. v. Jennie Sample
Case No. D2023-0090

1. The Parties

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

Respondent is Jennie Sample, United States.

2. The Domain Name and Registrar

The disputed domain name <modernaty.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 9, 2023. On January 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 9, 2023, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to Complainant on January 10, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on January 11, 2023. Complainant’s amendment requested that the Complaint reflect Jennie Sample as Respondent.

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 Respondent of the Complaint, and the proceedings commenced on January 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 2, 2023. Respondent did not submit a response. Accordingly, the Center notified Respondent’s default on February 7, 2023.

The Center appointed Jeffrey M. Samuels as the sole panelist in this matter on February 16, 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

Complainant Modernrx, Inc. is an American-based biotechnology company that focuses on the development of medicines based on messenger RNA. One of these medicines is the Moderna Covid-19 vaccine, which is one of the most widely administered vaccines in the history of medicine, with more than 800 million doses shipped in 2021. Complainant's global sales in 2021 were approximately USD 18.5 billion.

The case file indicates that Complainant owns a global portfolio of MODERNA-formative registered trademarks. These include United States Trademark Registration Nos. 4659803 and 4675783, International Trademark Registration No. 1293063, Canadian Trademark Registration No. TMA1079224, and European Union Trademark Registration No. 018241405.

Complainant also owns the domain name <modernatx.com>, which hosts a website that displays information about Complainant and its activities.

The disputed domain name, <modernaty.com>, was registered on February 9, 2022, well subsequent to issuance of each of the above-mentioned trademark registrations and to Complainant's May 2013 date of first use of the MODERNA trademark.¹ The disputed domain name redirects to Complainant's official website at "www.modernatx.com".

5. Parties' Contentions

A. Complainant

Complainant asserts that its ownership of trademark registrations for the MODERNA trademark clearly establishes its rights to such mark. It further contends that the disputed domain name is confusingly similar to the MODERNA trademark. Complainant points out that the disputed domain name incorporates the MODERNA mark in full and that the addition of the letters "t" and "y" as well as the top-level domain ".com" does not prevent a finding of confusing similarity. According to Complainant, "there is little doubt that the MODERNA mark is such clearly recognizable in the Domain Name regardless of the addition of the letters `t` and `y.`"

Complainant next alleges that Respondent has no rights or legitimate interests in respect of the disputed domain name. It notes that Respondent is not a licensee of Complainant and has not received permission or acquiescence from Complainant to use the MODERNA trademark in association with the registration of the disputed domain name. Complainant has also found no evidence that Respondent is commonly known by the term "modernaty" and contends that the use of the disputed domain name to redirect to Complainant's official website does not present a *bona fide* offering of goods or services under the disputed domain name.

Finally, Complainant finds it "highly unlikely" that Respondent intended to use the disputed domain name for any legitimate or fair use. "On the contrary, it has been shown that the Respondent is clearly using the Domain Name to impersonate the Complainant by setting up emails purporting to be sent from the Complainant and by redirecting the Domain Name to the Complainant's official website".

With respect to the issue of "bad faith" registration and use, Complainant maintains that given the prevalence of Complainant and of its MODERNA mark on search engines and on the web, it is "implausible" that Respondent was not aware of Complainant and of its MODERNA trademark when the disputed domain

¹ Complainant's U.S. Trademark Registration No. 4659803 recites a date of first use of May 2013.

name was registered, “especially considering the enormous popularity of the Complainant and its MODERNA mark during the COVID pandemic, which began before the registration of the Domain Name”.

According to Complainant, the fact that the disputed domain name redirects to Complainant’s official website is probative of bad faith “as it reinforces the likelihood of confusion and creates a real or implied ongoing threat to Complainant. Bearing in mind the well-known nature of the MODERNA mark and the close similarities of the Domain Name with the Complainant’s domain name <modernatx.com>, Internet users are likely to consider the Domain Name as in some way endorsed by or connected with Complainant, which amounts of bad faith pursuant to paragraph 4(b)(iv) of the Policy”. Also probative of the requisite “bad faith,” Complainant asserts, is the fact that Respondent uses the disputed domain name to impersonate Complainant in the furtherance of a fraudulent email scheme, as well as Respondent’s use of a privacy shield to hide its identity.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that Complainant, through its ownership of trademark registrations for the MODERNA trademark, as well as its widespread use of such mark, has rights in the MODERNA trademark.

As noted in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter [WIPO Overview 3.0](#)), the test for confusingly similarity “typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name” and “in cases where a domain name incorporates the entirety of a trademark, or where 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.” See [WIPO Overview 3.0](#) §1.7.

Complainant’s MODERNA mark is incorporated in its entirety in the disputed domain name and the mark is recognizable in the disputed domain name. The addition of the letters “t” and “y” at the end of the term “moderna” does not avoid a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.8 (“Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element.”).

B. Rights or Legitimate Interests

The Panel concludes that Complainant has satisfied its burden of proving that Respondent has no rights or legitimate interests in the disputed domain name. There is no evidence that Respondent is licensed or otherwise authorized to use the MODERNA trademark in the disputed domain name or that Respondent is commonly known by the disputed domain name. The case file also supports Complainant’s contention that the disputed domain name redirects to Complainant’s official website at <modernatx.com>. The use of a domain name to redirect to an official website does not constitute a *bona fide* offering of goods or services under the domain name. See *Modernatx, Inc. v. Whois Privacy, Private by Design, LLC/hggfdd bchgugugh*, WIPO Case No. [D2022-2111](#). See, also, *Barrett Steel Limited v. Web Hosting*, WIPO Case No. [D2021-0055](#), and cases cited therein. Finally, given that there is no content at the disputed <modernaty.com> website, it cannot be held that Respondent is making a legitimate noncommercial or fair use of the domain name.

C. Registered and Used in Bad Faith

The Panel holds that the disputed domain name was registered and is being used in bad faith. Given the widespread publicity surrounding the use of the MODERNA vaccine during the Covid pandemic, it is inconceivable that Respondent was not aware of Complainant and of its MODERNA trademark at the time she registered the disputed domain name.

Further, as previously noted, the disputed domain name redirects to Complainant's website. As contended by Complainant, "such conduct is probative of bad faith, as it reinforces the likelihood of confusion and creates a real or implied ongoing threat to Complainant". There is no doubt that the disputed domain name seeks to capitalize on the reputation and goodwill of Complainant's MODERNA trademark, misleading consumers into thinking that the disputed domain name is operated by or affiliated with Complainant. The case file also supports Complainant's assertion that the disputed domain name is being used to impersonate one of its employees, a supply chain manager seeking to share in the profits earned from the sale to Complainant of an ingredient from India. This is also indicative of bad faith. See [WIPO Overview 3.0](#), section 3.4 and cases cited therein.

In the Panel's opinion, Respondent, in its registration and use of the disputed domain name, targets Complainant and its MODERNA trademark. The addition of the letters "t" and "y" following the term "moderna" in the disputed domain name is further evidence of targeting insofar as the case file establishes that Complainant's formal name is Modernatx, Inc. and its official website may be found at <modernatx.com>.

With respect to Complainant's reliance on Respondent's use of a privacy shield as a basis for a finding of bad faith, the Panel notes that there are many plausible reasons a domain name registrant might choose to use a privacy service that do not involve bad faith. See [WIPO Overview 3.0](#), section 3.6, and cases cited therein.

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 <modernaty.com> be transferred to Complainant.

/Jeffrey M. Samuels/

Jeffrey M. Samuels

Sole Panelist

Date: March 2, 2023