

ADMINISTRATIVE PANEL DECISION

Modernatx, Inc. v. gbsrgbs ghsrehserh
Case No. D2023-2626

1. The Parties

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

The Respondent is gbsrgbs ghsrehserh, India.

2. The Domain Name and Registrar

The disputed domain name <moderna186.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 19, 2023. On June 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 19, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 27, 2023, 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 on June 27, 2023.

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 of the Complaint, and the proceedings commenced on July 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 31, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on September 6, 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

The Complainant is a United States-based biotechnology company and has acquired worldwide renown in the past three years because of its MODERNA COVID-19 vaccine (Annex 6 to the Complaint).

The Complainant holds several trademark registrations containing the mark MODERNA, *inter alia*:

- U.S. trademark Registration (word mark) No. 4659803, registered on December 23, 2014, in international classes 1, and 5;
- China trademark Registration (combined mark) No. 36738656, registered on December 7, 2019, in international class 5;
- International Registration (combined mark) No. 1543457, registered on April 23, 2020, in international classes 1 and 42, designated for Canada, Switzerland and European Union; and
- International Registration (figurative mark) No. 1293063, registered on January 7, 2016, in international classes 1, 5 and 42, designated for Australia, Canada, Switzerland, China, European Union, Japan, Singapore, and U.S. (Annexes 7 and 8 to the Complaint).

The Complainant's main website is available under the domain name <modernatx.com> (Annex 16 to the Complaint).

The disputed domain name was registered on May 23, 2023 (Annex 2 to the Complaint); it resolved to a website featuring the Complainant's mark MODERNA as well as information about the Complainant's business (especially COVID-19 vaccinations), a portrait photo of the Complainant's CEO, and provided a section where Internet users could register and create a user account (Annex 13 to the Complaint); currently, the disputed domain name does not resolve to an active website.

Finally, the disputed domain name has an active MX (mail exchange) records, as shown in an MX records lookup (Annex 15 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant is a global biotechnology company that focuses on the development of medicines based on messenger RNA (mRNA). One of these medicines is the MODERNA COVID-19 Vaccine, also known as Spikevax. The Complaint's claims that its vaccine, which relies on pioneering mRNA technology, is one of the most widely administered vaccines in the history of medicine, with more than 800,000,000 doses shipped globally in 2021.

In 2021, the Complainant was judged the world's most innovative company; it was also judged the third most well-respected company in the United States.

The Complainant's global sales in 2022 were approximately USD 18.45 billion, with more than 3,900 employees worldwide in 17 locations across North America, Europe, and Asia. Thus, the Complainant and its MODERNA brand have become extremely well known worldwide thanks to the success of its COVID vaccine and its pioneering messenger RNA technology.

The Complainant owns a global portfolio of MODERNA-formative registered trademarks, *inter alia* in the U.S. China, Japan, United Kingdom and the European Union.

The disputed domain name is confusingly similar to the Complainant's MODERNA marks: The disputed domain name incorporates the entirety of the Complainant's well-known MODERNA mark. Hence, it can be concluded that they are confusingly similar, since the addition of the suffix "186" does not prevent a finding of confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain name: The Complainant has not authorized the Respondent to use its MODERNA mark for any reason or in any manner, including in or as part of the disputed domain name. Likewise, the Complainant is not affiliated or otherwise connected with the Respondent. The Complainant has found no evidence that the Respondent has been commonly known by the disputed domain name or by the term “moderna186”. Further, the Complainant has found nothing to suggest that the Respondent holds any trademark rights on the disputed domain name or the term “moderna186”. The disputed domain name and the terms “moderna” and “moderna186” do not seem to have any meaning in English or Chinese language and it has not been used in connection with any legitimate noncommercial or fair use, without intent for commercial gain. On the contrary: the disputed domain name resolved to a website displaying the well-known MODERNA mark and a photograph of the Complainant’s CEO and containing a section where Internet users could register and create a user account.

Finally, the disputed domain name was registered and is being used in bad faith: Because of the fame of the Complainant and its MODERNA mark, it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant and the Complainant’s MODERNA mark when the disputed domain name was registered. Further, the disputed domain name reproduces in full the well-known MODERNA mark, without the consent or authorization of the Complainant; the terms “moderna” and “moderna186” do not seem to have any meaning in English and Chinese language; the disputed domain name resolved to a website which prominently displayed the Complainant’s mark on top, a photograph of the Complainant’s CEO, and information about the Complainant’s products; and the disputed domain name resolved to a website where Internet users could allegedly register and create a user account and the Respondent has used the disputed domain name to impersonate the Complainant, or otherwise mislead Internet users as to the source of the Respondent’s website, in order to harvest information and passwords of the Complainant’s customers. In the end, the disputed domain name is associated with MX servers that enable the Respondent to use it for creating and using email addresses composed with “@moderna186.com”.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that

- (i) the disputed domain name is 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 with respect to 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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

In the case at issue, the Complainant submitted evidence, which incontestably and conclusively establishes rights in the mark MODERNA.

The disputed domain name is confusingly similar to the MODERNA mark in which the Complainant has rights since the Complainant's MODERNA mark is clearly recognizable in the disputed domain name. It has long been established under UDRP panel decisions that where the relevant trademark is recognizable within the disputed domain name, the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

This is the case at hand, the addition of the number "186" in the disputed domain name does not prevent a finding of confusing similarity.

Finally, it has also long been held that generic Top-Level Domains are generally disregarded when evaluating the confusing similarity under the first element (see section 1.11.1 of the [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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 (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant's distinctive mark in its entirety together with the number "186" as suffix falsely suggests an affiliation with the Complainant that does not exist (see section 2.5.1 of the [WIPO Overview 3.0](#)). This finding is also supported by the fact that the Respondent's earlier use of the disputed domain name as shown in the screenshots submitted as Annex 13 to the Complaint clearly did not meet the requirements for a *bona fide* offering of goods or services (see section 2.8 of the [WIPO Overview 3.0](#)).

Noting the above, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g., *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant is the owner of the registered trademark MODERNA, which was registered long before the registration of the disputed domain name. Moreover, the Complainant has a strong Internet presence showing and providing the MODERNA products (Annexes 16 to the Complaint).

The Respondent featured the Complainant's distinctive MODERNA mark alongside with content regarding the Complainant's business and a portrait photo of the Complainant's CEO on its website, addressed by the disputed domain name (Annex 13 to the Complaint).

It is therefore inconceivable for this Panel that the Respondent registered and used the disputed domain name without knowledge of the Complainant's rights, which in the circumstances of this case leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's registered trademark MODERNA entirely.

All of which in fact indicate that the Respondent must have been aware of the Complainant's business and trademark when registering the disputed domain name.

Therefore, in the circumstances, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) Furthermore, the disputed domain name was used in bad faith: the Complainant put forward evidence that the disputed domain name resolved to a website which prominently featured the Complainant's MODERNA mark, a portrait photo of the Complainant's CEO, alongside with information about the Complainant's business, and a section where Internet users could allegedly register and create a user account. Thus, the Respondent impersonated the Complainant, or otherwise misled Internet users as to the source of the Respondent's website, in order to harvest information and passwords of the Complainant's customers.

Hence, the Respondent intentionally, and for commercial gain, registered and has used the disputed domain name to attract Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. This clearly constitutes bad faith use of the disputed domain name under the Policy.

Further, the disputed domain name has an active MX (mail exchange) records, as shown in an MX records lookup (Annex 15 to the Complaint), which indicates a possible use for email-services.

Taking all these aspects and evidence on record into consideration and the fact that the Respondent failed to reply to the Complainant's contentions supports the finding of bad faith under paragraph 4(a)(iii) of the Policy. Given the prior use and also taking into consideration section 3.3 of the [WIPO Overview 3.0](#), the fact that the disputed domain name does not currently resolve to an active website does not prevent a finding of bad faith.

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, <moderna186.com>, be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: September 20, 2023