

## **ADMINISTRATIVE PANEL DECISION**

Modernatx, Inc. v. rshhserh ghserhbsehrseh  
Case No. D2023-2898

### **1. The Parties**

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

The Respondent is rshhserh ghserhbsehrseh, India.

### **2. The Domain Name and Registrar**

The disputed domain name <moderna366.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 July 6, 2023. On July 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 6, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 10, 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 July 11, 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 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 8, 2023.

The Center appointed Alistair Payne as the sole panelist in this matter on August 17, 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, established in 2010, is an American-based 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 Complainant's vaccine, which relies on pioneering mRNA technology, is one of the most widely administered vaccines with more than 800,000,000 doses shipped globally in 2021. Its global sales in 2022 were approximately USD18.45bn, with more than 3,900 employees worldwide in more than 17 locations across North America, Europe and the Asia Pacific region. It owns various trade mark registrations for its MODERNA mark including United States trade mark registration 4659803 for MODERNA registered on December 23, 2014.

The disputed domain name was registered on June 8, 2023 and resolves to a website which displays the Complainant's MODERNA marks and a photograph of the Complainant's CEO together with information in the Chinese language about the Complainant's vaccine and some of its products, including a section where Internet users can register and create a user account.

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

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

The Complainant submits that it owns registered trade mark rights for its MODERNA trade mark as noted above. It says that the disputed domain name incorporates this mark in its entirety and as a consequence is confusingly similar to it. The Complainant also submits that the addition of the number "366" does not prevent a finding of confusing similarity.

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name. It says that it has not authorised the Respondent to use its MODERNA mark and has found no evidence that the Respondent is commonly known by the disputed domain name or owns any trade mark rights in the disputed domain name and that the Respondent did not have the right to incorporate its well-known mark into the disputed domain name which necessarily brings with it a high risk of implied false association.

The Complainant notes that neither "moderna" nor "moderna366" have any meaning in the English or Chinese languages and submits that the disputed domain name has not been used in connection with any legitimate noncommercial or fair use without intent for commercial gain. In this regard, it notes that the disputed domain name resolves to a website which displays the Complainant's MODERNA marks and a photograph of the Complainant's CEO together with information in the Chinese language about the Complainant's vaccine and some of its products, including a section where Internet users can register and create a user account. The Complainant says that this use of the disputed domain name confuses customers and deceives them into thinking that the website at the disputed domain name is operated by or associated with the Complainant most likely with a view to seeking to illicitly obtain information and passwords of the Complainant's customers.

As far as bad faith is concerned, the Complainant notes that the disputed domain name was only registered on June 8, 2023, many years after the registration of its trade mark for MODERNA. The Complainant maintains that it is not possible to conceive of a situation in which the Respondent would have been unaware of its mark and business at the date of registration of the disputed domain name. This is even more so the case, says the Complainant, because the MODERNA mark is both distinctive and well reputed and in addition the disputed domain name resolves to a website that features the Complainant's MODERNA trade mark and information about the Complainant's products.

As far as use in bad faith is concerned, the Complainant submits that the Respondent has used the disputed domain name in an effort to impersonate the Complainant, or to otherwise mislead Internet users as to the source of the Respondent's website for the purposes of obtaining information and passwords belonging to

the Complainant's customers. In addition, it alleges that the Respondent's conduct in using the disputed domain name to divert customers to a website that appears to be run by, or endorsed by, the Complainant, is conduct that fulfills the requirements of paragraph 4(b)(iv) of the Policy. The Complainant also notes that the Respondent used a privacy service in order to mask its identity and that the mail servers associated with the disputed domain name enable the Respondent to use it for email purposes, including spamming or phishing.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Complainant has demonstrated that it owns various trade mark registrations for its MODERNA mark including United States trade mark registration 4659803 for MODERNA registered on December 23, 2014. The disputed domain name wholly incorporates the Complainant's mark and is therefore confusingly similar to it. The addition of the numbers "366" does not prevent a finding of confusing similarity. As a result, the Complaint succeeds under this element of the Policy.

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

The Complainant has asserted that the Respondent has no rights or legitimate interests in the disputed domain name. It has also submitted that it has not authorised the Respondent to use its MODERNA mark and has found no evidence that the Respondent is commonly known by the disputed domain name or owns any trade mark rights in the disputed domain name. It has also maintained that the Respondent did not have the right to incorporate the Complainant's well-known MODERNA mark into the disputed domain name which necessarily implied a high risk of false association.

The Panel notes that neither "moderna" nor "moderna366" have any meaning as a separate word in the English language and that the Complainant has submitted that it also has no meaning in the Chinese language. The Complainant has also asserted that the disputed domain name has not been used in connection with a legitimate noncommercial or fair use without intent for commercial gain. In this regard it has noted that the disputed domain name resolves to a website which displays the Complainant's MODERNA marks and a photograph of the Complainant's CEO together with information in the Chinese language about the Complainant's vaccine and some of its products, including a section where Internet users can register and create a user account. The Complainant has suggested that this use of the disputed domain name confuses customers and deceives them into thinking that the website at the disputed domain name is operated by or associated with the Complainant most likely with a view to seeking to illicitly obtain information and passwords of the Complainant's customers.

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has failed to respond to, or to rebut the Complainant's case, or to explain its conduct in using the disputed domain name to divert internet users to a website that appears to be the Complainant's or which appears to have been authorised by the Complainant when this is not the case.

This conduct is not consistent with the Respondent acting in a *bona fide* manner or having rights or legitimate interests in the disputed domain name and the Panel therefore finds that the Complaint also succeeds under this element of the Policy.

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

The disputed domain name was registered in mid-2023, long after the Complainant registered its MODERNA trade mark in 2014, as set out under section 4 above. The Complainant's MODERNA trade mark is distinctive and extremely well reputed in relation to its pharmaceutical business and products. Considering that the disputed domain name resolves to a website on which is featured the Complainant's MODERNA mark, a photograph of its CEO and information about the Complainant's products, it is almost certain that the Respondent was well aware of the Complainant and of its MODERNA mark and business when it registered the disputed domain name.

Under paragraph 4(b)(iv) of the Policy, there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

In this case, the disputed domain name diverts Internet users to the Respondent's website at which it appears to masquerade as if it is the Complainant, or is authorised by the Complainant, to provide information about the latter's products under the MODERNA mark. It is apparent that Internet users could well be confused by the disputed domain name into thinking that they are being led to the Complainant's website when in fact they end up on a website that masquerades as if it is the Complainant's, or is endorsed by the Complainant. Whether this is in order to elicit personal information from customers, or to facilitate a phishing campaign, is unclear but the fact remains that there is a likelihood of confusion in terms of paragraph 4(b)(iv) and that this is most likely for the Respondent's commercial benefit.

The Panel finds that the requirements of paragraph 4(b)(iv) of the Policy are fulfilled and that this amounts to evidence of registration and use of the disputed domain name in bad faith. The Panel's finding of bad faith is only reinforced by the Respondent's use of a privacy service to hide its identity.

Accordingly, the Panel finds that the disputed domain name has been registered and used in bad faith and that the Complaint also succeeds under this element 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 name <moderna366.com> be transferred to the Complainant.

*/Alistair Payne/*

**Alistair Payne**

Sole Panelist

Date: August 31, 2023