

## **ADMINISTRATIVE PANEL DECISION**

Modernatx, Inc. v. Valerie Jones, Moderna  
Case No. D2024-1898

### **1. The Parties**

The Complainant is Modernatx, Inc., United States of America (“United States”), internally represented.

The Respondent is Valerie Jones, Moderna, United States.

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

The disputed domain name <modernatxmrna.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 May 6, 2024. On May 6, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 6, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent’s default on May 29, 2024.

The Center appointed Ingrida Kariņa-Bērziņa as the sole panelist in this matter on June 4, 2024. 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, a Delaware corporation based in Massachusetts, United States, develops mRNA medicines to treat and prevent disease, including the widely used MODERNA COVID-19 vaccine. The Complainant is the proprietor of several trademarks, including United States Trademark Registration No. 4659803 for MODERNA (word mark), registered on December 23, 2014, for goods in classes 1 and 5.

The Complainant operates its business website at the domain name <modernatx.com>, which it registered in 2010.

The disputed domain name was registered on April 3, 2024. At the time of the filing of the Complaint, it redirected users to the Complainant's website. At the time of the Decision, it did not resolve to any website.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that its MODERNA COVID-19 vaccine has been approved for distribution in more than 70 countries, exceeding 800,000,000 doses shipped and USD 15 billion in revenue. The MODERNA mark enjoys a global reputation, and the disputed domain name incorporates this mark in the entirety. The presence of "tx" (a common abbreviation for "therapeutics") and "mrna" (referring to mRNA technology) do not diminish the confusing similarity. The Respondent has no connection to the Complainant and no right to use its mark. The disputed domain name redirected users to the Complainant's website, thereby creating a false impression of association with or authorization by the Complainant. Moreover, the Respondent provided false contact information claiming an affiliation with the Complainant.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (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 in respect of the disputed domain name; and
- (iii) the Respondent has registered and is using the disputed domain name in bad faith.

Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

##### **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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant's MODERNA trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "tx" and "mrna") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes there is no evidence that the Respondent has used the disputed domain name in connection with a bona fide offering of goods or services, nor that the Respondent has been commonly known by the disputed domain name. There is no evidence that the Respondent has made a legitimate noncommercial or fair use of the disputed domain name. The use of the disputed domain name reflected in the evidence does not support an inference that the Respondent was engaged in a legitimate business connected to the disputed domain name. Under these circumstances, the Panel finds that such use does not establish rights or legitimate interests. Moreover, the composition of the disputed domain name, which reflects the Complainant's MODERNA trademark together with the terms referring to the Complainant's services, carries a risk of implied affiliation to the Complainant that cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

Using the disputed domain name to redirect Internet users to the Complainant's website does not support a claim to rights or legitimate interests. [WIPO Overview 3.0](#), section 2.5.3.

The Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. The disputed domain name was registered approximately a decade after the Complainant first registered its MODERNA mark and after its MODERNA mark became widely known for its successful COVID-19 vaccine. The disputed domain name reflects the Complainant's registered mark together with terms referring to the Complainant's services, and therefore implies a connection to the Complainant. The disputed domain name is also confusingly similar to the Complainant's domain name. Under these circumstances, the Panel finds that the disputed domain name was registered in bad faith. [WIPO Overview 3.0](#), section 3.1.

The Panel finds that redirecting Internet users to the Complainant's website further supports a finding of bad faith registration and use of the disputed domain name. [WIPO Overview 3.0](#), section 3.1.4.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the reputation of the Complainant's trademark, the composition of the disputed domain name, and the false claim of affiliation with the Complainant provided by the Respondent, and finds that in the circumstances of this case the redirection and subsequent passive holding of the disputed domain name do not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third 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 <modernatxmrna.com> be transferred to the Complainant.

*/Ingrīda Kariņa-Bērziņa/*

**Ingrīda Kariņa-Bērziņa**

Sole Panelist

Date: June 18, 2024