

## **ADMINISTRATIVE PANEL DECISION**

Modernatx, Inc. v. Brody Ericksson, Axo Technologies LLC  
Case No. D2024-3729

### **1. The Parties**

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

Respondent is Brody Ericksson, Axo Technologies LLC, United States.

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

The Disputed Domain Name <modernatx.cloud> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 13, 2024. On September 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 13, 2024, 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 (Name Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to Complainant on September 20, 2024, 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 September 25, 2024.

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 September 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 16, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 17, 2024.

The Center appointed Richard W. Page as the sole panelist in this matter on October 21, 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**

Hundreds of millions around the world have received Complainant's Moderna COVID-19 vaccine. Thus, Complainant enjoys an excellent global reputation. Complainant is included on the Fortune Magazine list of World's Most Admired Companies, sitting among the top-50 "All Star" companies. In its current list of top U.S. Companies, LinkedIn ranked Complainant 9th, one ahead of Alphabet. Also, Boston Consulting Group ranked Complainant 10th among the 50 most innovative companies.

Complainant owns a global portfolio of MODERNA and MODERNA-formative registered trademarks (the "MODERNA Mark"), totaling more than 100, among them these U.S. registrations:

United States Trademark Registration No. 4,659,803 for MODERNA, registered December 23, 2014;

United States Trademark Registration No. 4,811,834 for MODERNA, registered September 15, 2015; and

Chinese Trademark Registration No. 6,141,206 for MODERNATX, registered June 14, 2022.

On September 7, 2010, Complainant registered the domain name <modernatx.com>, which has hosted its corporate website for more than a decade.

The Disputed Domain Name was registered nearly ten years after Complainant's first registration of the MODERNA Mark in the United States, more than 2 years after Complainant registered MODERNATX in China, and 14 years after Complainant registered its domain name <modernatx.com>, which resolves to Complainant's corporate site.

The Disputed Domain Name was registered on September 2, 2024, resolves to an inactive website and was used to set up fraudulent email addresses.

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

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

Complainant contends that the Disputed Domain Name contains the entirety of the phrases MODERNA and MODERNATX and is thus confusingly similar to the MODERNA Mark. The presence of "tx" in the Disputed Domain Name does nothing to diminish the confusing similarity to the MODERNA Mark. Indeed, the addition of "tx" increases the likelihood of confusing similarity as TX references a core competence of Complainant – therapeutics.

Complainant alleges that Respondent configured MX (Mail Exchange) records associated with the Disputed Domain Name in order to generate fraudulent phishing emails in which Respondent impersonated a Complainant's executive. In the past 10 days, stealing the identity of an employee and using an email address associated with the Disputed Domain Name, Respondent sent emails containing a bogus Request For Proposals (RFP) to corporate event planners in Boston, Massachusetts and Charleston, South Carolina. Suspicious upon receiving an unsolicited email from a pharmaceutical executive, some of Respondent's targets contacted Complainant and shared Respondent's fraudulent email.

Complainant further alleges that Respondent appears to be laying the groundwork for a fraudulent scheme known as "Business Email Compromise" (BEC) or "Email Account Compromise" (EAC). It involves impersonating a legitimate business or employee to trick companies into making unauthorized transfers of fund or paying fraudulent invoices. The scheme involves domain name spoofing, where the fraudster registers a domain name similar to a legitimate business to lend credibility to their impersonation efforts. BCE scams are well-known and are a significant concern for businesses due to their potential cause of substantial financial losses.

Complainant further alleges that Respondent has engaged in fraudulent activity and sought to impersonate Complainant, which cannot be the basis for any bona fide offering of good or services or legitimate activity.

Complainant further alleges that it has never granted permission to Respondent to use the MODERNA Mark for a domain name or for any other purpose.

Complainant further alleges that Respondent has never been commonly known by the Disputed Domain Name.

Complainant submits that it has become the world's most admired, influential, and innovative vaccine company.

Complainant further submits that, given the disparity in registration dates, with Complainant's trademark registrations predating the Disputed Domain Name by a significant margin, it is farfetched to think Respondent was unaware of Complainant's fame and rights in the MODERNA Mark. Such knowledge constitutes actual and constructive knowledge and is an indication of bad faith.

Complainant further submits that Respondent used the Disputed Domain Name to send unsuspecting small business phishing emails impersonating a member of Complainant's Executive Team and containing a bogus RFP. Respondent is laying the groundwork for a BEC fraud, the first step of which is to trick the vendors into issuing an invoice. Once in hand, Respondent will move to the next step and assume the identity of the vendor and send the invoice to Complainant for payment. If successful in deceiving the vendors and Complainant, Respondent pockets the money. Fraud and identity theft constitute bad faith under the Policy.

Complainant contends that it has satisfied each of the three elements required under the Policy for a transfer of the Disputed Domain Name.

## **B. Respondent**

Respondent did not reply to the Complainant's contentions.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following three elements:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the MODERNA Mark in which Complainant has rights;
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- iii) that the Disputed Domain Name has been registered and is being used in bad faith.

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

[WIPO Overview 3.0](#), section 1.2.1 states that registration of a trademark is prima facie evidence of Complainant having enforceable rights in the MODERNA Mark.

Complainant has shown rights in respect of the MODERNA Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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 MODERNA Mark and the Disputed Domain Name. [WIPO Overview 3.0](#), section 1.7.

The entirety of the MODERNA Mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the MODERNA Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term, here “tx”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Name and the MODERNA 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**

The Policy paragraph 4(c) allows three nonexclusive methods for the Panel to conclude that Respondent has rights or a legitimate interest in the Disputed Domain Name:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the MODERNA Mark.

Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving Respondent lacks rights or legitimate interests in the Disputed Domain Name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of Respondent. As such, where Complainant makes out a prima facie case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name (although the burden of proof always remains on Complainant). If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Disputed Domain Name. Respondent has not rebutted 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.

Panels have held that the use of the Disputed Domain Name for illegal activity, here claimed as fraud and impersonation, can never confer rights or legitimate interests on Respondent. [WIPO Overview 3.0](#), section 2.13.1.

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 the Disputed Domain Name in bad faith.

The Panel finds that confusingly similarity (particularly domain names incorporating the mark) to a famous or well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that the Disputed Domain Name was registered and used in bad faith, but other circumstances may be relevant in assessing whether Respondent's registration and use of the Disputed Domain Name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel further finds that Respondent knew or should have known about Complainant's rights when it registered the Disputed Domain Name which is an indication of bad faith. [WIPO Overview 3.0](#), section 3.2.2.

Panels have held that the use of the Disputed Domain Name for illegal activity, here claimed as fraud and impersonation constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy.

The Panel finds that 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 <modernatx.cloud> be transferred to the Complainant.

*/Richard W. Page/*

**Richard W. Page**

Sole Panelist

Date: October 24, 2024