

## ADMINISTRATIVE PANEL DECISION

AllianceBernstein L.P. v. Browning Mank, Vidapop  
Case No. DAI2024-0020

### 1. The Parties

The Complainant is AllianceBernstein L.P., United States of America (“United States”), represented by CSC Digital Brand Services Group AB, Sweden.

The Respondent is Browning Mank, Vidapop, United States.

### 2. The Domain Name and Registrar

The disputed domain name <alliancebernstein.ai> is registered with 1API GmbH (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 27, 2024. On February 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 29, 2024, the Registrar transmitted a reply to the request for registrar verification that did not disclose the underlying registrant, but rather disclosed a privacy service provided by GoDaddy.com, LLC. On the same day, the Center notified GoDaddy.com, LLC that their privacy service had been listed as the owner of the disputed domain name and requested that GoDaddy.com, LLC provide the underlying registrant information. On February 29, 2024, GoDaddy.com, LLC 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 | EU Registrar, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 1, 2024, 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 amended Complaint on March 6, 2024.

The Center verified that the Complaint together with the amended 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 March 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 27, 2024. The Respondent sent an email communication to the Center on March 1 and 24, 2024, proposing inter alia the sale of the disputed domain name to the Complainant. On March 25, 2024, the Center informed the Parties of the possibility of settlement under paragraph 17(a) of the Rules. On March 27, 2024, the Complainant replied indicating it did not wish to explore settlement options. On April 2, 2024, the Center sent to the Parties the Commencement of Panel Appointment Process.

The Center appointed Ingrida Karina-Berzina as the sole panelist in this matter on April 8, 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 is a global asset management firm headquartered in Nashville, Tennessee in the United States. It provides investment management and research services worldwide to institutional, high-net-worth and retail investors. It was formed by the merger of Alliance Capital and Bernstein in the year 2000, and is the proprietor of several registrations for its ALLIANCEBERNSTEIN mark, including the following:

- United States Trademark Registration No. 2756848 for ALLIANCEBERNSTEIN (word mark), registered on August 26, 2003, for services in class 36;
- European Union Trade Mark No. 003660974 for ALLIANCEBERNSTEIN (word mark), registered on May 23, 2005, for services in class 36.

The Complainant operates its business website at the domain name <alliancebernstein.com>.

The disputed domain name was registered on May 11, 2023. It does not resolve to an active website. The record contains copies of cease-and-desist emails sent by the Complainant on November 3, 2023; November 13, 2023, and November 27, 2023. The record does not reflect the Respondent's responses thereto.

#### **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 it operates offices around the world with net revenues of USD 1 million. The disputed domain name is identical to its registered ALLIANCEBERNSTEIN mark and to its domain name, which it registered in 2001. The Complainant's website received over 180,000 unique visits during the period September to December 2023, and is ranked the 822nd most popular website in its category. The Respondent is not affiliated with the Complainant and is not using the disputed domain name, which resolves to a blank page. The Respondent apparently ignored the Complainant's cease-and-desist letters.

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

On March 1, 2024, the Respondent sent the Center an email stating: "You are welcome to buy the domain for a very reasonable price instead of spending money on legal fees." The Respondent did not provide a formal reply to the Complainant's contentions. On March 24, 2024, the Respondent sent another email to

the Center in which the Respondent renewed his offer to the Complainant to buy the disputed domain name.

## **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 for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Complainant’s ALLIANCEBERNSTEIN mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 that, at the time of the Complaint and of this Decision, the disputed domain name did not resolve to an active website. On that basis, the Panel is unable to find that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services. The evidence does not indicate that the Respondent is commonly known by the disputed domain name nor that the Respondent is making legitimate noncommercial or fair use of it. The composition of the disputed domain name, which is identical to the Complainant's ALLIANCEBERNSTEIN trademark, carries a high risk of implied affiliation to the Complainant that cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

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 a domain name in bad faith.

The Panel notes that the registration of the Complainant's trademarks predates the registration of the disputed domain name by approximately 20 years. The disputed domain name is identical to it, and to the Complainant's domain name and to the Complainant's ALLIANCEBERNSTEIN trademark. On these facts, the Panel finds that the disputed domain name was registered in bad faith.

UDRP 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 that the Complainant's ALLIANCEBERNSTEIN mark is well-established in its field. The disputed domain name is identical to it. The Panel finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Respondent's stated offer to sell the disputed domain name indicates that the Respondent has registered or acquired the disputed domain name primarily to sell it to the Complainant (or its competitor) for valuable consideration likely in excess of the Respondent's costs related to the domain name. [WIPO Overview 3.0](#), section 3.1.1.

The Respondent's failure to respond to the Complainant's cease-and-desist letters provide additional support for the Panel's findings under the third element.

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 <alliancebernstein.ai> be transferred to the Complainant.

*/Ingrida Karina-Berzina/*

**Ingrida Karina-Berzina**

Sole Panelist

Date: April 22, 2024