



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2401893
Complainant:	UNION INVIVO
Respondent:	ALEXANDER LAMBIE
Disputed Domain Name(s):	<invivo-nsa.com>

1. The Parties and Contested Domain Name

The Complainant is Union Invivo, of 83 Avenue de la Grande Armee, F75116 Paris, France.

The Respondent is Alexander Lambie, of 1724/372 Phetchaburi Road, MyResort Bangkok, Bang Kapi, Bangkok 10310 Thailand

The domain name at issue is <invivo-nsa.com>, registered with DynaDot LLC, of 210 S Ellsworth Ave #345 San Mateo, CA 94401 US.

2. Procedural History

The Complainant filed the Complaint on June 7, 2024 with the Asian Domain Name Dispute Resolution Center (“ADNDRC”) Hong Kong Office. On June 13, 2024 the ADNDRC HK Office (the “HK Center”) sent an email to the Registrar with a request to verify the registrant of the disputed domain name. On June 14, 2024 the Registrar transmitted by email to the HK Center its verification response disclosing the registrant and contact information of the disputed domain name. The Complainant filed an amended Complaint on June 18, 2024 reflecting the name and contact information of the Respondent.

The HK Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Dispute Resolution Policy (the “Policy”), the Rules for the Uniform Domain Name Dispute Resolution Policy (the “Rules”) and the Asian Domain Name Dispute Resolution Supplemental Rules (the “Supplemental Rules”). The HK Center formally notified the Respondent of the Complaint on June 18, 2024 and the proceedings commenced. The Respondent was informed that under Article 5 of the Rules the Response was due within 20 days from the date of notice, on or before July 8, 2024.

The Respondent did not submit a Response within the stipulated time. The Respondent however sent an informal email communication on July 9, 2024 to the HK Center and a reply was sent by the HK Center on the same day with a copy to the Registrar.

The Complainant opted for a single member panel and the HK Center appointed Harini Narayanswamy as the Panel on July 9, 2024. The Panel confirmed by email to the HK Center acceptance to serve as an impartial panel in this matter.

3. Factual background

The Complainant is a French federation of co-operatives created in 2001 and is an agricultural group that provides seeds and supplies to farmers and co-operatives. The Complainant owns the trademarks INVIVO and INVIVO NSA. The trademark registrations for the INVIVO and INVIVO NSA marks owned by the Complainant *inter alia* include the following:

- (i) European Union EUIPO registration for INVIVO NSA with registration No. 008335648, registered on December 9, 2009 in classes 5, 31, 35, 42 and 44.
- (ii) International trademark registration for INVIVO NSA with registration No. 1118936, registered on May 18, 2012 in classes 5, 31 and 42.
- (iii) International trademark registration for INVIVO with registration No. 1534420, registered on December 10, 2019 in numerous classes including 1,5,9,31, 33,35,36,42,43 and 44 designating multiple countries including Thailand.

The Complainant also owns several domain names containing the trademark INVIVO, such as <invivo-group.com>, <invivo-fds.com>, <invivo-agro.com>, <invivo-grains.com>, <invivo-campus.com>, <invivo-retail.com> and <invivo-events.com>.

The Respondent Alexander Lambie is located in Bangkok, Thailand as per the domain name registration record. The disputed domain name was registered on March 29, 2023. At the time the Complaint was filed, the disputed domain name resolved to a website with an initial page displaying the Complainant's trademark INVIVO and the Complainant's logo, which is a farmer holding a plant on soil and a hoe. The terms "Feeding Mankind" is also displayed on the website, which the Complainant has used as its mission statement. The website content displays information both in English and in the Thai language.

The Respondent's website also has links and tags and displays sessions in "Agriculture", "Food", and "Health". There are articles in the Thai language and tags in the Thai language. There is also a link to a YouTube video titled "Animal Nutrition and Health: Transitioning for a more sustainable future". In the "About" section of the website, the Respondent claims to be "providing services in animal feed, animal health, agriculture, and pet products." The website also displays a contact address, 2284 Sukumwith Road, Khlong Toei, Bangkok" along with a telephone number.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

The Complainant contends its marks INVIVO and INVIVO NSA are widely known and have been used extensively. The Complainant states its network include one hundred and seventy-four co-operative members and it has 14,500 employees in 30 countries worldwide including Thailand. Its exports flows cover more than 60 countries. Its subsidiary InVivo NSA was formed on January 1, 2010 which it claims is a world leader in animal nutrition and health. The Complainant states its subsidiary InVivo NSA was rebranded as Noevia in 2016.

The Complainant contends that its trademark registration predates the registration of the disputed domain name. The disputed domain name is identical or confusingly similar to its INVIVO NSA trademark except for the addition of a hyphen, which does not lessen the confusing similarity adds the Complainant.

The Complainant contends that the Respondent lacks rights in the disputed domain name, as mere registration does not confer rights. The Complainant is the prior adopter of the mark, and the use of the INVIVO NSA mark by the Respondent with no authorization or any rights in the name, indicates the Respondent's use of the disputed domain name is not *bona fide* or legitimate use.

The Complainant contends the disputed domain name was registered and is being used in bad faith with the intention of exploiting the goodwill associated with its mark. The Complainant states that it has built the reputation and goodwill of its mark through years of promotion of its mark. The Respondent's website has knowingly used the trademark and the logo of the Complainant's business with the intention of misleading people and argues that the disputed domain name is being used in bad faith.

The Complainant requests for transfer of the disputed domain name as it has met all the requirements under the Policy.

B. Respondent

The Respondent did not file a response in these proceedings. An informal email communication was sent by the Respondent on July 9, 2024 to the HK Center stating that he had tried to contact the Complainant's representative and the Registrar by email regarding the dispute.

In the said email communication, the Respondent also stated "Please let me know how we can move forward or will DynaDot take over with the process of transferring the domain" The signature line of the email displays: "Alexander Lambie Business Operations Manager" and "TBS Marketing". The Respondent did not provide details of his business or mentioned reasons for the registration of the disputed domain name or provide any explanation regarding the manner of use of the disputed domain name.

5. Findings

Preliminary Issue

Language of the Proceedings

According to Article 11(a) of the Rules, unless otherwise agreed to by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative

proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceedings. The Panel decides that the language of these proceedings is English, which is the language of the Registration Agreement.

Paragraph 5 (e) of the Rules directs that if a respondent does not submit a response, then in the absence of exceptional circumstances, the Panel shall proceed to render a decision based on the complaint. There are no exceptional circumstances here, and the Panel shall proceed to make the findings on the merits of the case.

The Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / 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. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("WIPO Overview 3.0"), section 1.7.

The Complainant has provided evidence of its registered trademarks for the INVIVO and INVIVO NSA marks. Based on the evidence on record, it is found that the Complainant has established its rights in respect of the INVIVO and INVIVO NSA trademarks in these proceedings.

The disputed domain name contains the INVIVO NSA mark in its entirety, except for a hyphen that is added in between the two terms. The Complainant has argued that the additional hyphen does not impact the assessment of confusing similarity. The Panel accepts that it is well established in UDRP cases, that where the trademark is recognizable in the disputed domain name, any additional terms, words or punctuation marks such as hyphens do not prevent a finding of confusing similarity between the disputed domain name and the mark.

Several UDRP cases have consistently held that a disputed domain name which contains an additional hyphen between two parts of a trademark, is generally not sufficient to distinguish the domain name from the mark to avoid a finding of confusing similarity with the mark. See for instance *Carrefour SA. Andre Ahner, xitroMEDIA*, WIPO Case No. D 2021-2656, where the disputed domain name <carre-four.shop> was found to be confusingly similar to the CARREFOUR trademark despite the addition of a hyphen. Similarly, in the present case the addition of the hyphen between two parts of the trademark does not prevent a finding of confusing similarity of the disputed domain name with the trademark INVIVO NSA.

The disputed domain name is found to be confusing similar to the mark for the purposes of Paragraph 4 (a) (i) of the Policy. The Complainant has satisfied the first element under the Policy.

B) Rights and Legitimate Interests

The second element of the Policy under paragraph 4 (a) (ii) requires the Complainant to make a case that the Respondent lacks rights or legitimate interests in the disputed domain name. It is well accepted in UDRP cases, that if 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. See for instance *Prudential Plc v. euwioejwq/ PrivacyProtect.org* ADNDRC Case No HK-1000289 *Cummins Inc. v. DG Lanshan Mechanical Electrical Equipment Co., Ltd.*, ADNDRC Case No HK-1000286 and if the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

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 for purposes of paragraph 4 (a) (ii) of the Policy, these are:

- (i) Before any notice of the dispute the use of or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services or
- (ii) You (as an individual, business or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) You are making legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Having reviewed the available record, the Panel finds the Respondent is not known by the disputed domain name or demonstrated any legitimate reason for the registration of the disputed domain name. The domain name registration record shows the name of the Respondent is Alexander Lambie. Evidence provided by the Complainant shows that the disputed domain name resolves to an active website that displays the Complainant's trademark and logo. The Respondent's website claims to be "providing services in animal feed, animal health, agriculture, and pet products." which is similar to the Complainant's area of business.

The Panel notes that there is no disclaimer on the Respondent's website regarding the use of the trademark and logo that are owned by the Complainant. The Respondent lacks permission, authorization or license to use the mark or variants of the mark, as no authorization or license that has been obtained by the Respondent from the Complainant. The Respondent has therefore made unauthorized use of the Complainant's registered trademark in the disputed domain name with an intention of trying to impersonate the Complainant or is attempting to show a false affiliation, when no connection or affiliation exists.

The Panel finds that the disputed domain name registered by the Respondent carries an implied affiliation to the Complainant's mark. Furthermore, the Respondent's website

content shows its use is in the same or similar line of business as the Complainant, therefore it is likely to confuse and mislead Internet users regarding its sponsorship or affiliation. The Panel finds that such use of the disputed domain name is not *bona fide* use and neither is it non-commercial fair use. The Respondent's unauthorized use of the Complainant's mark, under the circumstances discussed is not indicative of the Respondent rights or legitimate interests in the disputed domain name.

For the reasons discussed, the Panel finds that 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 provided any relevant submissions or evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

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

C) Bad Faith

The third element under paragraph 4(a)(iii) of the Policy requires the Complainant to establish the disputed domain name has been registered and used in bad faith by the Respondent. The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy specifies circumstances, in particular, but without limitation, if found by the Panel to be present, shall be evidence of registration and use of a domain name in bad faith.

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

- (i) Circumstances indicate that the respondent has registered or acquired the domain name primarily for purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) The respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant has argued that the registration and use of the disputed domain name by the Respondent shows the intent to benefit from the reputation associated with its mark. The Panel finds the overall circumstances of the case shows that the Respondent has used the INVIVO trademark and logo on his website in connection with the same area of business, which indicates that the Respondent had knowledge of the Complainant's prior rights in the mark.

The Respondent has even used the Complainant's mission statement, apart from using the trademark and logo on the website, which indicates that the Respondent ought to be aware of the Complainant business and its prior rights in the trademark. Even if the website content has been generated automatically, the Respondent is responsible for the content, as the disputed domain name is in his control. The Panel finds the manner of use of the disputed domain name together with the website content shows the Respondent's awareness of the Complainant's prior rights in the INVIVO and INVIVO NSA marks.

The Respondent, as discussed in the previous section, has not established any rights or legitimate interest in the disputed domain name. UDRP panels have widely accepted the proposition that absence of rights or legitimate interests in the disputed domain name impacts the finding of bad faith registration and use. See *Wal-Mart Stores, Inc. v. Pavel Tkachev*, HK-0800231<wal-martstores.info>. It has been consistently found by UDRP panels that registration of a confusingly similar domain name with a reputed trademark by someone who is not affiliated with the owner of the trademark and has not shown good reason for registration of the disputed domain name or its legitimate use, can by itself create a presumption of bad faith. WIPO Overview 3.0, section 3.1.4.

The Complainant has clearly established in these proceedings its prior rights in the INVIVO and INVIVO NSA marks. Panel also notes a previous UDRP case that has recognized the reputation associated with the INVIVO trademark in *Union InVivo v. Kim Dushinski*, WIPO Case No. D2020-1214. The Panel finds, in the light of all that has been discussed, that the Respondent's intention is to attract Internet users based on the fame and reputation associated with the Complainant's mark, which is bad faith as described under paragraph 4 (b) (iv) of the Policy. Furthermore, the use of false contact address, the use of privacy services to redact the identity of the Respondent, and the lack of response are additional factors to find bad faith registration and use of the disputed domain name.

The Panel finds that the Complainant has satisfied the requirement under Paragraph 4(a)(iii) of the Policy, that the disputed domain name has been registered and is being used in bad faith by the Respondent.

6. Decision

For the foregoing reasons in accordance with paragraph 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <invivo-nsa.com> be transferred to the Complainant.



Harini Narayanswamy
Panelist

Dated: July 23, 2024