

## **ADMINISTRATIVE PANEL DECISION**

**ETHENEA Independent Investors S.A. v. Phil Lisse**  
**Case No. D2022-3898**

### **1. The Parties**

The Complainant is ETHENEA Independent Investors S.A., Luxembourg, represented by Johannes Hageböiling, Germany.

The Respondent is Phil Lisse, France.

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

The disputed domain name <ethenea.group> is registered with Gandi SAS (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 18, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 19, 2022, 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 sent an email communication in English and French to the parties on October 24, 2022 regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the disputed domain name is French. The Complainant submitted a request for English to be the language of the proceeding on October 25, 2022. The Respondent did not comment on the language of the proceeding.

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, in English and in French, and the proceedings commenced on October 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 21, 2022.

The Center appointed Benoit Van Asbroeck as the sole panelist in this matter on November 24, 2022. 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 an investment management company and offers financial services in countries inside and outside the European Union. It owns *inter alia* the following trademark registrations:

European Union Trademark No. 010411965 for ETHENEA, registered on March 20, 2012, in International Classes 16 and 36;

European Union Trademark No. 010436814 for ETHENEA INDEPENDENT INVESTORS (figurative), registered on December 6, 2012, in International Classes 16 and 36;

European Union Trademark No. 018528840 for ETHENEA (figurative), registered on November 26, 2021, in International Classes 16 and 36;

The Complainant is also the owner of the domain name <ethenea.com>.

The disputed domain name was registered on June 1, 2022, well after the Complainant secured rights to the trademarks listed above. At the time of this Decision, the disputed domain name does not resolve to an active website and, according to information provided by the Registrar has been put on “hold” following a case of fraud, pending this proceeding.

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

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

The Complainant asserts that each of the three elements specified in paragraph 4(a) of the Policy are present. The three elements being: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) the disputed domain name has been registered and is being used in bad faith.

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant contends that the disputed domain name is identical to its ETHENEA word mark and highly similar to its ETHENEA and ETHENEA INDEPENDENT INVESTORS figurative trademarks. The word “ethenea” is fully contained in the disputed domain name. Internet users who are visiting the disputed domain name will think that any financial services offered on this domain name are services of the Complainant, which is not true. Finally, the disputed domain name only consists of the distinctive word “ethenea”, which has no meaning for financial services in class 36.

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant points to the fact that, to its knowledge, the Respondent does not own any trademarks or other non-registered or name rights, that are granting him a right to the disputed domain name. In addition, the Complainant contends that the Respondent solely used the disputed domain name for fraudulent business activities. The Respondent used the disputed domain name to offer fraudulent

financial services in class 36, which are identical to the services in class 36 for which the trademarks of the Complainant have been registered.

(iii) the disputed domain name has been registered and is being used in bad faith

The Complainant contends that the disputed domain name has been registered and is being used in bad faith. The Complainant asserts that, before it was taken down by the Registrar, the disputed domain name was used in attempts to impersonate the Complainant and to lure potential investors to its fraudulent activities and points to a warning relating to the disputed domain name from the Luxembourgish financial surveillance office (CSSF) issued after a report by the Complainant. According to the Complainant, the Respondent also used the disputed domain name in email addresses that have been used to communicate with potential victims and lead them to believe that the services on the disputed domain name were actually services of the Complainant. In the emails that were sent using the email addresses, the Respondent used the trademarks, name, address and further company information of the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Language of the Proceedings**

Paragraph 11(a) of the Rules provides that "unless otherwise agreed 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 proceeding". The language of the Registration Agreement for the disputed domain name is French. However, the Complainant has requested to conduct the proceeding in English, even though it submitted a translated Complaint into French.

The Complainant states that it is unclear whether the Respondent's mother tongue is indeed French. Emails originating from email addresses using the disputed domain name have been written in French, but were not signed by the Respondent, but rather by a certain Eric Miller. Moreover, the Complainant emphasizes that there is no evidence that the Respondent is actually a citizen of France. The Complainant points out that the Respondent's registered address in France seems to be false as no such address seems to exist in Paris, according to Google Maps. Finally, the Complainant bases its request on the fact that English is widely spoken within Europe and the parties live in different countries with different native languages.

As noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules which provide that the parties are treated equally, that each party is given a fair opportunity to present its case and that the proceeding takes place with due expedition (see *Volkswagen AG v. Nowack Auto und Sport - Oliver Nowack*, WIPO Case No. [D2015-0070](#); *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. [D2006-0334](#); *Beiersdorf AG v. Good Deal Communications*, WIPO Case No. [D2000-1759](#); and *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. [D2003-0679](#)).

Taking the abovementioned requirements and the circumstances of this case all into account, the Panel considers that conducting the proceeding in English would not be disadvantageous to the Respondent. While the Complainant has not provided evidence showing that the Respondent can understand English, the language of the Complaint, the facts of this case show that there does not appear to be a risk that the Respondent may not appreciate the true nature of the proceeding and that they therefore may be deprived of a fair opportunity to present their case.

The Center duly notified the Respondent in both English and French of these proceedings and the Complainant's request to conduct these proceedings in English instead of French. The Center's notices were issued to the email and correspondence addresses stated in the Whois records. The Center's notice regarding the language of the proceedings contained a deadline for a response and the Center communicated both in English and French that "if we do not hear from you by this date, we will proceed on the basis that you have no objection to the Complainant's request that English be the language of proceedings". However, the Respondent did not respond to any of the Center's notices, including this one. In addition, the Respondent received a French translation of the Complaint and some of the annexes from the Complainant, who issued these by email in response to the Center's notice regarding the language of the proceedings. The Respondent neither responded to this email nor submitted a Response.

The Panel is therefore satisfied that the Respondent was given a fair opportunity to appreciate the true nature of the proceedings and what its consequences may be, as well as present its case, to raise objections as to the request for English to be the language of proceedings or to inform the Center on its language preference. It has however chosen not to comment on any of these issues (cf. *Volkswagen AG v. Song Hai Tao*, WIPO Case No. [D2015-0006](#)). The Panel concludes that the Respondent will not be prejudiced by the proceeding being conducted in English and it has the advantage of avoiding unnecessary delay of the proceeding and further expense on translations into French of some of the annexes that had not been translated yet. Accordingly, the Panel determines that the language of the Proceeding shall be English.

## **B. Identical or Confusingly Similar**

The Complainant is required to establish: (1) that it owns rights in a trademark or service mark, and, if so, (2) that the disputed domain name is identical or confusingly similar to its trademarks.

Firstly, the Panel finds that the Complainant has clearly evidenced that it owns registered trademark rights to ETHENEA. It should be noted that paragraph 4(a)(i) of the Policy does not set minimum requirements as to the jurisdictions of the trademarks a complainant relies on, nor as to the number, nature or scope of protection of such trademarks.

Secondly, the Panel finds that the disputed domain name is identical to the Complainant's ETHENEA word trademark and confusingly similar to its ETHENEA figurative trademarks since it incorporates the entirety of the ETHENEA word trademark and the dominant portion of the figurative trademarks, the word "ethenea" (see [WIPO Overview 3.0](#), section 1.7 as well as *L'Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang*, WIPO Case No. [D2011-1627](#); *Rapidshare AG, Christian Schmid v. InvisibleRegistration.com, Domain Admin*, WIPO Case No. [D2010-1059](#) and *The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc.*, WIPO Case No. [D2000-0113](#)).

Finally, as for the applicable Top-Level Domain, ".group", the Panel holds that this can be disregarded under the first element confusing similarity test (*CANAL + FRANCE v. Franck Letourneau*, WIPO Case No. [DTV2010-0012](#); *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#); *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#)).

On the basis of the foregoing findings, and according to paragraph 4(a)(i) of the Policy, this Panel finds and concludes that the disputed domain name is confusingly similar to the Complainant's trademarks.

## **C. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy non-exhaustively lists three circumstances that shall demonstrate a right or legitimate interest:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your 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 or 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 a 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.”

It is a well-established view of UDRP panels, with which the Panel agrees, that a *prima facie* case advanced by a complainant is generally sufficient to satisfy the requirements under paragraph 4(a)(ii) of the Policy, provided that a respondent does not submit any evidence to the contrary (*AGUAS DE CABREIROA, S.A.U. v. Hello Domain*, WIPO Case No. [D2014-2087](#); *Spigen Korea Co., Ltd., Spigen Inc. v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. [D2016-0145](#); *HubSpot, Inc. v. WhoisGuard Protected, WhoisGuard, Inc. / Steve Johnson*, WIPO Case No. [D2016-1338](#)).

The Panel notes that the Respondent has not responded to any of the Complainant’s contentions, let alone submitted evidence to the contrary, and that, pursuant to paragraph 14 of the Rules, the Panel may draw such inferences from the Respondent’s failure to respond as it considers appropriate. In the present case, taking into consideration the Respondent’s default, this Panel finds that the Complainant has made out an un rebutted *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, in view of the circumstances of this case, including the following factors.

The Panel concludes that there is no evidence that the Respondent is using the disputed domain name for a *bona fide* offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name. On the contrary, the Complainant has made a convincing *prima facie* case that the Respondent previously used the disputed domain name to impersonate the Complainant and offer fraudulent financial services. Fraud or phishing activity is clearly not *bona fide* commercial use nor is it legitimate noncommercial or fair use. This is a well-established view of UDRP panels, with which the Panel agrees, confirmed in decisions like *Diamond Hill Investment Group, Inc. v. Richard Stroud*, WIPO Case No. [D2016-0510](#).

In addition, there is no evidence that the Respondent is sponsored by or affiliated with the Complainant in any way or that the Complainant has licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant’s trademarks. Finally, there is no evidence that the Respondent has been commonly known by the disputed domain name or the name “ethenea”.

For all the foregoing reasons, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

Paragraph 4(b) of the Policy non-exhaustively lists four circumstances 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:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.”

The Panel finds that the circumstances and evidence presented by the Complainant offer sufficient evidence that both the Respondent's registration and current use of the disputed domain name are in bad faith.

The Panel will first discuss the Respondent's registration of the disputed domain name. The Panel believes that the Respondent knew or, at least, should have known at the time of registration that the disputed domain name included the Complainant's abovementioned trademarks since, shortly after registration, it used the disputed domain name in connection with attempts to impersonate the Complainant and to lure potential investors to its fraudulent activities, as shown by the evidence submitted by the Respondent. The Panel therefore finds that that the Respondent registered the disputed domain name in bad faith. See section 3.4 of the [WIPO Overview 3.0](#).

Regarding the use of the disputed domain name, the Complainant also points to the abovementioned fraudulent activities and the evidence showing that the Respondent also used the disputed domain name in email addresses that have been used to communicate with potential victims and lead them to believe that the services on the disputed domain name were actually services of the Complainant. The Panel agrees with the Complainant that using a domain name in connection with fraudulent activity is an indicator of bad faith use. See section 3.4 of the [WIPO Overview 3.0](#).

The fact that the disputed domain name no longer resolves to an active website and therefore the use of the disputed domain name in the abovementioned fraudulent activities may now have stopped, does not prevent this finding. It is a well-established view of UDRP panels, including in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#), that the non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding. The Panel agrees with this view and finds that the circumstance of past bad faith use by the Respondent makes it implausible that the disputed domain name will be put to any good faith use in the future. The Panel also finds that there is no evidence of any actual or intended use of the disputed domain name in good faith. Finally, the fact that, as shown by the Complainant, the Respondent seems to have provided false contact details in the WhoIs records only further supports a finding of bad faith use.

In light of the above, the Panel finds that the disputed domain name was registered and is being used by the Respondent in bad faith.

## 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 <ethenea.group> be transferred to the Complainant.

*/Benoit Van Asbroeck/*

**Benoit Van Asbroeck**

Sole Panelist

Date: December 8, 2022