

## **ADMINISTRATIVE PANEL DECISION**

**Bilendi SA v. 101 Domain DAS Limited / TÜRKYE BANKASI A.Ş.**  
**Case No. DCY2023-0001**

### **1. The Parties**

The Complainant is Bilendi SA, France, represented by Ebrand France, France.

The Respondent is 101 Domain DAS Limited, Ireland, represented internally / TÜRKYE İŞ BANKASI A.Ş., Türkiye, represented by Grup Ofis Marka Patent, Türkiye..

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

The disputed domain name <maximiles.cy> is registered with CY Registry, University of Cyprus (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 8, 2023. On March 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 10, 2023, 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 March 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2023. On April 11, 2023, following a request pursuant to paragraph 5(b) of the Rules by a third party which claimed to be the beneficial holder of the disputed domain name, Türkiye İş Bankası A.Ş., the due date for Response was extended to April 14, 2023. On April 13, 2023, the due date for Response was extended to April 24, 2023. The third party/beneficial holder of the disputed domain name submitted a Response on April 15, 2023. The holder of the disputed domain name, 101 Domain DAS Limited, submitted a Response on April 24, 2023.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on April 26, 2023. 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 French company founded in 1999. It was formerly known as Maximiles S.A. Its line of business is market research and customer engagement. It has over 380 employees in 15 offices around the world, and recorded revenues of EUR 11.4 million in 2022.

The Complainant is the owner of European Union Registered Trademark No. 2174811 for the word mark MAXIMILES, registered on July 11, 2002 in Classes 9, 16, and 41 (notably, computer software/multimedia, printed matter and paper, and entertainment/lotteries/competitions). The Complainant also owns some forty domain names containing the said mark and operates the website “www.maximiles.com” at which Internet users can answer surveys, take up offers, respond to emails and receive rewards.

The disputed domain name was registered on June 2, 2020. The website associated with the disputed domain name was until recently a parking page provided by 101 Domain DAS Limited. This page stated: “The future home of... / maximiles.cy / Yes, this is my domain. / Sign in to manage your domain and account. / Sign In To Account [button] / No, this is not my domain. / But I would like it to be. / Inquire to Purchase [button].”

101 Domain DAS Limited is the current holder of the disputed domain name. It operates a domain name registration service, and a proxy service named “101domain trustee” for its customers, including in the “.cy” country code. In respect of the disputed domain name, 101 Domain DAS Limited’s trustee services were used by Türkiye İş Bankası A.Ş.

Türkiye İş Bankası A.Ş. is a bank based in Türkiye. It describes itself as “the first national bank of the Republican era” and was established on August 26, 1924. It provides various banking services to its customers and, in 1955, it was the first Turkish bank to open a branch in Cyprus. It is the owner of the domain name <maximiles.com.tr>, registered on May 1, 2008, along with around fifty other domain names containing the term “maximiles”. It is also the owner of Turkish Registered Trademark No. 2008 /21359 for the mark MAXIMILES, registered on April 10, 2008 in Classes 7, 8, 9, 21, 35, 36, 38, 39, 41, 42, and 43 (a wide variety of goods and services, notably including financial and monetary services), together with over thirty other related trademarks. The mark is used, *inter alia*, as the brand of a VISA card provided by the said bank in conjunction with the car company Mercedes-Benz. According to a machine translation of a press report dated December 30, 2021, Türkiye İş Bankası A.Ş., in cooperation with VISA, provides its customers with a higher rate of miles via the “Maximiles Black” card. Other evidence supplied as to the use of the mark shows that it features on large billboard advertisements for the said bank’s card, and as the brand for an airport lounge.

At some point prior to January 23, 2023, the Complainant’s representatives made contact with 101 Domain DAS Limited regarding the disputed domain name. On January 23, 2023, 101 Domain DAS Limited replied that it was the registrar for the disputed domain name, that the disputed domain name was owned by another party, and that if the Complainant wanted 101 Domain DAS Limited to contact the owner and negotiate a possible purchase of the disputed domain name, it should purchase 101 Domain DAS Limited’s “Domain Concierge Service”. On April 26, 2023, 101 Domain DAS Limited issued an email to the Center stating that Türkiye İş Bankası A.Ş. is the registrant of the disputed domain name.

Emails produced with the supplemental filing made on behalf of Türkiye İş Bankası A.Ş. show correspondence from an address at <101domain.com> to an address at <isbank.com.tr> (each email with the salutation “Dear Turkiye Is Bankasi A.S.”). These emails are as follows: (1) dated April 3, 2020, containing an invoice in respect of four “.cy” domain names including the disputed domain name and

<maximum.cy>; (2) dated April 3, 2020, specifying that the registration for the said domain names had been put on hold pending submission of a letter of authorization for each, after which the registrations would take approximately one month; (3) dated April 16, 2020, noting that the said domain names had changed status to "pending approval" as the registrations had been sent to the registry; (4) dated May 26, 2020, confirming that the disputed domain name was now active and inviting the recipient to begin building its website; and (5) dated November 10, 2021 confirming renewal of a range of ".cy" domain names including the disputed domain name.

## **5. Parties' Contentions**

### **A. Complainant**

In summary, the Complainant's contentions are as follows:

The disputed domain name is identical to the Complainant's MAXIMILES trademark and is identical to several of the Complainant's domain names.

#### Rights or legitimate interests

The website associated with the disputed domain name offers it for sale and it is possible to contact the Respondent thereby to obtain a price quotation. The disputed domain name does not appear to have been used for any other purpose since it was registered. The Respondent 101 Domain DAS Limited has not registered any MAXIMILES trademark, is not commonly known by the disputed domain name, has no apparent links to the "maximiles" name, and is not authorized by the Complainant to use it. The Complainant did not authorize the Respondent to register or use a domain name consisting of an exact match of its trademark in a country code domain name referring to a country in respect of which the Complainant's trademark is registered.

#### Registered and used in bad faith

Since 1999, MAXIMILES has become a very famous name and trademark exploited by the Complainant all around the world. The Respondent was aware of the Complainant's rights when it registered the disputed domain name. MAXIMILES is not a common word and since 1999 has been associated with the Complainant and its business. The registration of the disputed domain name does not seem to be a coincidence and suggests that the Respondent intended to create an association with the Complainant and its business at that time. The use of the disputed domain name suggests that the Respondent has no rights or legitimate interests in the disputed domain name but rather seeks to make money reselling it. Bad faith can be inferred from the Respondent's lack of rights or legitimate interests in the disputed domain name.

The Complainant made contact with the Respondent to discuss an amicable settlement but the Respondent proposed that it contact its client who currently owns the disputed domain name. The Respondent indicated that it would be willing to be paid to supply further information regarding the disputed domain name, suggesting that the Respondent does not exploit the disputed domain name for its own activity but registered it for the sole purpose of reselling it to the Complainant, which is the trademark owner.

### **B. Respondent - 101 Domain DAS Limited**

In summary, 101 Domain DAS Limited contends as follows:

#### Identical or confusingly similar

The disputed domain name is identical to the Complainant's trademark but it is not unique as others have filed for protection of the same term. The Respondent is not the registrant of the disputed domain name and is a registrar offering registrations to those looking to secure a ".cy" domain name.

#### Rights or legitimate interests

The Respondent is only the registrar of record and has no rights or legitimate interests in the disputed domain name. The disputed domain name is parked at a passive landing page allowing contact to be made with the registrant to inquire about purchasing it. Multiple cases establish that such a passive offering to the general public does not disqualify a registrant's rights to use or own a domain name. This does not constitute illegitimate use. Hundreds of similar domain names are parked on the Respondent's default parking page, and this in no way conveys the registrant's actual purpose or interests in the domain name concerned. To the Respondent's knowledge, the disputed domain name is not actively listed for sale on major aftermarket platforms. The associated website does not target or reference the Complainant or its goods or services. Reserved domain names, such as defensive registrations, constitute a legitimate use by an appropriate registrant. Domain names may be registered proactively before the registrant enters the marketplace. Not being its registrant, the Respondent cannot opine as to the purpose of this disputed domain name.

#### Registered and used in bad faith

The Complainant has not grasped that the Respondent is merely the registrar of record. All of the Complainant's arguments on bad faith are irrelevant for that reason. The Respondent did not register or use the disputed domain name in any fashion. The Complainant's own annex shows that the Respondent informed the Complainant that it was the registrar for the disputed domain name, and that the Complainant ignored the Respondent's offer to contact the registrant on the Complainant's behalf. The Respondent has notified the registrant and encouraged them to file a Response in this administrative proceeding.

#### **C. Respondent - Türkiye İş Bankası A.Ş.**

In summary, Türkiye İş Bankası A.Ş. contends as follows:

#### Identical or confusingly similar

The Respondent is the sole owner of trademarks containing the MAXIMILES mark in terms of the goods and services within the scope of registered use. It is also the owner of corresponding domain names. The Respondent has a link to Cyprus as the first Turkish bank to open a branch in that country. The Respondent has registered the MAXIMILES trademark in a variety of countries and has a reputation preferred by users. The disputed domain name would not be perceived differently from the Respondent's brand and trade name.

#### Rights and legitimate interests

The Respondent is a well-known company in the banking sector at home and abroad. The MAXIMILES mark is identified with the Respondent and is widely recognized and known. The Respondent has engaged in large projects with the Mercedes brand related to the said mark, including a new product named the "Maximiles Mercedes Card" launched in Cyprus. The Respondent carried out market research in Cyprus related to the said mark. The Respondent's mark has made a great impact on the Internet and in print media. A simple Internet search discloses the Respondent's interests.

#### Registered and used in bad faith

The Respondent registered the disputed domain name in good faith based upon its trademark rights. The Respondent plans to use the disputed domain name fairly without misleading consumers. The Respondent did not register the disputed domain name for the purpose of selling the disputed domain name to the Complainant or anyone else. The Parties are not competitors and the disputed domain name was not registered to disrupt the Complainant's business. The Respondent aimed to use print and digital media to better serve the user based on its registered trademark.

The Respondent has registered domain names and provided services in many countries. The application in this case was made through an intermediary firm, 101 Domains, with which the Respondent works. Its mediation or domain sales services do not bind the Respondent. In any event, the Respondent removed the parking page because it was planning to work on the website. The Respondent is unaware of any conversation between the Complainant and 101 Domains. No service or response by 101 Domains binds the Respondent. No domain name registered in the Respondent's name has been sold thus far and domain name sales is not the Respondent's business.

#### **D. Complainant Supplemental Filing**

In summary, and insofar as not already stated in the Complaint, the Complainant contends as follows:

The Complainant sees no evidence that the disputed domain name was registered by or for Türkiye İş Bankası A.Ş.. The holder of the disputed domain name is 101 Domain DAS Limited and Türkiye İş Bankası A.Ş. is not a party in this case. The holder alone is responsible for the disputed domain name. Neither 101 Domain DAS Limited or Türkiye İş Bankası A.Ş. provide proof of a nominee contract or other link between them. Even if such a contract had been entered into, this would not prove a legitimate interest.

The disputed domain name has not been used for any activity since its registration and its use does not suggest that Türkiye İş Bankası A.Ş. has a real interest in the disputed domain name. Neither of the Respondents provide the date of registration of the disputed domain name.

The fact that the disputed domain name was parked without any legitimate use being made of it in the hope of attracting a possible interested buyer proves that the Respondent had no interest other than to block the extension from any other interested trademark holder and possibly to make a financial gain by reselling it.

#### **E. Respondent (Türkiye İş Bankası A.Ş.) Supplemental Filing**

In summary, the Respondent contends as follows:

The owner of the disputed domain name is Türkiye İş Bankası A.Ş.. The email sale confirmations are provided. If the owner information is not updated in country code domain names, the information of the registered brokerage firm is entered automatically. There is also a service to keep the owner information confidential. The fact that the owner information does not appear or that the brokerage firm information appears does not mean that it is the owner of this domain name.

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

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (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.

#### **A. Preliminary Matter: Identity of the Respondent**

There is a dispute between the Parties as to which entity is the correct respondent in this administrative proceeding. The verification from the Registrar names 101 Domain DAS Limited as the holder of the disputed domain name. However, Türkiye İş Bankası A.Ş. argues that it is the Respondent because it instructed 101 Domain DAS Limited to register the disputed domain name on its behalf. This position is

supported by the Response prepared by 101 Domain DAS Limited, the email that it issued to the Center on April 26, 2023, and the emails between addresses at <101domain.com> and <isbank.com.tr> described in the factual background section above. The Complainant nevertheless argues that it has seen no evidence for any interest in the disputed domain name on the part of Türkiye İş Bankası A.Ş.

While 101 Domain DAS Limited states that it is the “registrar” for the disputed domain name and purports to provide a “registrar verification” to the effect that Türkiye İş Bankası A.Ş. is the registrant, the Panel understands that 101 Domain DAS Limited operates a proxy registrant service which it calls its “101domain trustee”. By that service, it will substitute its details for the details of the underlying beneficial registrant. It appears to the Panel that this is what has happened here. In any event, based upon the emails described above, there at least appears to be a form of *de facto* agency arrangement in place whereby 101 Domain DAS Limited is acting as a registration service provider and Türkiye İş Bankası A.Ş. is its principal.

The Complainant is correct that the Rules define the respondent as “the holder of a domain name registration against which a complaint is initiated”. Nevertheless, the Panel has discretion to substitute or join another entity as a respondent by way of its general powers as set out in paragraph 10(a) of the Rules. A common reason for such substitution is where the registrant of a domain name is a proxy service and the identity of an underlying beneficial holder has been revealed by such service (see, for example, section 4.4 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). That did not happen at the point of Registrar verification, although the proxy service has since made a corresponding declaration following notification of the Complaint.

In any event, abundant material has been produced by Türkiye İş Bankası A.Ş. demonstrating its interest and indeed longstanding rights in the MAXMILES mark. It asserts that it is using the mark in Cyprus. It appears to have a close association with the disputed domain name, even if it has not yet used it, and to be the principal in an agency relationship whereby it was registered. Contrary to the Complainant’s position, the Panel has no reason to disbelieve this entity when it says that it instructed 101 Domain DAS Limited to register the disputed domain name on its behalf, and provides supporting email correspondence to that effect.

In all of these circumstances, the Panel will substitute Türkiye İş Bankası A.Ş. as the Respondent in this case and references to the Respondent hereafter refer to that entity.

## **B. Preliminary Matter: Supplemental Filings**

Unsolicited supplemental filings have been received from the Complainant and the Respondent. Section 4.6 of the [WIPO Overview 3.0](#) notes that paragraph 12 of the Rules provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case. It goes on to note that unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel. In all such cases, panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response.

The Complainant’s supplemental filing seeks to address the fact that it has been presented with a Response from both 101 Domain DAS Limited and the Respondent. As noted above, 101 Domain DAS Limited appears to have been acting as a proxy registrant. It did not disclose the Respondent’s identity between the time that the Complaint was filed and its notification, such that there would have been an opportunity for the Complainant to investigate and, if it wished, amend the Complaint. The reason why the disclosure was not made at an earlier stage appears to be that 101 Domain DAS Limited (apparently erroneously) believed that it was acting as the Registrar in this proceeding, and that it was therefore awaiting a request for registrar verification from the Center. Equally, 101 Domain DAS Limited may not have known of the filed Complaint until its notification by the Center, which could also explain why the disclosure was made at a later time.

The Complainant’s supplemental filing was made after it received the Respondent’s Response. It was aware of the Respondent’s claimed interest in the disputed domain name by that stage. Indeed, the Complainant

would have been able to tie this interest together with its original submission because one of the Respondent's registered trademarks is listed in the Complainant's Annex 12 entitled "research for MAXIMILES". The Respondent's existence is not necessarily something that the Complainant would have been able to anticipate when it filed the Complaint. For that reason, it seems reasonable to the Panel to admit the Complainant's supplemental filing as this in effect puts the Complainant back in the position as though the Respondent's identity had been disclosed at an earlier stage and the Complainant had received the opportunity to amend its Complaint.

For similar reasons, the Panel considers that the Respondent's supplemental filing should also be admitted. In its supplemental filing, the Complainant challenged the Respondent's assertion that the disputed domain name had been registered on the Respondent's behalf, suggesting that the Respondent was not a genuine underlying beneficial holder. It seems reasonable to the Panel to allow the Respondent a right of reply on that issue and to include in evidence the emails from an address at <101domain.com> to an address at <isbank.com.tr> which were provided with its supplemental filing.

### **C. Identical or Confusingly Similar**

The first element inquiry under the Policy is usually completed in two stages. First, the Complainant must demonstrate that it possesses UDRP-relevant rights in a trademark, whether registered or unregistered. Secondly, any such trademark is compared to the disputed domain name to assess identity or confusing similarity. The comparison is usually made on a straightforward side-by-side basis, typically disregarding the Top-Level Domain (in this case ".cy"). If, on the basis of such comparison, the disputed domain name is seen to be identical to the Complainant's trademark, identity will generally be found, while if the Complainant's mark is otherwise recognizable in the disputed domain name, confusing similarity will usually be found.

In the present case, the Panel finds that the Complainant has UDRP-relevant rights in its MAXIMILES registered trademark as outlined in the factual background section above. Turning to the comparison exercise, it may be seen that the disputed domain name, absent the Top-Level Domain, is alphanumerically identical to the Complainant's mark.

The Respondent does not directly address the issue of the Complainant's rights but notes its own rights in the MAXIMILES mark. That issue is not relevant to the first element assessment under the Policy, which focuses on the Complainant's standing to bring the Complaint. It may however be relevant to the assessment of other elements of the Policy.

In all of these circumstances, the Panel finds that the disputed domain name is identical to the Complainant's trademark and that the Complainant has carried its burden with regard to paragraph 4(a)(i) of the Policy.

### **D. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy lists several ways in which the Respondent may demonstrate rights or legitimate interests in the disputed domain name:

"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
- (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."

The consensus of previous UDRP decisions is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. Where the panel finds that a complainant has made out such a *prima facie* case, the burden of production shifts to the respondent to bring forward evidence of such rights or legitimate interests.

In the present case, the Complainant seeks to establish such *prima facie* case by reference to its submissions that the disputed domain name matches the Complainant's trademark, has not been used since registration, and is offered for sale on the associated website. The Complainant also notes that 101 Domain DAS Limited is not commonly known as "maximiles" and was not authorized by it to register the disputed domain name. The Panel finds that these submissions would normally be sufficient to establish the requisite *prima facie* case and therefore turns to the Respondent's case on this topic.

Considering the detailed evidence and submissions put forward by the Respondent as to the background of its use of the "maximiles" name, the Panel is satisfied that the Respondent has made demonstrable preparations to use the disputed domain name, and is using a name corresponding to the disputed domain name, in connection with a *bona fide* offering of goods or services before any notice to it of the dispute. The Respondent has registered numerous trademarks and domain names containing the MAXIMILES sign and has launched related financial products into various markets. It has engaged with prominent companies in collaborations to promote these products and has advertised the name prominently. Its activities under the name appear to have commenced some fifteen years ago, in 2008. Although it has not developed the disputed domain name since it was registered in 2020, it is reasonable to infer that it has plans to do so, for example, in order to provide or to support certain "Maximiles" branded financial products or services in the Cypriot marketplace. Equally, given the Respondent's extensive interests in the MAXIMILES mark, and its use in various markets, it would have a legitimate interest in holding the disputed domain name, even with no developed website, as a defensive registration.

In all of these circumstances, the Panel finds that the evidence supports the Respondent's rebuttal of the Complainant's *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and accordingly the Complainant has failed to carry its burden in terms of paragraph 4(a)(ii) of the Policy. The Complaint therefore fails.

In reaching this decision, the Panel notes that it takes no position on the Parties' competing registered trademarks and on the related question of trademark infringement of the Complainant's MAXIMILES mark in general, whether in Cyprus or elsewhere. That is an issue beyond the scope of this proceeding. Although there may be some conceptual overlap, trademark infringement and abusive registration of domain names within the meaning of paragraph 4(a) of the Policy are not always the same thing (see *Delta Air Transport NV (trading as SN Brussels Airlines) v. Theodule De Souza*, WIPO Case No. [D2003-0372](#), and *1066 Housing Association Ltd. v. Mr. D. Morgan*, WIPO Case No. [D2007-1461](#)).

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

Given the failure of the Complaint on the basis of the second element assessment, it is not strictly necessary for the Panel to enter into a detailed discussion on the topic of registration and use in bad faith in this case. Nevertheless, the Panel notes for completeness that it has not overlooked the fact that the Complainant's rights in the MAXIMILES mark predate the Respondent's first registered trademark by around six years, and that the disputed domain name was not registered until June 2020. There is therefore a possibility, however remote, that the Respondent might have selected the term in order to benefit from the notoriety already created by the Complainant's activities. However, considering the fact that the mark is a portmanteau of the prefix "maxi" indicating "maximum" and the dictionary word "miles", the Panel can well appreciate the fact that the Respondent most probably came up with this term to represent its credit card, which is publicized as providing the maximum air miles reward. Its selection and use therefore appears to be coincidental, and entirely independent of the Complainant's activities under the same mark. The notion of coincidence is supported by the fact that, at the same time, the Respondent also requested the registration of the dictionary word domain name <maximum.cy>.



In these circumstances, the disputed domain name appears to have been registered in good faith. There is no sense that the Respondent was aware of the Complainant before it registered the disputed domain name or, even if it was, that it intended to take unfair advantage of the Complainant's rights in its own MAXIMILES trademark.

The evidence shows that the parking page on the website associated with the disputed domain name was deployed by the Respondent's proxy registrant/registration agent. This page directly addresses the registrant with an invitation to complete the building of its website. The Internet user with an interest in the disputed domain name is also invited to enquire as to whether it might be for sale. This is not evidence, in and of itself, that the Respondent registered the disputed domain name in order to sell it to the Complainant or to a competitor. All the available evidence indicates that the Respondent registered the disputed domain name in good faith, in furtherance of its own commercial purposes as outlined above.

In all of the above circumstances, the Panel finds that the Complainant has failed to carry its burden in terms of paragraph 4(a)(iii) of the Policy.

## **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: May 10, 2023