

## **ADMINISTRATIVE PANEL DECISION**

Eight Advisory v. Daniel Bourn, e8ght Sarl  
Case No. DCO2023-0096

### **1. The Parties**

The Complainant is Eight Advisory, France, represented by Gevers & Ores, France.

The Respondent is Daniel Bourn, e8ght Sarl, Switzerland, represented by LALIVE, Switzerland.

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

The disputed domain name <eightadvisory.co> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 10, 2023. On November 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 10, 2023, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 13, 2023, 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 November 16, 2023.

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 November 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 10, 2023. The Parties submitted a joint request for suspension of the proceeding for settlement discussions on December 1, 2023. The Center sent the Notification of Suspension to the Parties on the same day and suspended the proceeding until December 31, 2023. The Parties sent a joint request to extend the suspension until December 22, 2023. The Center sent the Notification of Extension to Suspension on December 27, 2023, and suspended the proceeding until

January 30, 2024. The Complainant sent a request to reinstitute the proceeding on January 29, 2024. The Center sent the Reinstitution of Proceeding to the Parties the same day, in which the due date for Response was noted as February 8, 2024. The Response was filed with the Center on February 7, 2024. On February 22, 2024, the Complainant filed an unsolicited supplemental filing.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on February 15, 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 French company, registered with the Trade and Companies Register of Paris under number 514 274 760 and incorporated on August 17, 2009. The Complainant is a strategic and financial consulting firm which offers a range of services including handling complex transaction support, restructurings, business transformations, and financial due diligence. The Complainant has 13 offices in Europe, a presence on every continent, and a network of 15 partner firms.

The Complainant exhibits media coverage dating from 2017 in which it is described as a boutique “M&A” (mergers and acquisitions) consultancy with three offices in France and one in London, United Kingdom. It produces further coverage dated September 20, 2018, consisting of a profile of the Complainant in which it is described as having been able to “find its place and make a name for itself” from 2009. An additional media profile dated June 11, 2019, describes the “spectacular growth” of the Complainant’s Transformation division, notes that the company has established its own law firm to provide transaction-related tax advice, and mentions an international presence that is expanding. A piece dated February 17, 2020, describes the Complainant’s ten years of uninterrupted growth and an “exponential expansion of the service offering”. Further articles demonstrate that the Complainant company continues to attract favorable media coverage relating to its transaction support services, typically reporting on completed deals, and its financial analyses of various companies.

The Complainant is the owner of a variety of registered trademarks for the mark EIGHT ADVISORY, the most relevant of which is International Registered Trademark Number 1025536 for the word mark EIGHT ADVISORY, registered on September 25, 2009, in Classes 35 and 36 (business consultancy and financial services) and designated in respect of 11 territories including Switzerland, where the Respondent is based. The Complainant is also the registrant of the Internet domain names <8advisory.com>, registered on July 31, 2009, and <eightadvisoryavocats.com>, registered on July 12, 2019. Also, the Panel notes that the Complainant is the owner of the domain name <eightadvisory.com>, which redirects to its <8advisory.com> domain name mentioned above.<sup>1</sup>

The disputed domain name was registered on May 30, 2023, and points to a registrar parking page. The second Respondent, e8ght Sàrl, is a Swiss company registered on March 5, 2018, under number CHE-493.079.557, the corporate purpose of which is stated to be expertise and advice in the field of watchmaking. The Respondent produces an Internet excerpt of its current registration details along with the details of another Swiss company, e8ght Immobilier SA, registered on January 4, 2021, under number CHE-181.988.931, the corporate purpose of which is stated to be real estate transactions. The first Respondent, Daniel Bourn, is the listed manager of both of these companies. The first and second Respondent, taken together, will be described herein as “the Respondent” unless the context otherwise requires.

The Respondent states that it is engaged in the watch industry, providing horology related advisory and brokerage services, but does not evidence this assertion. The second Respondent’s website at

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<sup>1</sup> On the topic of a panel conducting such independent research of publicly available sources, see section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

“www.e8ght.co” is a two-page site. The first and only substantive page is headed “e8ght ADVISORY / A JOURNEY INTO THE DEEP”, which repeats the said assertion. Said page goes on to state that, since its foundation in 2018, the second Respondent has curated, brokered, and managed some of the world’s most exceptional watch collections on behalf of private collectors, family offices, family trusts, auction houses, and alternative asset investment companies. The second page, linked to from the first by a “contact us” link, is an unadorned contact form inviting submissions from interested parties. The relative domain name for the website was registered on December 16, 2021.<sup>2</sup>

An extract from the Swiss Official Gazette of Commerce SOGC dated May 25, 2022, produced by the Complainant indicates that the second Respondent was previously named 8 Ball Group Consulting Sàrl until May 20, 2022, when it changed its name to e8ght Sàrl.

## **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 the “Eight Advisory” verbal element of both its trademarks and domain names, and of the disputed domain name, is not part of common language, does not designate or describe the services concerned, and is intrinsically distinctive. The Complainant adds that the numeral “8”, while visually different, is the equivalent of the word “eight”. The Complainant submits that the disputed domain name is identical to the Complainant’s EIGHT ADVISORY trademark, and that the country code Top-Level Domain (ccTLD) “.co” suffix is a technical requirement that should not be considered when comparing these.

The Complainant notes that the Respondent has no relationship with it, and that the Complainant has not granted any authorization or license to use the disputed domain name, adding that the Respondent appears to have no industrial property rights over the sign used therein. The Complainant points out that the Respondent changed its name on May 18, 2022, from 8 Ball Group Consulting Sàrl to e8ght Sàrl, concluding that the Respondent is not commonly known by the term “Eight Advisory”. The Complainant asserts that the disputed domain name points users to an inactive site, which it says undeniably shows a lack of rights or legitimate interests. The Complainant submits that the disputed domain name was registered for the purpose of causing confusion, and states that this cannot constitute a bona fide offering of goods or services.

The Complainant contends that the registration of the disputed domain name is driven by an abusive intent, noting that it may cause confusion, and could be used to harm the Complainant’s clients or others who might believe that the disputed domain name belongs to the Complainant. The Complainant also asserts that Policy precedent supports the contention that passive use can constitute abusive use. The Complainant adds that the Respondent did not reply to its cease-and-desist notice and has remained silent to the Complainant’s claim.

### **B. Respondent**

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name. Notably, the Respondent asserts that e8ght Sàrl has been registered with the Geneva Registry of Commerce since 2018, and is active within the watch industry, providing horology related advisory and brokerage services, operating via a website at “www.e8ght.co”.

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<sup>2</sup> No screenshot was produced of this website. As its existence was specifically raised by the Response, the Respondent may be presumed both to know its contents and the date on which the relative domain name was registered. The Panel elected to visit the site and to conduct a Whois lookup on the relative domain name in order to assist it in reaching this Decision. On the topic of a panel conducting such independent research of publicly available sources, see section 4.8 of the [WIPO Overview 3.0](#).

The Respondent also notes that a company named e8ght Immobilier SA has also been registered with the Geneva Registry of Commerce since 2021 and is active in real estate and alternative collectible assets, adding that it does not operate via a website. The Respondent asserts that it was unaware of the Complainant, which does not appear to have a physical presence in Switzerland, when it registered the disputed domain name, adding that it registered the disputed domain name for the sole purpose of using it for its own business services in the future. The Respondent asserts that its services and area of operations are different from those of the Complainant. Finally, the Respondent contends that the Complainant had 14 years following the filing of its trademark to register the disputed domain name but failed to do so, adding that the Respondent has been receptive to a mutually agreeable solution but that discussions failed to achieve a settlement.

## **6. Discussion and Findings**

### **A. Preliminary Matter: The Complainant's Supplemental Filing**

As noted above, on February 22, 2024, the Complainant filed an unsolicited supplemental filing headed "Further observations by the Complainant following the Respondent's reply of 7th February 2024". Paragraph 12 of the Rules expressly 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. Unsolicited supplemental filings are generally discouraged, unless specifically requested by the Panel. [WIPO Overview 3.0](#), section 4.6. In this particular case, the Panel determines that the Complainant's unsolicited supplemental filing shall not be admitted.

The Complainant's supplemental filing contains details of certain researches into the first Respondent together with information regarding the location of one of the Complainant's offices, being in Switzerland. With regard to the research into the first Respondent, the Panel considers that this should have been supplied after the first Respondent's identity was revealed to the Complainant on November 13, 2023. The Complainant was given until November 18, 2023, to file an amended Complaint and in fact chose to file this two days ahead of the deadline on November 16, 2023. As far as the Panel is concerned, the Complainant had ample time by way of the allowed five calendar days to include any information which it wished to provide to the Panel regarding the first Respondent. The same applies to the location of the Complainant's office. Although the Respondent raised the suggestion that the Complainant might not have a presence in Switzerland at a later date in the Response, the Complainant was well aware at a much earlier stage, on November 13, 2023, that the first Respondent was based in Switzerland, and it was free to provide any information relating to the significance of the Respondent's location in the amended Complaint.

In considering the question of supplemental filings, the Panel must balance the duties imposed upon it in terms of paragraph 10(b) and paragraph 10(c) of the Rules. The former provides that the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case. The latter provides, inter alia, that the Panel shall ensure that the administrative proceeding takes place with due expedition. In the present case, the administrative proceeding has been extended by almost two months due to the Parties' exploration of the prospects of settlement. Given these already lengthy extensions of time, the Panel does not wish to have these proceedings extended further by way of allowing the Complainant's supplemental filing at this late stage, which would itself necessitate providing the Respondent with a right of reply leading to further delay. Bearing in mind the Panel's observations above on the Complainant's ability to have inserted these details into the amended Complaint, the Panel considers that the Complainant has already received a fair opportunity to present its case and that the Panel must now proceed to a Decision without further delay, in order to ensure due expedition.

### **B. 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 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the 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 applicable TLD in a domain name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11. Equally, the space in the Complainant's trademark may be disregarded in the comparison process as a space is not permitted in domain names for technical reasons.

The Panel finds the first element of the Policy has been established.

### **C. 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 Panel therefore turns to the Respondent's case to determine whether it has rebutted the Complainant's prima facie showing.

The essence of the Respondent's case is that it is in the horology and real estate businesses under the corporate name "e8ght", and has registered the disputed domain name for "[the Respondent's] own business services in the future". These future business purposes are unspecified, and it is unclear to the Panel whether the Respondent means by this statement that the proposed services will be similar to those which it says that it currently provides. The Panel will examine whether the Respondent's submissions might disclose a case in terms of paragraph 4(c)(i) of the Policy, namely that before any notice to it of the dispute, the Respondent has made 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. The Panel will also examine whether the registered names of the Respondent's companies might disclose a case in terms of paragraph 4(c)(ii) of the Policy, namely that the Respondent has been commonly known as the disputed domain name.

It may be noted that the Respondent's company names do not correspond directly to the disputed domain name, albeit that there is a similarity between the "e8ght" in both company names and the word "eight" in the disputed domain name. Neither company name contains the word "advisory" although the corporate purposes of the Respondent's company do reference what might be described as an advisory service in the phrase "conseil dans le domaine de l'horlogerie". The Respondent's website at "www.e8ght.co" is a two-page site consisting of one static page and a contact form. As such, it adds very little to the Respondent's case on its own and only supports the notion that the Respondent is genuinely offering the services described in the most marginal sense. The Panel would have expected to see some indication of the substance of the Respondent's business, ideally based upon independent rather than self-generated evidence, in order to be satisfied that there is a genuine offering of goods or services underlying this site. The Panel notes that the domain name <e8ght.co> was itself only registered on December 16, 2021, just

over two years ago, so the website has not been live at that address for any substantial period. Furthermore, the lack of information about the Respondent's horological credentials, either on this web page or in the evidence provided to the Panel, seems remarkable. The Panel's concerns in this matter could perhaps have been avoided if the Respondent had been more forthcoming with its evidence. As matters stand, however, the economical nature of the Response cannot provide the Panel with much in the way of confidence as to the credibility or reliability of the Respondent's case.

Turning to the question of whether the Respondent might argue that it is commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy, the Panel again observes that the Respondent's company name does not match the disputed domain name exactly, whereas the domain name for its current website <e8ght.co> is such a match. This domain name, and the names of the Respondent's companies, make prominent use of the numerical figure "8", inserted in the word "eight" in place of the letter "i". This particular style is not reproduced in the disputed domain name. Neither company name includes the word "advisory", as found in the disputed domain name.

In any event, even if one were to consider that the word "eight" in the disputed domain name is equivalent to "e8ght" in the company names, the Panel notes that mere incorporation of a company with a name corresponding to a domain name does not typically, on its own, lead to a finding of rights and legitimate interests under the Policy. The rationale for this approach may be found in a relatively early case under the Policy, *Royal Bank of Canada v. RBC Bank*, WIPO Case No. [D2002-0672](#), in which the panel made the following observations:

"If the intention of the Policy were otherwise, every cybersquatter would be able to avoid the operation of the Policy by the simple expedient of: (i) quietly registering someone else's trademark as a corporation name (possibly in some jurisdiction having no connection with either the trademark owner or the cybersquatter); (ii) waiting some decent interval of time before registering the corporation name as a domain name; and (iii) resisting the trademark owner's challenge under the Policy by claiming that the fact of the registration of the corporation proves that the corporation has been 'commonly known by' the corporation name/trademark/domain name, and therefore has a legitimate interest in the domain name."

A panel under the Policy therefore needs to be able to identify something beyond the mere registration of one or more companies, as has happened here, in order to determine the issue of rights and legitimate interests. In the present case, all that the Respondent is prepared to give the Panel besides the Response itself and the company registration details is the Respondent's static and very limited website (as referred to in the Response, which notes that e8ght Sàrl operates via the "www.e8ght.co" website). While this website asserts that certain services are available, and indeed that these have been supplied to certain types of client, no evidence has been brought forward to support this. Even if there were evidence of the Respondent's alleged horological consultancy activities under the companies concerned before the Panel, the Response asserts that the disputed domain name was registered for "[the Respondent's] own business services in the future" without specifying what those would be or whether they will correspond to the services allegedly being provided today.

Lastly, the fact that the disputed domain name is a one-letter variation of the Complainant's domain name <eightadvisory.com> is inherently misleading and as such, is likely to result in a direct inference of association to the Complainant, contrary to the fact, which cannot constitute fair use under the circumstances of the proceeding. As discussed in the third element analysis below, the Panel finds it implausible that the existence of this domain name (and/or of the Complainant's other domain name <8advisory.com>) would not have come to the attention of the Respondent during its availability check for the disputed domain name.

In conclusion, there is no way in which the Panel could describe the present record as demonstrating use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is there satisfactory evidence that the Respondent has been commonly known by the disputed domain name.

The Panel determines that the Respondent has failed to rebut the Complainant's prima facie case and Panel finds the second element of the Policy has been established.

#### **D. 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.

In order to make out a case of bad faith registration under the Policy, generally speaking, a complainant must demonstrate that some form of targeting of its rights has occurred and at least the fact that the respondent had the complainant or its rights in mind at the point when it registered the domain name concerned. The Complainant's approach in this case is to demonstrate the considerable extent and reach of its EIGHT ADVISORY trademark by way of media coverage showing that the mark is very well-known in its sphere of activity. It must also be noted that the registration of the Complainant's mark predates the registration of the disputed domain name by some 14 years (and, equally, the incorporation of the Respondent's companies by nine and 12 years respectively) and, significantly, that the mark is registered in the location where the Respondent is based and incorporated. The goods and services for which the mark is registered include Class 35, consultancy services. In the Panel's opinion, the level of reputation and goodwill that the Complainant has demonstrably built up in its EIGHT ADVISORY mark over the last 15 years and the fact that the disputed domain name is an exact match thereof raises a case for the Respondent to answer here.

On this topic, the Panel is once again faced with the notable economy of the Response. Much depends not upon what the Respondent says, but what it does not say. What it does say is that it has two registered company names containing the word "e8ght" and that it is in the horology consulting business. It also makes the bare assertion that it had not heard of the Complainant when it registered the disputed domain name. It does not say specifically what the alleged future business purpose is behind this registration. It does not provide evidence of its business activities beyond the company registrations. It does not explain its thought process behind the selection of the name in general. It does not discuss its corporate change of name in 2022 despite this being raised in the Complaint. In short, it gives the Panel little to go on as to alleged good faith registration and use, and the Respondent's apparent lack of candor here does not help to establish credibility in its case.

On the other side of the balance is the extent of the Complainant's goodwill and notoriety. Given this, with which the Response does not take issue or attempt to contradict, it seems very unlikely to the Panel that the Respondent had never heard of the Complainant, even by way of the typical modest researches which most registrants are likely to carry out in the registration process, such as an availability check and/or a basic Internet search for the chosen name. For example, the Complainant appears to be the owner of a domain name that is only one letter different to the disputed domain name, namely <eightadvisory.com>, along with the numerical variant <8advisory.com>. In that context, the Panel find the registration of the disputed domain name to be a coincidence too far, and that it is highly improbable that neither of these domain names came to the Respondent's attention during its availability check for the disputed domain name. Had either domain name come to light, it is equally improbable that the Respondent would not have performed a modest Internet search to understand the identity of the likely owner/registrant.

In any event, the uncontradicted evidence before the Panel establishes that, due to its own activities, and also the reporting of the business media, the Complainant's mark has a reasonably substantial Internet footprint. At minimum, this would be identified upon the most cursory Internet search of the term which the Respondent registered. It should be remembered that, under paragraph 2(b) of the Policy, every prospective registrant makes a representation to their registrar that, to their knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party. Furthermore, based upon the statement on its website, the Respondent claims to deal with "alternative asset investment companies", namely entities who are engaged in a subset of investment activities, which is the Complainant's line of business.

Despite this, what the Respondent asks the Panel to believe is that its registration of what amounts to an identical name to the Complainant's mark in a jurisdiction where the mark is registered (and an almost identical domain name to the Complainant's domain names at that) was instead wholly coincidental, unrelated, and not done in any knowledge of the Complainant or its rights or with intent to target these. The Panel finds on the present record, and specifically the limited information emanating from the Respondent, that such an assertion is not reasonably credible. Furthermore, given the registration of its trademark in Switzerland and the extensive online coverage of the Complainant's activities which transcends borders, the Panel finds the Respondent's observation that the Complainant does not appear to have a physical presence in Switzerland to be somewhat disingenuous.

If the Panel had been provided with something more by way of evidence from the Respondent regarding its alleged business and its purpose for the disputed domain name it might perhaps have been able to accord the Response with a greater degree of credibility. As matters stand, however, there is nothing before the Panel to explain the Respondent's selection of the disputed domain name and its intentions other than that it has registered and maintained limited companies by somewhat different names (albeit each incorporating a version of "eight" in the name). The Panel can see that these companies have been maintained for almost six years in one case and three years in another. Nevertheless, little can be deduced from their time on the register alone. The Panel is particularly troubled by the fact that the Respondent chose to gloss over its change of corporate name from 8 Ball Group Consulting Sàrl to its present name in May 2022 despite this being raised in the Complaint. The Response merely states "e8ght Sàrl' has been registered with the Geneva Registry of Commerce since 2018" without mentioning that for four of those years it used a different name, albeit still with a reference to the numeral 8. In any event, the presence of the Respondent's companies on the register for any particular period of time does not automatically provide a good faith basis for the registration of the disputed domain name without something more, particularly as the Complainant's rights long predate this. That something, for example, a reasoned explanation for the selection of the disputed domain name that extends beyond the mere registration of the companies, is notably lacking in the present case.

Being nearly identical to the Complainant's mark, and also not overlooking its similarity to the Complainant's domain names, the disputed domain name bears a high risk of implied affiliation, and would be very likely to cause confusion in the hands of the Respondent. The Respondent effectively asks the Panel to believe that it was unaware of this. In the absence of a reasonably plausible explanation, the Panel holds on the balance of probabilities that the Respondent intended to benefit from such affiliation and the inevitable confusion that would follow. Even if the Panel were to accept the Respondent's assertions that it is engaged in the horology business in respect of the type of clientele listed on its website, and if the Panel assumes that the Respondent intended to deploy the disputed domain name in connection with that business, a reasonably foreseeable unfair benefit might be expected to arise. The Panel is aware from its own knowledge that the kinds of corporate finance activities in which the Complainant is prominent are often associated with high net worth individuals and their representatives. Based at least on the statement on the Respondent's website, it is just such individuals and/or their representatives ("discerning private collectors, family offices, family trusts, auction houses, and alternative asset investment companies") that the Respondent's business hopes to attract. While the Panel cannot know for certain why the Respondent registered the disputed domain name, particularly given the bare assertions within the Response, this does provide a possible motivation on the balance of probabilities.

In these circumstances, and in the absence of a more detailed and reasonably plausible explanation of its good faith motivation from the Respondent, supported by substantive evidence, the Panel finds on the balance of probabilities that the disputed domain name was registered in bad faith.

Turning to the use of the disputed domain name, 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 the distinctiveness or reputation of the Complainant's trademark, the composition of the disputed domain name, and the Respondent's failure to provide evidence of contemplated good faith use beyond a bare assertion of such, and 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 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, <eightadvisory.co>, be transferred to the Complainant.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: February 29, 2024