



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2201627
Complainant:	Shenzhen iMiracle Technology Co., Ltd
Respondent:	Nan Xin Guo
Disputed Domain Name(s):	elfbar-tech.com

1. The Parties and Contested Domain Name

The Complainant is Shenzhen iMiracle Technology Co., Ltd, of Room 1201, Building 1, Wanting Building, Labor Community, Xixiang Street, Baoan District, Shenzhen, China.

The Respondent is Nan Xin Guo, of Hu Bei Sheng Gong An Xian Cheng, Huang Gang, Hubei, China.

The domain name at issue is “elfbar-tech.com”, registered by the Respondent with GODADDY. COM. LLC, of Delaware 2155 East GoDaddy Way Tempe ARIZONA 85284, USA.

2. Procedural History

On 10 June 2022, the Complainant submitted a Complaint in English to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the “Centre” or “ADNDRC”) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by the ADNDRC.

On 10 June 2022, the Centre sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, GODADDY. COM. LLC, a request for registrar verification in connection with the disputed domain name.

On 11 June 2022, the Registrar transmitted by email to the Centre its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 13 June 2022, the Centre requested the Complainant to revise the submission with a Complaint in English and received the revised one submitted by the Complainant on the same day.

On 14 June 2022, the Centre notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced. On the same day, the Centre transmitted the Written Notice of the Complaint to the Respondent by email, which informed that the Complainant had filed a Complaint against the disputed domain name, the Centre had sent the Complaint and its attachments through email according to the Rules and the Supplemental Rules, and the date for submission of a Response is on or before 4 July 2022. On 14 June 2022, the Centre also notified ICANN and registrar, GODADDY.COM.LLC, of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time period. The Centre notified the Respondent's default on 5 July 2022. Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the Centre informed the Complainant and the Respondent that the Centre would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Wu Yuhe, the Centre notified the parties on 9 July 2022 that the Panel in this case had been selected, with Mr. Wu Yuhe acting as the sole panelist. The Panel determines that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

The Panelist received on 9 July 2022 the file from the Centre and should render the Decision within 14 days, i.e. on or before 23 July 2022.

Pursuant to Paragraph 11 (a) of the Rules, 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 current disputed domain name Registration Agreement is English, the Panel thus determines English as the language of the proceedings.

3. Factual background

A. The Complainant

The Complainant is an e-cigarette company from China, established in 2007. It is headquartered in Shenzhen, and has branches in Shanghai, Hong Kong, the United States, Ireland, Germany, and other places.

The Complainant is the true owner and exclusive licensee of the Chinese trademark registration no. 47304567 ELF BAR, which was filed on 16 June 2020, registered on 21 February 2021 in respect of “*cigarettes; cigarette cases; cigarette mouthpieces; smoking lighters; cigarette filters; tobacco bags; electronic cigarettes; cigars; cigarettes; snuff*” in class 34, and will expire on 20 February 2031.

The Complainant is the true holder and actual user of the domain name “elfbar.com”, which was registered on 30 September 2020 and used as its official website to promote the ELF BAR brand products and services to consumers worldwide.

B. The Respondent

The Respondent filed no response to the Complainant.

The Respondent is an individual and registered the disputed domain name on 22 February 2022. Per the two police stations’ Certificates submitted by the Complainant as annexes 5-6, the disputed domain name was resolved to an authenticity verification website of fake ELF BAR products.

No more background information is available for the Respondent.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

The Complainant is a world-renowned e-cigarette company from China, established in 2007. It is headquartered in Shenzhen, and has branches in Shanghai, Hong Kong, the United States, Ireland, Germany and other places. Adhering to the core values of “positive, striving, and win-win”, the Complainant established a well-known e-commerce platform at home and abroad - Heaven Gifts, to bring safer and more reliable electronic cigarette products to consumers around the world. It is known by the consumers as “the messenger who brings gifts from heaven”.

Elfbar is an e-cigarette brand owned by the Complainant. Since the beginning of the elfbar brand in 2018, elfbar has had a good reputation in the world for the good quality and promotion of its products. In order to promote the elfbar brand and to protect its precious intellectual property rights, the Complainant has applied for registration of the elfbar trademark in China on 16 June 2020, with approved goods including e-cigarette in Class 34: Cigarettes; Cigarette Cases; Cigarette Mouthpieces; Smoking Lighters; Cigarette Filters; Tobacco Bags; Electronic Cigarettes; Cigars; Cigarettes; Snuff; etc. Although the Complainant transferred the trademark to iMiracle (Shenzhen) Technology Co., Ltd on 13 May 2022 due to the adjustment of the company's strategy, iMiracle (Shenzhen) Technology Co., Ltd authorized the Complainant to use the trademark exclusively on the same day, which can fully prove that the Complainant has always enjoyed the exclusive right to use the trademark.

Up to now, elfbar's consumer groups have covered dozens of countries around the world, with monthly sales exceeding 10 million RMB and the number of consumers approaching one million. In view of the high popularity of elfbar, there are many fakes infringing elfbar's trademark right in the market, and the

Complainant has taken various measures to safeguard its trademark right. The disputed domain name was discovered when the police cracked down on the crime of trademark infringement of elfbar.

As mentioned above, elfbar enjoys a good reputation worldwide. Most consumers are familiar with the Complainant and its elfbar trademark, and exclusively associate the elfbar trademark with the Complainant together with its elfbar brand products and services.

The main part of the disputed domain name "elfbar-tech.com" is "elfbar-tech", where "tech" is the abbreviation of "technology", indicating the nature of the commodity (i.e. technology cigarettes) and that of the Complainant (i.e. technology company), which is not distinctive; moreover, the main distinctive part of the domain name "elfbar" is exactly the same as the complainant's trademark. The word *elfbar* is entirely a fanciful word of the Complainant, which has a very high significance. The domain name used by the Respondent can easily lead to consumer confusion.

At the same time, it was confirmed by two Police Stations that the disputed domain name was used as the authenticity verification website of elfbar's infringing products, and all webpage content (with the elfbar trademark marked in prominent positions) is captured from the Complainant's elfbar.com. In this way, consumers will be misled into thinking that the disputed domain name is the real official elfbar product authenticity verification website of the Complainant.

- ii. The Respondent has no rights or legitimate interests in respect of the domain name.

The disputed domain name was registered only not much later than the first day when the elfbar trademark was used in e-cigarette products and services (the date can be traced back to 2018) and the filing day of elfbar trademark in China (2020), and far later than the day that elfbar brand products gained great reputation and high visibility.

The Respondent enjoys neither any rights in the elfbar trademark nor any rights in the disputed domain name, as the Complainant never permits the Respondent to use the elfbar trademark or gives its authorization to the Respondent to register any domain name with elfbar or any similar word. And, considering that the elfbar trademark was registered by the Complainant's affiliate, which does not have any relationship with the Respondent, the Respondent does not enjoy the legitimate interests in the disputed domain name.

The Respondent used his infringing domain name as an authenticity check site for elfbar fakes, misleading the consumers who buy fake elfbar products into believing that they are buying genuine products. The Complainant has never authorized the Respondent to use the elfbar trademark in any way, the Respondent did not have (and has never had) popularity because of the name Elfbar. The Respondent registered the disputed domain name and uses it to infringe the elfbar trademark rights of the Complainant.

- iii. The disputed domain name has been registered and is being used in bad faith.

The Respondent's malicious intent can be reflected from the vocabulary of the domain name chosen by it. The word “*elfbar*” does not exist in English vocabulary, and is a fanciful word created by the Complainant. The significant recognition part of the disputed domain name is “elfbar”, which is the same as the Complainant’s trademark, thus easily causing confusion among the consumers with the trademark of the Complainant.

The disputed domain name was discovered during the inspections of the fake “Elfbar” seized by Shangnan Police Station and Xinglong Police Station, when the police were handling the crime of counterfeiting registered trademarks. As the verification website of fake goods, the content of the disputed website is completely captured from the Complainant's authentic brand website “Elfbar.com”, and attempts to mislead consumers that the fake goods they buy are genuine products sold by the Complainant, to thereby gain illegal benefits.

The Complainant's elfbar brand is well known and has been specifically linked to the Complainant due to the excellent quality of the Complainant's elfbar brand product and the long-term promotion of the Complainant.

Based on the Respondent's behavior of using the disputed domain name as the verification website of elfbar fake products and the high popularity of elfbar, it can be fully proved that the Respondent has a good understanding of the Complainant's products and trademark, and tries to make use of the high visibility of the Complainant's products to gain illegal profits. Its registration of the disputed domain name can be identified as malicious infringement.

As mentioned above, the Respondent does not enjoy any lawful rights and interests in the disputed domain name. However, the Respondent still out of bad motives chose to register the disputed domain name and uses it as a verification site for elfbar fakes.

Based on the above grounds and facts, the Complainant requests that the disputed domain name should be transferred to the Complainant.

B. Respondent

The Respondent was duly notified by the Centre of the Complaint lodged by the Complainant and asked to submit Response in accordance with the relevant stipulations under the Policy, the Rules and the ADNDRC Supplementary Rules, but did not make any response within the prescribed time period.

5. Findings

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

- i. The Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- ii. The Respondent has no rights or legitimate interests in respect of the domain name; and

- iii. The Respondent's domain name has been registered and is being used in bad faith.

In the absence of any Response from the Respondent, the Panelist shall make the decision primarily based on the contentions and evidences submitted by the Complainant on record.

A) Identical / Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must prove its rights in a trademark or service mark and that the disputed domain name is identical or confusingly similar to its trademark and service mark.

As for its trademark rights concerning ELF BAR, the Complainant stated that ELF BAR is an entirely fanciful word originally created by the Complainant, and claims that the Complainant is the true owner, actual user, and exclusive licensee of the Chinese trademark of registration no. 47304567 ELF BAR in class 34. In order to prove the aforesaid, the Complainant submitted the following evidences:

- *Registration Certificate* of the trademark ELF BAR, proving that the mark was registered on 21 February 2021 in class 34 in the name of Shenzhen Weiboli Technology Co., Ltd (“Weiboli”);
- *Assignment Certificate* of the trademark ELF BAR from Weiboli to the Complainant on 20 November 2021;
- *Assignment Certificate* of the trademark ELF BAR from the Complainant to iMiracle (Shenzhen) Technology Co., Ltd (“iMiracle (Shenzhen)”) on 13 May 2022;
- *Certificate* issued by Weiboli, to prove that Weiboli, as the Complainant's wholly-owned subsidiary, held the trademark ELF BAR with the authorization and on behalf of the Complainant from 21 February 2021 to 20 November 2021, and the true holder and actual user of the mark has always been the Complainant;
- *Letter of Consent* issued by iMiracle (Shenzhen) on the same day of the trademark transfer, proving that iMiracle (Shenzhen) is an affiliated company of the Complainant, and was assigned to hold the trademark ELF BAR on 13 May 2022 in view of the company's internal business strategy, but the Complainant is the exclusive licensee of the trademark ELF BAR for the period from 13 May 2022 to 20 February 2031.

As seen from the above evidences, the trademark ELF BAR was registered earlier than the registration of the disputed domain name (i.e. on 22 February 2022). The Complainant, as the true holder, actual user, previous registrant, and current exclusive licensee, has prior exclusive rights in the trademark ELF BAR.

The disputed domain name “elfbar-tech.com” is composed of “elfbar-tech” and “.com”. As a generic top-level domain suffix, “.com” does not identify the source of goods or services, and thus should be ignored in the determination of confusing similarity. The distinctive part of the disputed domain name is “elfbar-tech”, which is composed of “elfbar” and “tech” with a hyphen. The “tech” means technology and refers to electronic technological nature of the Complainant's e-cigarettes. The distinctiveness of “elfbar-tech” therefore lies in “elfbar”, which is identical with the trademark ELF BAR. The disputed domain name

completely includes the Complainant's prior trademark and cannot be distinguished from the latter. Thus, the disputed domain name "elfbar-tech.com" and the Complainant's trademark ELF BAR are confusingly similar.

In conclusion, the Panelist finds that the Complainant has satisfied the first element as provided under Paragraph 4(a) of the Policy.

B) Rights and Legitimate Interests

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name was registered much later than the first day when ELF BAR trademark was used by the Complainant, the filing date of the trademark ELF BAR in China, and the time when ELF BAR brand products gained great reputation and high visibility. In addition, the Respondent does not enjoy any rights in the elfbar trademark nor is he entitled to any rights in the disputed domain name. And the Complainant confirms that the Complainant never permitted the Respondent to use ELF BAR or authorized the Respondent to register any domain name with elfbar or any similar word. The Respondent used his infringing domain name as an authenticity check site for ELF BAR fakes, misleading the consumers who buy the fakes into believing that they are buying genuine products. The Respondent registered the disputed domain name and is using it to infringe the ELF BAR trademark rights of the Complainant.

The Complainant has submitted prima facie evidence required by Paragraph 4(a)(ii) of the Policy and the burden of proof is transferred to the Respondent. However, the Respondent did not make any response nor did he submit any evidence to prove his rights or legitimate interests in the disputed domain name in the whole proceedings. Based on the claims and evidence on record, the Panelist cannot find that the Respondent has rights or legitimate interests in respect of the disputed domain name.

Accordingly, the Panelist finds that the Complainant has satisfied the second element as provided under Paragraph 4(a) of the Policy.

C) Bad Faith

The Policy provides, at Paragraph 4(b), that the following circumstances, in particular but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- i. Circumstances indicating that the respondent has registered or 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 documented out-of-pocket costs directly related to the domain name; or
- ii. The respondent 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 domain name, the respondent has intentionally attempted to attract, for commercial gain, internet users to its 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 its website or location or of a product or service on its website or location.

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith. The word "elfbar" does not exist in English vocabulary and is a fanciful word created by the Complainant and has achieved high reputation prior to the registration of the disputed domain name. The significant recognition part of the disputed domain name is "elfbar", which is the same as the Complainant's trademark and can easily cause confusion among the consumers with the trademark of the Complainant. The disputed domain name was resolved to an authenticity verification website of fake goods. The content of the dispute website is completely captured from the Complainant's authentic brand website "elfbar.com", and attempts to mislead consumers that the fake goods they buy are genuine products sold by the Complainant. Hence, the Respondent has a good understanding of the Complainant's products and trademark, and tries to make use of the high visibility of the Complainant's products to gain illegal profits. The Respondent neither submitted any response nor did he give any reasons or explanation in this regard.

In order to prove that its trademark "ELF BAR" has been used and achieved certain reputation in the field of e-cigarettes in China and worldwide, the Complainant produced some news and evidence of rights protection against many fake goods in the market. In addition, the Complainant also submitted two Certificates issued by Shangnan Police Station and Xinglong Police Station, as well as the authenticity verification result on the Complainant's official website "elfbar.com", to prove that the disputed domain name was discovered when the police cracked down on the crime of "ELF BAR" trademark infringement and was used in connection with verification of fake goods.

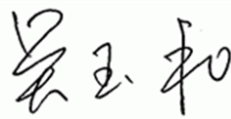
According to the two Police Stations' Certificates, the Panelist finds that "ELFBAR" and "www.elfbar.com" are displayed prominently on the label attached to the fake goods; the authenticity verification website's domain name associated with the QR code is "elfbar-tech.com"; the verification results show that the security codes of the fake goods are correct; the content of "www.elfbar-tech.com" copies, imitates and is confusingly similar to the official verification website.

In view of the above, the Panelist holds that the Respondent knew or should have known the Complainant's trademark prior to the registration of the disputed domain name. Having no rights or legitimate interests in the disputed domain name and without authorization from the Complainant, the Respondent should have avoided the registration, which is considered as good faith, but instead, it registered the disputed domain name which is confusingly similar to the Complainant's prior mark. By using the website of the disputed domain name to verify the fake products, the Respondent tries to mislead consumers that the website "www.elfbar-tech.com" is the Complainant's official verification website and that the fake goods are the genuine products of the Complainant. The Panelist has reasons to conclude that the Respondent has intentionally attempted to attract, for commercial gain, potential consumers to its fake goods, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of the fake products he sold. The Panelist therefore finds that the disputed domain name was registered and is being used in bad faith as prescribed under Paragraph 4(b)(iv) of the Policy.

Accordingly, the Panelist finds that the Complainant has satisfied the third element as provided under Paragraph 4(a) of the Policy.

6. Decision

For all the foregoing reasons, in accordance Paragraph 4(a) of the Policy and Article 15 of the Rules, the Panelist orders that the disputed domain name “elfbar-tech.com” be transferred to the Complainant, Shenzhen iMiracle Technology Co., Ltd.

A handwritten signature in black ink, consisting of three characters: '吴玉和' (Wu Yuhe).

Wu Yuhe
Sole Panelist

Dated: 22 July 2022