ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.: HK-2201644

Complainant: Bitmain Technologies Limited (比特大陸科技有限公司)

Respondent: Henry Torres

Disputed Domain Names: <antminerasics.com>

1. The Parties and Contested Domain Name

The Complainant is <u>Bitmain Technologies Limited</u> (hereinafter referred to as the "Complainant"), of Unit A1 of Unit A, 11th floor, Success Commercial Building, 245-251 Hennessy Road, Hong Kong Special Administrative Region of the People's Republic of China.

The Authorized Representatives of the Complainant are <u>HE Wei</u> (何玮), <u>CHEN Xie</u> (陈 勰), <u>CHEN Qixin</u> (陈绮新) and <u>YAO Yiqi</u> (姚奕淇) of Han Kun (Shenzhen) Law Offices (北京市汉坤(深圳)律师事务所) of 20/F, Kerry Plaza Tower 3, 1-1 Zhongxinsi Road, Futian District, Shenzhen 518048, Guangdong.

The Respondent is **Henry Torres**, (hereinafter referred to as the "**Respondent**") of 3099 Randall Drive, Honolulu, HI, United States of America.

The domain name at issue is **<antminerasics.com>** (hereinafter referred to as the "Disputed Domain Name"), registered with NameCheap Inc. of 4600 East Washington

Street, Suite 305, Phoenix, AZ 85034, United States of America (hereinafter referred to as the "**Registrar**").

2. Procedural History

On 4 August 2022, the Complaint (in the Chinese language) was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (hereinafter referred to as the "Centre"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") approved by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") approved by ICANN Board of Directors on 28 September 2013, and the Asian Domain Name Dispute Resolution Centre ("ADNDRC") Supplemental Rules to the ICANN Uniform Domain Name Dispute Resolution Policy and the Rules for the Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules") effective from 31 July 2015.

On the same day, the Centre notified the Registrar of the Complaint and requested the Registrar to verify information associated with the Disputed Domain Name.

On 4 August 2022, the Registrar transmitted to the Centre its verification response disclosing registrant information for the Disputed Domain Name, in which the Registrar stated that Henry Torres of 3099 Randall Drive, Honolulu, HI, 96819, United States of America is the registrant of the Disputed Domain Name; that the ICANN Policy is applicable to the Disputed Domain Name; that the language of the Registration Agreement of the Disputed Domain Name is English; the registration and expiry date of the Disputed Domain Name is 1 December 2020 and 1 December 2022 respectively and confirmed that the Disputed Domain Name will remain registered and locked until the proceedings are completed.

On 8 August 2022, the Centre informed the Complainant that the contact information of the Respondent in the Complaint is different from the Whois information provided by the Registrar:

"In accordance with Article 4 of the Rules for the ICANN Uniform Domain

Name Dispute Resolution Policy ('Rules'), we have reviewed the Complaint

for administrative compliance with the ICANN Uniform Domain Name

Dispute Resolution Policy and Rules and have found the following

deficiency.

The information of the Respondent in the Complaint is different from the

Whois information provided by the Registrar:

Registrant First Name: Henry

Registrant Last Name: Torres

Street Address: 3099 Randall Drive

City: Honolulu

State / Provence: HI

Postal Code: 96819

Country: United States

Email Address: alexandertossam@gmail.com

Phone Number: +1.8088568206

For the deficiency stated above, we ask the Complainant to update the

information of the Respondent in the Complaint Form with reference to the

Whois information provided by the Registrar. The scanned version (signed)

and WORD version of the Complaint Form should be sent to the Centre.

According to Article 4(d) of the Rules for ICANN Uniform Domain Name

Dispute Resolution Policy, the Complainant is hereby required to rectify the

above deficiency within 5 calendar days (i.e., by 13 August 2022), failing

which the Complaint will be deemed withdrawn without prejudice to

submission of a different complaint by the Complainant."

In another correspondence of 8 August 2022, the Centre wrote to the Complainant stating

the following:

3

"According to Article 11(a) of the Rules for ICANN Uniform Domain Name Dispute Resolution Policy, 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 of the disputed domain name <antminerasics.com> is English.

The complaint and annexes have been submitted in **Chinese**. We request the Complainant to respond to this e-mail regarding the language of the proceedings on or before 13 August 2022. The Panelist shall make the final determination on the language of the proceedings."

On 9 August 2022, the Centre requested the Complainant to settle the case filing fees on or before 14 August 2022 in accordance with Paragraph 19 (c) of the Rules and Article 15 of the Supplemental Rules.

On 12 August 2022, the Complainant submitted the necessary case filing fees to the Centre in accordance with Paragraph 19 (c) of the Rules and Article 15 of the Supplemental Rules.

On 15 August 2022, the Centre verified that the Complaint satisfied the formal requirements in accordance with the Policy, the Rules, and the Supplemental Rules. In accordance with the Rules, the Centre shall forward the Complaint to the Respondent and the proceedings shall formally commence.

On 15 August 2022, the Centre wrote to the Respondent informing the Respondent that a Complaint relating to the Disputed Domain Name was filed by the Complainant and that under Paragraph 5 of the Rules, the due date for the Respondent to file a Response was on or before 4 September 2022.

On 15 August 2022, the Centre once again wrote to the Respondent stating the following:

"According to Article 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 Registration Agreement of the disputed domain name <antminerasics.com> is English, therefore the language of the proceedings of the complaint should be English.

However, the complaint Form C and annexes that the Complainant submitted is in Chinese and the Complainant requested to change the language of the proceedings from English to Chinese. May we ask the Respondent to respond to this e-mail regarding the language of the proceedings on or before 20 August 2022. The Panelist shall make the final determination on the language issue."

On 16 August 2022, the Centre confirmed having received the case filing fees.

The Respondent did not file a response on or before 4 September 2022 and is in default.

On 5 September 2022, the Centre wrote to the parties informing them that the Respondent did not file a response within the stipulated time frame and that the Centre would shortly proceed to appoint a Panelist to determine the matter.

On 7 September 2022, the Centre wrote to Dr. Christopher To enquiring as to his availability to act as a Sole Panelist (the "Panelist") in relation to the Disputed Domain Name and whether he is in a position to act between the Parties. On 8 September 2022, Dr. Christopher To confirmed his availability and that he is able to act independently and impartially between the parties.

On 8 September 2022, the Centre appointed Dr. Christopher To as the Panelist in this matter.

The Panel finds that it was properly constituted and in accordance with Paragraph 15(a) of the Rules, the Panelist is of the view that it shall decide the Complaint on the basis of statements and documents submitted to it.

According to Paragraph 15(d) of the Rules, this Panel shall issue a reasoned decision.

3. Factual background

Complainant

The Complainant was incorporated in Hong Kong Special Administrative Region of the People's Republic of China on 10 January 2014 (reference *Annex 3 of the Complaint*). The Complainant advocates that it (and its affiliates) is a leading global technology company offering electronic products ranging from chips, servers and cloud base solutions used within the fields of blockchain and artificial intelligence. The Complainant and its affiliates conduct businesses in China, Singapore, and the United States of America.

According to the Complainant, the Complainant's "Antminer" and "Bitmain" brands are well-known and influential all over the world in the fields of blockchain and artificial intelligence. The Complainant and its affiliates have received multiple rounds of financing and have been listed on the Hurun Global Unicorn List 2019, the Hurun China 500 Most Valuable Private Companies 2019, the Hurun China Most Valuable Chip Design Private Companies 2020, the Global Silicon 100, the Shimao Strait-Hurun China 500 Most Valuable Private Companies 2020, the Suzhou High-tech District-Hurun Global Unicorn List 2020, to name a few.

The Complainant submits that it is the holder of the "ANTMINER" and "BITMAIN" trademarks and has registered the trademarks in multiple jurisdictions including the European Union, Japan, Mainland of China, Singapore, Switzerland, and the United States of America (reference *Annexes 1, 2, 4 and 5 of the Complaint*).

Respondent

The Respondent, Henry Torres, is an individual.

On 7 September 2022, the Centre informed this Panelist that the Centre did not receive a Response from the Respondent in relation to the Complaint on or before 4 September 2022, as such, the Respondent has not contested the allegations of the Complaint and is in default.

Disputed Domain Names

The Disputed Domain Name was registered on 1 December 2020.

4. Parties' Contentions

Complainant

The Complainant made the following submissions in the Complaint:

i. Identical/Confusingly Similar

The Complainant contends that by virtue of its trademark and service mark registrations across many countries and regions (*reference Annexes 1 and 2 of the Complaint*), the Complainant is the owner of the "ANTMINER" and "BITMAIN" trademarks.

The Complainant further contends that the usage of "ANTMINER" "and "BITMAIN" trademarks by the Complainant dates to the year 2013.

The Complainant states that the Dispute Domain Name <antminerasics.com> incorporates the Complainant's "ANTMINER" "trademark in its entirety, with only the addition of the term "asics". According to the Complainant, the mere addition of this term "asics" to the Complainant's trademark does not negate the confusing similarity between the Disputed Domain Name and the Complainant's trademark under paragraph 4(a)(i) of the Policy, and that the Disputed Domain Name must be considered confusingly similar to the Complainant's trademark. In support of this the Complainant refers to the cases of WIPO Case No. D2009-1325, WIPO Case No. D2007-1064 and

HK-2101555, HK-2101582, HK-2101441 (reference Annexes 6, 7 and 8 of the Complaint) in its Complaint in support of its stance.

The Complainant further states that the word "asic" is an abbreviation for "Application Specific Integrated Circuit", which is a common type of integrated circuit chip used within the electronics industry. According to the Complainant, the inherent meaning of "asic" is consistent with the characteristics of some of "Antminer" computer products sold by the Complainant, while the addition of the letter "s" represents the plural form of "asic" and has no distinctiveness.

The Complainant asserts that the addition of the term "asics" is not sufficient to overcome a finding of confusing similarity pursuant to paragraph 4(a)(i) of Policy and that the addition of the term "asics" further enhances confusion between the Disputed Domain Name and the Complainant's trademarks which the Complainant has prior rights.

It is the Complainant's stance that the Disputed Domain Name is confusingly similar to Complainant's "ANTMINER" and "BITMAIN" trademarks.

ii. Rights and Legitimate Interests

The Complainant contends that the Respondent is not in any way connected, associated, or affiliated with the Complainant and the Complainant has not authorized, endorsed, or otherwise permitted the Respondent to register the Disputed Domain Name or to use the Complainant's trademarks or any variation thereof.

The Complainant claims that the Respondent registered the Disputed Domain Name on 1 December 2020. Whereas the Complainant filed for registration of its "ANTMINER" "trademark in Singapore on 6 August 2014 earlier than the Respondent's registration of the Disputed Domain Name, and significantly after Complainant's first use of its trademark thereafter (reference Annex 9 of the Complaint).

The Complainant submits that the Respondent has no rights or legitimate interest in the Disputed Domain Name in accordance with Paragraph 4(a)(ii) of the Policy.

iii. Bad Faith

The Complainant advocates that the Disputed Domain Name has been registered and used in bad faith.

The Complainant contends that the Respondent was aware of or at least should have been aware of the Complainant's "ANTMINER" "trademark and other trademarks and acted in bad faith in registering the Disputed Domain Name.

Given the ease of registering a domain name, the Complainant advances the stance that the registrant of a domain name should exercise a duty of care at the outset of registering a domain name to ensure that the domain name registered will not infringe the legitimate rights and interests of others who have trademark rights. Any failure to perform such a duty of care cannot be an excuse because of one's ignorance nor can it preclude the presumption of registering the domain name in bad faith. The Complainant advances the case of *Zippo Manufacturing Company v. huangyang Case No. CN-1400815* in its Complaint in support of its stance.

The Complainant further contends that "ANTMINER" " trademark and other marks are not ordinary English words. They are original and distinctive marks that have been developed through the Complainant's long-term use.

The Disputed Domain Name was registered on 1 December 2020, much later than the date of registration and use of the Complainant's "ANTMINER" trademark and other marks. When registering the Disputed Domain Name, the Respondent must have been aware of or at least should have been aware of, that the Complainant and its affiliates had prior rights and interests in the "ANTMINER" trademark and other well-known marks. The Complainant states that "ANTMINER" is so closely linked and associated with the Complainant that Respondent's use of this mark, or any minor variation of it, strongly implies bad faith.

The Complainant states that by registering a domain name that comprises of the Complainant's "ANTMINER" "trademark in its entirety, and by adding the term "asics" to the end of the trademark, the Respondent has created a domain name that is confusingly similar to the Complainant's trademarks.

The Complainant further states that the Respondent is aware of the Complainant's brand and business, in fact the Respondent's use of the Disputed Domain Name is likely to confuse the public into believing that the website of the Disputed Domain Name is the official website of the Complainant or its affiliates. According to the Complainant this is a typical case of impersonating the Complainant's identity and intentionally misleading the public with the view of obtaining unjust enrichment, which in effect constitutes the use of the domain name in bad faith.

The Complainant contends that the Respondent operated the website of the Disputed Domain Name in malicious ways by impersonating the Complainant by selling the Complainant's products or products similar in nature to that of the Complainant. ScamWatcher (a website monitoring spam domain names) revealed that the website of the Disputed Domain Name had offered to sell the Complainant's products and when payment was received by the Respondent no products were delivered. This the Complainant advocates as a clear sign of bad faith use in the Dispute Domain Name.

The Complainant asserts that the Respondent's use of the Disputed Domain Name constitutes a disruption of the Complainant's business and qualifies as bad faith registration and use under paragraph 4(a)(iii) of the Policy because the Respondent's domain name is confusingly similar to Complainant's trademarks.

The Complainant states that the Respondent must have known of and targeted the Complainant's trademark, and that the Respondent should be found to have registered and used the Disputed Domain Name in bad faith in accordance with Paragraph 4(a)(iii) of the Policy.

Respondent

The Respondent did not reply to the Complainant's contentions as stated in the Complaint.

5. Findings

Having considered all the documentary evidence before this Panel and the Respondent's non-participation in these proceedings after being afforded every opportunity to do so, in accordance with Paragraph 5(f) of the Rules, the Panelist is of the view that it should proceed to decide on the Disputed Domain Name, based upon the Complaint and evidence adduced by the Complainant as contained within the Complaint and attachments.

Paragraph 5(f) of the Rules stipulates that:

"If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint."

Whereas Paragraph 10(d) of the Rules states that:

"The Panel shall determine the admissibility, relevance, materiality and weight of the evidence."

Similarly, 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."

In the present case the Parties had not agreed to use a particular language for these proceedings. As the Registration Agreement is in the English language as confirmed by the Registrar in its correspondence to the Centre of 4 August 2022, then in accordance with

Paragraph 11(a) of the Rules, the language of the administrative proceedings shall be English, unless this Panel decides otherwise.

In these circumstances given that the Complaint before the Panelist is drafted in the Chinese language, the Panelist issued Procedural Order No. 1 dated 9 September 2022, directing the Complainant to provide the Respondent and this Panel with a copy of the Complaint in the English language on or before 15 September 2022. This is in line with the Registration Agreement and given that the Respondent has failed to communicate on the matter, the Panelist considers that it would be appropriate (and without prejudice to any of the parties) for the present proceedings to be conducted in the English language in line with Paragraph 11(a) of the Rules.

On 15 September 2022, the Complainant provided this Panel (and the Respondent) with a copy of the Complaint and the Index to the Annexes in the English language.

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

- **A.** Disputed Domain Name is <u>identical or confusingly similar</u> to a trademark or service mark in which Complainant has rights; and
- **B.** The Respondent has no <u>rights or legitimate interests</u> in respect of the Disputed Domain Name; and
- **C.** Disputed Domain Name has been registered and is being used in **bad faith** by the Respondent.

The Panelist would like to state that the Respondent's non-participation in these proceedings (i.e., default) would not by itself mean that the Complainant claims are deemed to have prevailed. In fact, the Respondent's default is not necessarily an admission that the Complainant's claims are true. The burden of proof still rests with the Complainant to establish the three elements contained within Paragraph 4(a) of the Policy as stated above by a preponderance of the evidence for the Panelist to determine in accordance with Paragraph 10(d) of the Rules.

A. Identical / Confusingly Similar

The Complainant contends that the Disputed Domain Name is confusingly similar to the Complainant's trademark "ANTMINER" "which the Complainant has prior rights.

The threshold test for confusing similarity under the Policy involves a comparison between the relevant trademarks/marks/logos/wordings belonging to the Complainant and the Disputed Domain Name to ascertain the presence of the trademarks/marks/logos/wordings Domain Name. To satisfy this in the Disputed test, the relevant trademarks/marks/logos/wordings would generally need to be recognizable as such within the Disputed Domain Name, with the addition of merely descriptive, common, or geographical wording typically being regarded as insufficient to prevent a finding of confusing similarity.

In essence, this Panel has to consider whether the Disputed Domain Name, namely <antminerasics.com> is a central and distinguishable part of the Complainants' trademark/mark.

The Disputed Domain Name contain two elements: (i) "antminerasics" and (ii) top-level generic domain ".com". It is well established that the top-level generic domain ".com" does not have trademark significance, conferring no distinctiveness to the domain name sufficient to avoid user confusion, and should be ignored for identifying the "confusing similarity" element.

On a side-by-side comparison of the Disputed Domain Name and the textual components of the Complainant's trademark/mark, the trademark/mark is recognizable within the Disputed Domain Name. In fact, the Disputed Domain Name incorporates the entirety of the trademark/wordings of the Complainant with the word "antminer", which is insufficient to prevent a finding of confusing similarity.

The distinctive part of the Disputed Domain Name <antminerasics.com>, is "antminer", which is confusingly similar to the Complainant's trademark/mark "antminer" thus creating a likelihood of confusion amongst Internet users. The addition of the term "asics";

does not negate the confusing similarity between the Disputed Domain Name and the Complainant's trademark. This is in line with what is stated within paragraph 1.8 of the WIPO Jurisprudential Overview 3.0.

The Panelist finds that the Complainant has rights in the trademark/mark/wordings acquired through use.

The Panelist agrees with the Complainant's contentions that the Disputed Domain Name is the same and is a central and distinguishable part of the Complainant's "ANTMINER" "trademark/mark. The Panelist further concurs with the Complainant's stance that the Disputed Domain Name can easily mislead members of the public into believing that the Disputed Domain Name is owned or operated by the Complainant, or that the Respondent has a relationship or association with the Complainant in some way or form.

As stated previously, the Respondent has not contested the allegations of the Complaint and is in default.

For the foregoing reasons, the Panelist concludes that the Complainant has discharged the burden of proof to establish the elements of identical and confusingly similar trademark or service mark in accordance with Paragraph 4(a) (i) of the Policy.

B. Rights and Legitimate interests

The burden of proof shifts to the Respondent once the Complainant provides prima facie evidence showing that the Respondent lacks legitimate rights or interests.

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances, any of which is sufficient to demonstrate that a Respondent has rights or legitimate interests in the Disputed Domain Name:

(i) before any notice to the Respondent of the dispute, the Respondent's 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; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

There is no evidence that the Complainant has authorized, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the trademark/mark.

The Panelist finds on record that there is therefore a prima facie case that the Respondent has no rights or legitimate interests in the Disputed Domain Name, and the burden shifts to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trademark rights in respect of the Disputed Domain Name or that the Disputed Domain Name has been used in connection with a bona fide offering of goods or services. The Complainant has neither authorized nor consented to the Respondent using the Complainant's trademark/mark.

There has been no evidence adduced to show that the Respondent has been commonly known by the Disputed Domain Name.

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name.

The Complainant has in a credible way alleged that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name whereas the Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name. This ineffectively entitles the Panelist to infer that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name at issue.

To sum up, the Panelist is satisfied on the totality of the evidence before it that the Respondent's use of the Disputed Domain Name is not in connection with a bona fide offering of goods or services. The Respondent has not been authorized or licensed by the Complainant to use its marks. Nor is there any evidence that the Respondent has been commonly known by the Disputed Domain Name or similar names. Neither is there evidence that the Respondent has been making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the mark of the Complainant.

In the circumstances, the Panelist concludes that, on a balance of probabilities, the Complainant has discharged its burden of proof to show that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name pursuant to paragraph 4(a) (ii) of the Policy.

C. Bad Faith

Paragraph 4(b) of the Policy sets out four (4) factors in which the Panelist may take into consideration in determining whether the Respondent has registered and used the Disputed Domain Name in bad faith. Any one (1) of these four (4) factors being evident would amount to registration and use in bad faith on the part of the Respondent.

Bad faith cannot be presumed, but once the Complainant has presented some evidence to establish a prima facie case, the onus then shifts onto the Respondent to either justify or explain its business conduct.

From the evidence submitted by the Complainant, the Panel finds that the Respondent is attempting to use the Disputed Doman Name to create confusion with the Complainant's trademark/mark with the view of gaining commercially. As such the Panelist contends that the Respondent's bad faith is evident by Paragraph 4(b) (iv) of the Policy:

"(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."

For the foregoing reason, the Panel concludes that the Complainant has discharged the

burden of proof to establish that the Respondent registered and used the Disputed Domain

Name in bad faith in accordance with Paragraph 4(a) (iii) of the Policy.

6. Decision

For the foregoing reasons and in accordance with Paragraph 4(a) of the Policy and

Paragraph 15 of the Rules, the Panelist is satisfied that the Complainant has sufficiently

proved the existence of all three elements pursuant to Paragraph 4(a) of the Policy. The

Panel orders that the Disputed Domain Name <antminerasics.com> be transferred to the

Complainant.

Dr. Christopher To Panelist

Dated: 20 September 2022

17