ADNDRC | Asian Domain Name Dispute Resolution Centre
hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2201669
Complainant:	Imiracle (ShenZhen) Technology Co., Ltd (爱奇迹（深圳）技术有限公司)
Respondent:	Ali Sahin
Disputed Domain Name(s):	<theelfbar.com>

1. The Parties and Contested Domain Name

The Complainant is Imiracle (ShenZhen) Technology Co., Ltd (爱奇迹（深圳）技术有限公司), of Room 1606, Office Building T5, Qianhai China Resources Financial Center, No. 5035 Menghai Avenue, Nanshan Street, Qianhai Hong Kong-Shenzhen Cooperation Zone, Shenzhen, Guangdong Province, China.

The Respondent is Ali Sahin of Kral Ord, gulbahar mah erdogan sk no: 25, Istanbul, sisli, Turkey.

The domain name at issue is <theelfbar.com> (the "Disputed Domain Name"), registered by the Respondent with NameCheap, Inc., of 4600 E Washington St Ste 305, Phoenix, AZ 85034, USA.

2. Procedural History

On September 23, 2022, the Complainant submitted a Complaint to the Hong Kong Office ("HK Office") of the Asian Domain Name Dispute Resolution Centre ("ADNDRC") by email and elected this case to be dealt with by a single-member panel, pursuant to the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP") the Rules for the UDRP (the "Rules"), and the ADNDRC Supplemental Rules to the Internet Corporation for Assigned Names and Numbers (ICANN) UDRP. On September 26, 2022, the HK Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint. On the same day, the HK Office also notified the Registrar of the Complaint by email and the Registrar replied to the HK Office informing the contact information of the Respondent.

Subsequently, on September 26, 2022, the HK Office informed the Complainant that the information of the Respondent in the Complaint was different from the WHOIS information provided by the Registrar. On September 27, 2022, the Complainant submitted an amended Complaint and an updated annexure to the HK Office. The HK Office confirmed receipt of

the amended Complaint and the amended annexure on September 28, 2022. On September 29, 2022, the Complainant submitted adminicular evidence to the HK Office, the receipt of which was confirmed by the HK Office on the same day. On October 3, 2022, the HK Office confirmed that the Complaint is in administrative compliance with the Policy and forwarded the Complaint together with the Annexes to the Respondent. The due date of the Response was October 23, 2022. The Respondent did not file a Response and on October 24, 2022, the HK Office informed the Parties of the Respondent's default in response. On the same day, the HK Office sent a panelist appointment invitation to Li Yee Man Rosita, and received a declaration of independence and impartiality from Li Yee Man Rosita. On October 25, 2022, the HK Office appointed Li Yee Man Rosita as the sole panelist in this matter.

3. Factual background

The Complainant is Imiracle (ShenZhen) Technology Co., Ltd (爱奇迹（深圳）技术有限公司). The Complainant submits that its affiliated company, Shenzhen iMiracle Technology Co., Ltd, is a well-known Chinese electronic cigarette company established in 2007. The Complainant established a well-known e-commerce platform, "Heaven Gifts", locally and abroad, to bring electronic cigarette products to consumers worldwide.

The Complainant submits that:-

- ELFBAR is an electronic cigarette brand currently owned by the Complainant ("ELFBAR"), and since the establishment of the brand in 2018, the ELFBAR has enjoyed a good reputation worldwide for the quality of their products.
- Due to the adjustment of the company's business strategy, the Complainant had taken over the main business and trade mark rights of ELFBAR from its affiliated company. PRC Trade Mark Registration No. 47304567 for "ELF BAR", registered on February 21, 2021, and PRC Trade Mark Registration No. 54149297 for "  ", registered on September 28, 2021 (collectively, the "ELFBAR Marks") were transferred from the Complainant's affiliated company, Shenzhen Weiboli Technology Co., Ltd., to the Complainant on May 13, 2022.
- The Complainant's domain name <elfbar.com> was registered on September 30, 2020 and is currently held by the Complainant's affiliated company, Heaven Gifts International Limited.

The Disputed Domain Name was registered on August 9, 2022, and the Complainant submits that it resolves to a website in Turkish which uses the Complainant's ELFBAR Marks and the website content is almost identical to the Complainant's website, apart from the language.

The Respondent is Ali Sahin of gulbahar mah erdogan sk no: 25, Istanbul, sisli, Turkey. The Respondent did not file a Response to the HK Office.

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 trade mark or service mark in which the Complainant has rights:

The Complainant submitted that the main part of the Disputed Domain Name is "theelfbar" and that the definite article "the" was used generically. As such, the two words "theelfbar" and "elfbar" differ in form but convey the same meaning, which can cause confusion to the relevant public. The Complainant contended that "elfbar" is an entirely fanciful word of the Complainant and the Disputed Domain Name used by the Respondent can easily lead to consumer confusion.

ii. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name:

The Complainant submitted that the Disputed Domain Name was registered on August 9, 2022, which was later than the date of the first use of the "ELF BAR" trade mark on electronic cigarette products in 2018, the filing date of the "ELF BAR" trade mark in 2020, the registration of the Complainant's domain name <elfbar.com> in 2020, and also later than when the ELFBAR brand products gained high reputation.

The Complainant contended that the Respondent has no trade mark rights related to the ELFBAR brand, and that the Respondent was not authorized by the Complainant to use the "ELF BAR" trade mark or register any domain name with "elfbar" or any similar word. The Complainant also contended that the Respondent did not have popularity because of the name "elfbar". The Complainant submitted that the Complainant and the Complainant's affiliates do not have any relationship with the Respondent, and as such, the Respondent did not have legitimate interests in respect of the Disputed Domain Name.

The Complainant submitted that the Respondent uses the Disputed Domain Name as the Turkey official online store of ELFBAR to misguide consumers to buy infringing goods through WhatsApp links.

iii. The Disputed Domain Name has been registered and is being used in bad faith:

The Complainant submitted that the Respondent's bad faith is demonstrated from the use of "elfbar" in the Disputed Domain Name. The Complainant explained that "elfbar" is a fanciful word created by the Complainant and does not exist in the English vocabulary. The Disputed Domain Name is recognized by the part "theelfbar" which is similar to the Complainant's trade marks and can easily cause confusion among the public.

The Complainant submitted that the Disputed Domain Name website uses the Complainant's ELFBAR Marks, and apart from the language, the Disputed Domain Name website is almost identical to the Complainant's website.

The Complainant contended that its ELFBAR brand is well-known for its product quality and promotion, and alleged that the Respondent must have a good understanding of the Complainant's products and trade marks, and attempts to benefit from the popularity of the Complainant's products to obtain illegal profits.

B. Respondent

The Respondent did not file a Response to the Complaint within the required time limit.

5. Findings

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

i. Respondent's domain name is identical or confusingly similar to a trade mark or service mark in which Complainant has rights; and
ii. Respondent has no rights or legitimate interests in respect of the domain name; and
iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

It has been well established that generic Top-Level Domains such as ".com" in a domain name does not typically form part of the relevant assessment in the test of confusing similarity. The Panel will accordingly consider the Second-Level Domain of the Disputed Domain Name (i.e. "theelfbar").

The Complainant demonstrated that it is the proprietor of the ELFBAR Marks prior to the registration of the Disputed Domain Name and the filing of the Complaint. The Complainant also demonstrated that the "ELF BAR" trade mark and the domain name <elfbar.com> were registered earlier than the Disputed Domain Name.

The Panel notes that the Complainant is not the owner on record of the domain name <elfbar.com>. The Panel has considered the evidence submitted by the Complainant, including the certification of affiliation jointly issued by the Complainant, Shenzhen Weiboli Technology Co. Ltd, Shenzhen iMiracle Technology Co., Ltd., and Heaven Gifts International Limited dated July 1, 2022, which stated the corporate relationship between the Complainant and the said companies, and the actual ownership and usage of the domain name <elfbar.com>. The Panel accepts that the Complainant is the effective owner of the domain name <elfbar.com>.

The Panel notes that the Disputed Domain Name incorporates the Complainant's "ELF BAR" trade mark in its entirety with the addition of the definite article "the" before "elfbar". The Panel finds that the addition of the definite article "the" does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's "ELF BAR" trade mark.

Accordingly, the Panel is of the view that the Disputed Domain Name is confusingly similar to the Complainant's "ELF BAR" trade mark and the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The Panel notes that at the date of this decision, the Disputed Domain Name resolves to an error page. That said, the Panel accepts the Complainant's submission and evidence that, at the time when the Complaint was prepared, the Disputed Domain Name resolved to a website in a foreign language, and based on the English version of a printout of the Dispute Domain Name webpage, the Disputed Domain Name website displayed the Complainant's ELFBAR Marks and the content of the website was almost identical to the Complainant's website at <elfbar.com>. The Panel also finds that the Disputed Domain Name resolved to a website which appeared to be selling electronic cigarettes in the ELFBAR brand of the Complainant. Considering the aforesaid, the Panel is of the view that the Respondent did not use the Disputed Domain Name in connection with a bona fide offering of goods and services. The Panel also concludes that the Respondent did not make a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.

The Panel notes that the Complainant did not license or authorize the Respondent to use the "ELF BAR" trade mark or authorize the Respondent to register any domain name incorporating the "ELF BAR" trade mark or any similar term to "elfbar".

On the other hand, the Respondent has failed to provide any evidence or submit any arguments to demonstrate that it had any rights or legitimate interests in the Disputed Domain Name. No evidence was given by the Respondent to prove it had authorization from the Complainant to use the "ELF BAR" trade mark and/or register a domain name which incorporates the "ELF BAR" trade mark or any similar term to "elfbar".

Accordingly, the Panel is of the view that the Respondent does not have rights or legitimate interests in respect of the Disputed Domain Name and that paragraph 4(a)(ii) of the Policy has been satisfied.

C) Bad Faith

It is well established that the registration of a domain name which is identical or confusingly similar to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith.

The Complainant's ELFBAR brand was established in 2018, and the Complainant's "ELF BAR" trade mark was registered in China in 2021, which predates the registration of the Disputed Domain Name. The Panel accepts that the Complainant's ELFBAR brand is recognized for electronic cigarettes and enjoys a high reputation amongst the relevant public. The Panel accepts that "elfbar" is a fanciful word created by the Complainant, and the "ELF BAR" trade mark is distinctive and well known. Considering the reputation of the Complainant's ELFBAR brand and the "ELF BAR" trade mark, and the distinctiveness of the "ELF BAR" trade mark, it would not be plausible for the Respondent to claim that they were unaware of the Complainant's ELFBAR brand or ELFBAR Marks, or that the choice in domain name was coincidental.

Further, considering the composition of the Disputed Domain Name and the appearance and use of the Disputed Domain Name website while it was still active, in particular, the high similarity of the content of the Complainant's website and the Disputed Domain Name website, the Panel is prepared to infer that the Respondent

knew, or should have known, that its registration of the Disputed Domain Name would be confusingly similar to the Complainant's "ELF BAR" trade mark. Accordingly, the Panel finds that the Respondent registering a domain name confusingly similar to the Complainant's earlier well-known "ELF BAR" trade mark is a clear indicator of bad faith.

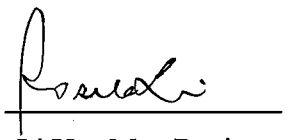
The Panel notes that the Complainant did not license or authorize the Respondent to use the "ELF BAR" trade mark or authorize the Respondent to register any domain name incorporating the "ELF BAR" trade mark or any similar term. The Panel is prepared to find that, while the Disputed Domain Name website was still active, the Respondent has attempted to pass off as an official website of Complainant and/or pass off as being affiliated with the Complainant, to benefit from the reputation and goodwill of the Complainant's ELFBAR brand.

Having considered the above, the Panel considers that the Respondent registered and used the Disputed Domain Name primarily for the purpose of attempting to attract, for commercial gain, Internet users to their website by creating confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of their website or of the product(s) on their website to the Complainant. This constitutes evidence of bad faith under paragraph 4(b)(iv) of the Policy.

In view of the foregoing, the Panel is of the view that paragraph 4(a)(iii) of the Policy has been satisfied.

6. Decision

For the foregoing reasons, in accordance with paragraph 4(i) of the Policy and paragraph 15 of the Rules, the Panel orders that the Disputed Domain Name, <theelfbar.com>, be transferred to the Complainant.



Li Yee Man Rosita
Panelist

Dated: November 8, 2022