



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2201671
Complainant:	Imiracle (ShenZhen) Technology Co., Ltd (爱奇迹 (深圳) 技术有限公司)
Respondent:	Oleksandr Kravchenko
Disputed Domain Name(s):	<elf.bar>

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 Oleksandr Kravchenko, of 109 Saenka st, Zhitomir Zhitomirskaya, Ukraine.

The domain name at issue is <elf.bar> (the “Disputed Domain Name”), registered by the Respondent with GoDaddy.com, LLC, of 14455 North Hayden Road Suite 226 Scottsdale, AZ 85260 United States.

2. Procedural History

On September 28, 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 28, 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. On September 29, 2022, the Registrar replied to the HK Office informing the contact information of the Respondent.

Subsequently, on September 29, 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 30, 2022, the Complainant

submitted an amended Complaint and an updated annexure to the HK Office. On the same day, the HK Office confirmed that the Complaint is in administrative compliance with the Policy and the Rules. On October 3, 2022, the HK Office forwarded the amended 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 October 25, 2022, the HK Office appointed Li Yee Man Rosita as the sole panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the HK Office that she is able to act independently and impartially between the parties.

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.
- The Complainant holds the following trade mark application/ registrations:
 - PRC Trade Mark Registration No. 47304567 for "ELF BAR", registered on February 21, 2021, and PRC Trade Mark Registration No. 54149297 for "W", both were transferred from the Complainant's affiliated company, Shenzhen Weiboli Technology Co., Ltd., to the Complainant on May 13, 2022.
 - Ukrainian Trade Mark Application No. m202102536 for "ELFBAR", filed on February 8, 2021.(collectively, the "ELFBAR Marks")
- The Complainant has registered "elfbar" trade marks in Europe, such as in Russia, Belarus, Moldova and European Union, amongst others.
- 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 February 19, 2022, and the Complainant submits that it resolves to a website in Ukrainian which uses the Complainant's ELFBAR Marks and sells fake electronic cigarette products purporting to be under the ELFBAR brand.

The Respondent is Oleksandr Kravchenko, of 109 Saenka st, Zhitomir Zhitomirskaya, Ukraine.

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 identifying part of the Disputed Domain Name is "elf.bar" and that the Respondent is taking advantage of the domain name suffix ".bar" and uses it as a domain name suffix. The Complainant contended that the Disputed Domain Name "elf.bar" is visually identical to the Complainant's "ELF BAR" trade mark. The term "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 February 19, 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 China 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 an online store to infringe on the Complainant's trade mark rights relating to the ELFBAR brand and misguide consumers to buy infringing products.

- 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 Complainant submitted that the Respondent takes advantage of the suffix ".bar", that "elf.bar" is highly similar to the Complainant's "ELF BAR" trade mark 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.

The Complainant further contended it is in bad faith that the Respondent registered the Disputed Domain Name and used it as a site for selling fake products under the ELFBAR brand, when the Respondent does not enjoy any lawful rights and interests in the Disputed Domain Name.

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

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>.

Generic Top-Level Domains such as ".com" in a disputed domain name do not typically form part of the relevant assessment in the test of confusing similarity. That said, it is well established that where the Top-Level Domain and the Second-Level Domain as a whole contain the relevant trade mark, panels may consider the

domain name in its entirety in assessing confusing similarity. The Panel will accordingly consider the Disputed Domain Name in its entirety (i.e., “elf.bar”). The Panel finds that the Second-Level Domain and the Top-Level Domain of the Disputed Domain Name resembles the terms “elf” and “bar” in the “ELF BAR” trade mark of the Complainant, respectively. When the Disputed Domain Name is being viewed as a whole, it is also visually and phonetically identical to the “ELF BAR” trade mark. Therefore, the Panel finds the Disputed Domain Name is confusingly similar to the Complainant’s “ELF BAR” trade mark.

Accordingly, the Panel is of the view that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

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”. The Panel also notes that the Complainant and its affiliates did not have any business relationship with the Respondent.

It is well established that the use of a domain name for illegal activity such as the sale of counterfeit goods or impersonation/passing off, can never confer rights or legitimate interests on a respondent. The Panel accepts the Complainant’s submission that the Disputed Domain Name resolves to a website in a foreign language which displays the Complainant’s ELFBAR Marks. The Panel also accepts that the Disputed Domain Name resolves to a website which misguides consumers into buying goods that appeared to be of the Complainant’s ELFBAR brand. The Panel is prepared to find that such use of the Disputed Domain Name does not confer rights or legitimate interests on the Respondent. 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.

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, its "ELF BAR" trade mark was registered in China in 2021 and it has also filed the "ELF BAR" trade mark in Ukraine in 2021, all of 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.

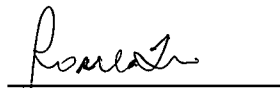
The Panel notes that the Complainant did not license or authorize the Respondent to use the "ELF BAR" trade mark or authorize the Respondent to register any domain name incorporating the "ELF BAR" trade mark or any similar term. Yet, the Respondent took advantage of using ".bar" as a Top-Level Domain and combined it with the term "elf" at the prefix to create a domain name which incorporates the Complainant's "ELF BAR" trade mark in its entirety. 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.

Further, considering the appearance and use of the Disputed Domain Name website to sell goods purporting to be under the ELFBAR brand, the Panel is prepared to find that 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. 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. Considering the above, the Panel finds it implausible that there could be any good faith use of the Disputed Domain Name.

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, <elf.bar>, be transferred to the Complainant.



Li Yee Man Rosita
Panelist

Dated: November 8, 2022