



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2301848
Complainant:	Imiracle (Shenzhen) Technology Co., Ltd.
Respondent:	michael Diaz
Disputed Domain Name:	<elfbarz.com>

1. The Parties and Contested Domain Name

The Complainant is **Imiracle (Shenzhen) Technology Co., Ltd.**, Room 1606, T5 Office Building, Qianhai China Resources Financial Centre, 5035 Menghai Avenue, Nanshan Street, Qianhai Hong Kong-Shenzhen Cooperation Zone, Shenzhen, China, represented by **Shenzhen Chofn Intellectual Property Agency Co. LTD.**, of Shenzhen, China.

The Respondent is **michael Diaz**, 584 sw 166 terr, Weston 33326, Florida, United States.

The domain name at issue is **<elfbarz.com>**, registered by Respondent with **GoDaddy.com, LLC**, of Arizona, United States.

2. Procedural History

The Complainant was filed electronically with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (the “Centre” or “ADNDRC”) on December 12, 2023.

On December 12, 2023, ADNDRC acknowledged the receipt of the Complaint and transmitted by email to the Registrar GoDaddy.com, LLC (the “Registrar”), a request for registrar verification in connection with the disputed domain name. On December 13, 2023, the Registrar transmitted by email to ADNDRC its verification response revealing the identity and contact information of the Respondent of the disputed domain name as michael Diaz, 584 sw 166 terr, Weston 33326, Florida, United States. Phone: +1.3056007323, email: ‘miked223@me.com’ and confirmed that the disputed domain name was placed on a Registrar LOCK, which differed from the named Respondent and contact information in the Complaint. According to Article 4(d) of the Rules ADNDRC notified of the Deficiency of the Complaint to Complainant on December 27, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on December 28, 2023.

ADNDRC verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on August 26, 1999 and approved by ICANN on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) approved by ICANN on September 28, 2013, and in effect as of July 31, 2015, and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”) in effect as of August 21, 2023.

In accordance with the UDRP Rules, paragraphs 2 and 4, ADNDRC formally notified the Respondent of the Complaint, to the person listed on Respondent’s registration as technical, administrative, and billing contact, and to ‘miked223@me.com’, ‘info@elfbarz.com’, and to the corresponding postmaster’s email address by e-mail, including a Written Notice, the Amended Complaint (and Annexes) to the Respondent. The proceedings commenced on January 2, 2024. In accordance with the UDRP Rules, paragraph 5, the due date for the Response was January 22, 2024. The Respondent failed to file its response by the due date, or any response on or before January 22, 2024.

Accordingly, the ADNDRC issued notification of the Respondent’s default on January 23, 2024.

On January 23, 2024, pursuant to the Complainant’s request to have the dispute decided by a single- member Panel, ADNDRC appointed María Alejandra López García as Panelist. The Panel has confirmed the Statement of Acceptance and Declaration of Impartiality and Independence, as required by ADNDRC to ensure compliance with the UDRP Rules, paragraph 7.

Having reviewed ADNDRC’s records, the Administrative Panel (“the Panel”) finds that ADNDRC has discharged its responsibility under paragraph 2(a) of the UDRP Rules “to employ reasonably available means calculated to achieve actual notice to Respondent” through submission of electronic and Written Notices, as defined in the UDRP Rules paragraph 2(a)(i) and (ii). Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the Policy, the UDRP Rules and the Supplemental Rules and any rules and principles of law that the Panel deems applicable.

The Registrar of the disputed domain name is GoDaddy.com, LLC. The Respondent registered the disputed domain name on **June 17, 2022**. By December 6, 2023 the disputed domain name resolves to a website which impersonates the Complainant’s business and Trademark. By the time of this Decision, the disputed domain name redirects to a potential Complainant competitor’s website [vapemania.com].

3. Factual background

For the Complainant

Imiracle (Shenzhen) Technology Co., Ltd. (hereinafter “The Complainant”), was established in 2017. The Complaint’s affiliated company, Shenzhen iMiracle Technology Co., Ltd, is a well-known e-cigarette company established in China in 2007. Due to the company’s business strategy, the Complainant took over the main business and trademark right of ELF BAR. The ELF BAR brand was established in 2018, which is making an effort on innovative products via a smart heating system and offers disposable e-cigarettes

in a wide range of sizes, flavours and nicotine levels to users in dozens of countries on five continents.

The Complainant has protected the trademark rights of ELF BAR in several countries and territories. ELF BAR is headquartered in Shenzhen and has branches in Shanghai, Hong Kong, the United States, Ireland and Germany. ELF BAR operates in the UK, Ireland, Germany, France, Italy, Spain and other EU TPD-compliant countries and non-EU countries.

ELF BAR is a range of disposable vapes that like most other disposable vapes, are pre-filled with e-liquid and usually contain a small single-use battery. ELF BAR is known for their fruity, sweet, candy-inspired e-liquids, with more than 30 flavors available across two dozen disposable device styles. Vapers have appreciated this combination of attributes, which has led to their popularity skyrocketing in the recent years. To date, the Complainant's consumer base has covered dozens of countries around the world, with monthly sales of over 10 million units and over one million consumers. Best-selling Elf Bars include the early pen-style Elfbar 600 and, more recently, the hugely popular BC3500 and BC5000.

The Complainant has created its own platforms to sell its products and also sells on well-known e-commerce and well-known industry platforms ELF BAR entered the UK in 2021 and in that year, it sold a record 2.5 million Elf Bar 600s per week, accounting for two thirds of all disposable e-cigarettes.

According with the evidence submitted by the Complainant, and online article of May 25, 2022 (London) shown that: "One of Europe's largest vaping distributors, Flawless, has signed an exclusive agreement with leading Chinese manufacturer of vape disposables, ELF BAR, to create the Gee600 disposable device, for the UK's vape & FMCG sector."

According with the evidence submitted by the Complainant, and online article of Oct. 25, 2022 (Leicester, England) shown that: "ELF BAR team up with local retail store in "50,000-cigarette-quit national challenge" as part of Stoptober."

According with the evidence submitted by the Complainant, and online article, of June 5, 2023 (London) shown that: "On World Environment Day, ELF BAR, a pioneer and innovator of vaping technologies, reiterated its sustainable practices and industry compliance through its comprehensive recycling efforts in reducing e-waste generation."

In some countries, between 2020 and 2022, the percentage of vapers using disposables rose from 6-7% to 45-50%. And much of that growth was due to brands like ELF BAR. ELF BAR has also been embraced by younger vapers, which is evident on social media. The elfbar hashtag on TikTok had 1.5 billion views at the start of 2023.

ELF BAR has been in actual use and promotion for many years and has become highly recognizable in the world; through a Google Search all the results point to the Complainant.

For the Respondent

The Respondent registered the disputed domain name on **June 17, 2022**. Apart from the information provided by the concerned Registrar of this Case, there is no further

information about the Respondent. The Respondent did not reply to any of the Complainant's contentions.

4. Parties' Contentions

Complainant

The Complainant's contentions may be summarized as follows:

- i. The Complainant asserts that has protected the trademark rights of ELF BAR in several countries and territories, which predate the registration of the disputed domain name.
- ii. The Complainant owns, among others, the following Trademarks:
 - Chinese Trademark for ELF BAR (word mark), Reg. No. 47304567, in IC 34, registered on February 21, 2021 and in force until February 20, 2031.
 - EUIPO Trademark for ELF BAR (word mark), Reg. 018365272, in IC 34, protected since (filing date) December 29, 2020 and in force until December 29, 2030.
 - UK Trademark for ELFBAR (word mark), Reg. No. UK00003646223, in IC 34, filed on May 24, 2021, registered on October 15, 2021, and in force until May 24, 2031.
 - International Trademark for ELFBAR (and design), Reg. No. 1619099, IC 34, registered on July 22, 2021, and in force until July 22, 2031.
- iii. The Complainant contends that this is a case of "typo-squatting", where the disputed domain name is a slight misspelling of a registered trademark in order to divert Internet traffic; that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element; that the addition of the letter z does not give elfbarz a new meaning; that the disputed domain name elfbarz.com incorporates the Complainant's ELF BAR trademark.
- iv. The Complainant contends that the Respondent doesn't have rights or legitimate interest in respect of the disputed domain name, since the disputed domain name effectively impersonates or suggest sponsorship or endorsement by the owner of the trademark and do not constitute fair use.
- v. The Complainant asserts that has searched the trademark database in the United States and confirmed that no trademark applications were found under the name of the Respondent michael Diaz; that the Respondent is not in the identity of the Complainant's distributor or partner, and the Complainant has never directly or indirectly authorized the Respondent to use the ELF BAR trademark and domain name in any form.
- vi. The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith, since the Complainant has prior rights over ELF BAR, which had a high global profile prior to the registration of the disputed domain name; that it is highly unlikely that the Respondent was not aware about the existence of the Complainant's Trademark ELF BAR at the time of the registration, since ELF BAR is so well-known; that according to the Complainant's investigation of the disputed domain name, it was found that the content of the website it pointed to overlapped with the project operated by the Complainant.

- vii. The Complainant contends that according to the Complainant's preliminary investigation and evidence, it was found that the Respondent has pointed the disputed domain name to a website related to the Complainant's business, and the content of the website also appeared several times with the Complainant's ELF BAR trademark, even, selling the Complainant's competitor's products; The Complainant submits that the Respondent's use of the disputed domain name to deliberately imitate the Complainant's ELF BAR brand for profit is consistent with paragraph 4b(iv) of the Policy.
- viii. Remedies
The Complainant requests that the disputed domain name <elfbarz.com> should be transferred to the Complainant.

B. Respondent

The Respondent did not reply to any of the Complainant's contentions.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution 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 trademark 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 has sufficiently proved before the Panel, that owns Trademark Rights for the purpose of the Policy, over the word ELF BAR, ELFBAR [indistinctively for the purposes of this Decision, hereinafter "ELF BAR"] since December 29, 2020 (e.g.: EUIPO, ELF BAR, Reg. No. 018150428).

In relation to those trademarks conformed by a textual and a design element, the Domain Name Jurisprudence has stated:

"Panel assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark. To the extent that design (or figurative/stylized) elements would be incapable of representation in domain names, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element. Such design elements may be taken into account in limited circumstances e.g., when the domain name comprises a spelled-out form of the relevant design element." (see the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.10).

This Panel finds that the disputed domain name <elfbarz.com> is confusingly similar to the Complainant's Trademark. The Complainant's Trademark ELF BAR despite the addition of the letter "Z" is recognizable in the disputed domain name and do not prevent a finding of confusion similarity under the first element (see WIPO Overview 3.0, sections 1.7 and 1.8).

In relation to the TLD, it is well established by UDRP Panelists that for the purposes of the analysis of the first element of the Policy, in this case, the gTLD “.com”, is considered “as a standard registration requirement and as such is disregarded under the first element confusing similarity test” (see WIPO Overview 3.0, section 1.11.1).

Therefore, the Complainant has, to the satisfaction of the Panel, shown that the disputed domain name <elfbarz.com> is confusingly similar to the Complainant Trademark ELF BAR (within the meaning of paragraph 4(a)(i) of the Policy).

B) Rights and Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the circumstances, but without limitation, described in paragraph 4(c) of the Policy.

As multiple UDRP Panelists have established, satisfying the burden of proving a lack of the Respondent’s rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a)(ii) of the Policy “may result in the often-impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element” (see WIPO Overview 3.0, section 2.1).

In this case, the Respondent has not submitted its Response and or any communication rebutting the Complainant’s contentions.

According to the evidence submitted by the Complainant, this Panel finds that:

- 1) nothing from the evidence can possibly suggests that the Respondent has been commonly known by <elfbarz.com> term, in particular, since the Respondent has made use of a Privacy Service, subsequently identified as “michael Diaz”; either a Trademark holder of ELF BAR;
- 2) the Respondent is not associated or affiliated with the Complainant; nor a Complainant’s distributor or partner; the Complainant has not granted any rights to the Respondent to use its Trademark ELF BAR, or has granted any kind of license to offer any product or service, or any rights to apply for its registration as a domain name;
- 3) the Respondent is not making a legitimate noncommercial 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, since the Respondent has sought to impersonate the Complainant’s business activity and Trademark ELF BAR and currently seeks to obtain commercial gain to misleadingly divert consumers, tarnishing the Complainant’s trademark (paragraph 4.c(iii) of the Policy).

Therefore, to the satisfaction of the Panel, the Complainant has made out its *prima facie* case. No Response or any communication from the Respondent has been submitted. In the absence of a Response, this Panel accepts Complainant’s undisputed assertions and

evidence as true. Thus, the Complainant has shown that the Respondent has no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

C) Bad Faith

According to the evidence submitted, this Panel finds the following:

Bad Faith Registration:

The Complainant acquired its Trademark Rights at least since December 29, 2020 (*e.g.*: EUIPO, ELF BAR, Reg. No. 018365272), meaning more than a year before Respondent registered the disputed domain name on June 17, 2022.

The Complainant asserted that the ELF BAR brand was established on 2018, that ELF BAR it is a well-known Trademark and indicated certain sales figures, however, did not provide the supporting evidence before the Panel. Therefore, this Panel is not ready to confirm it as a 'well-known' *as such* in the present case.

The Respondent exactly reproduces Complainant's Trademark ELF BAR in the disputed domain name. By December 6, 2023, the disputed domain name resolved to a website which even included the Complainant's ELF BAR Trademark design element, to sell the Complainant's products, and Complainant's competitor's products as its own, which this Panel may define as a "fake trademark" being ELFBARZ, on an attempt to impersonate the Complainant, which inevitably proves that Respondent had consistent knowledge of the Complainant's business, its Trademark value at the time of the registration of the disputed domain name. Therefore, this Panel concludes that did it with Complainant in mind (see *Miracle (Shenzhen) Technology Co., Ltd. v. Wei Li*, ADNDRC Case No. HK-2301737; *Segway Inc. v. Reinhard Poetzlberger*, ADNDRC Case No. HK-2301846).

Therefore, this Panel concludes that the disputed domain name has been registered in bad faith.

Bad Faith Use:

According to the evidence submitted by the Complainant, by December 6, 2023, the disputed domain name resolved to a website based on Complainant's business and the Trademark ELF BAR to sell Complainant's products. By the time of this Decision, the disputed domain name redirects to www.vapemania.com, to sell Complainant's products and products which directly compete with the Complainant, with all of it, incurring into Paragraph 4(b)(iv) of the Policy, which states:

(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.

According to the WIPO Overview 3.0, section 3.1.4:

“Panels have moreover found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant’s mark: (i) **actual confusion**, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent’s commercial benefit, even if unsuccessful, (iii) **the lack of a respondent’s own rights to or legitimate interests in a domain name**, (iv) **redirecting the domain name to a different respondent-owned website**, even where such website contains a disclaimer, (v) **redirecting the domain name to the complainant’s (or a competitor’s) website**, and (vi) **absence of any conceivable good faith use.**” (emphasis added).

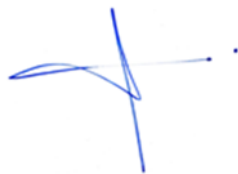
The Panel notes that the Respondent’s activity can easily land into a phishing scenario with disastrous consequences to the Internet user, the Complainant’s business and its Trademark ELF BAR; as it has been established by multiple UDRP Panelists, “phishing can never confer rights, such behavior is manifestly considered evidence of bad faith.” (see *Auchan Holding SA v. WhoisGuard Protected, WhoisGuard, Inc. / Name Redacted*, WIPO Case No. Case No. D2021-0986; *Allianz Asset Management of America L.P. and Pacific Investment Management Company LLC v. Aitken Marketing Pty Ltd*, ADNDRC Case No. HK-2101434; *Softbank Group Corp. v. Yixin Network Technology Co., Ltd.*, ADNDRC Case No. HK-2101557).

Additionally, the Respondent made use of a Privacy Service, to prevent the Complainant from knowing its identity, and/or to avoid being notified, which in the present case, to this Panel, emphasizes its bad faith. (see the WIPO Overview 3.0, section 3.6).

Thus, this Panel has not found any conceivable good faith towards the Respondent. Therefore, this Panel concludes that, the Complainant has, to the satisfaction of the Panel, shown that the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

6. Decision

For the above reasons, in accordance with Paragraph 4 of the Policy, Paragraph 15 of the Rules, the Panel orders that the disputed domain name <elfbarz.com> be transferred to the Complainant.



María Alejandra López G.
Panelist

Dated: January 30, 2024