



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-2301737
<b>Complainant:</b>	Imiracle (Shenzhen) Technology Co., Ltd.
<b>Respondent:</b>	Wei Li
<b>Disputed Domain Name(s):</b>	<elfbarl.com>

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**1. The Parties and Contested Domain Name**

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

The Respondent is Wei Li, of Shen Zhen Shi Long Gang Ou.

The domain name at issue is <elfbarl.com>, registered by Respondent with GoDaddy.com, LLC, of 14455 North Hayden Rd. Suite 219 Scottsdale, AZ 85260.

**2. Procedural History**

The Complainant filed the Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre on 12 April 2023 in accordance with the Uniform Policy for Domain Name Dispute Resolution approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999 (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy approved by the ICANN Board of Directors on 28 September 2013 (the “Rules”) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the “Supplemental Rules”). On 13 April 2023 the Hong Kong Office acknowledged receipt of the Complaint and sent an email to the Registrar requesting verification of information regarding the domain name at issue. On the same day, the Registrar sent an email disclosing registrant and contact information for the disputed domain name that differed from the named respondent and contact information in the Complaint. On 14 April 2023, the Centre sent an email to the Complainant providing the registrant and contact information disclosed by the Registrar and requiring the Complainant to update the information regarding the Respondent in the Complaint. On 19 April 2023 the Complainant filed an amended Complaint.

The Hong Kong Office confirmed that the Complaint, as amended, was in administrative compliance with the Policy and the Rules. On 24 April 2023 the Hong Kong Office sent

the Respondent a written notice of the Complaint, informing it that it was required to submit a Response within 20 days (that is, on or before 14 May 2023). The Hong Kong Office did not receive a Response from the Respondent regarding the Complaint. Accordingly, on 15 May 2023 the Hong Kong Office notified the parties of the Respondent's default.

On 18 May 2023 the Hong Kong Office appointed Prof. Kun FAN as the sole Panelist in this dispute, who confirmed that he was available to act independently and impartially between the Parties in this matter. On the same day, the Hong Kong Office transferred the case file to the Panel. The Decision due date was 1<sup>st</sup> June 2023.

### **3. Factual background**

#### **A. The Complainant**

The Complainant, Imiracle (Shenzhen) Technology Co., Ltd., was established in 2017. The Complaint's affiliated company, Shenzhen iMiracle Technology Co., Ltd, is a Chinese company established in 2007. The Complainant adds that "*Due to the adjustment of the company's business strategy, the Complainant is now taking over the main business and trademark right of "ELF BAR"*".

The "ELF BAR" trademark was created in 2018 to manufacture and sell disposable e-cigarettes.

The Complainant describes its products as following:

*"ELF BAR" is currently among the most popular vape devices on the market due to their ease of use, great fruity flavors, consistency, and quality of their products. Vapers have appreciated this combination of attributes, which has led to their popularity skyrocketing in the recent years. The Complaint's consumer base now covers dozens of countries worldwide, with over 10 million units sold per month and over a million consumers".*

(...)

*"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. "ELF BAR" have the privilege of operating in the UK, Ireland, Germany, France, Italy, Spain and other EU TPD-compliant countries and non-EU countries. In addition, "ELF BAR" has established a network of distributors in key regions around the world (please see Annex 7 for details of the Complainant's core distributors in key regions around the world). To date, the "ELF BAR" brand has reached dozens of countries and regions across five continents, with dozens of exhibitions throughout the year (Annex 8 the featured Exhibition Photos).*

*Based on the above, it can be seen that the Complainant has a high level of popularity and influence. As the Complainant's corporate name and core product trademark, "ELF BAR" has been in actual use and promotion for many years and has become highly recognisable in the world. By searching "ELF BAR" on google, you can see that all the results point to the Complainant (Annex 9 search results). It follows that "ELF BAR" has a unique correspondence with the Complainant.*

## B. The Respondent

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

## 4. Parties' Contentions

### A. Complainant

The Complainant's contentions may be summarized as follows:

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

The Complainant contends that the disputed domain name <elfbarl.com> is confusingly similar to a trademark, ELF BAR, in which the complainant has rights. The Complainant submits that the disputed domain name fully incorporates the ELF BAR trademark. The Complainant adds that the main identifying part of the disputed domain name is "elfbar", which is identical to the Complainant's registered trademark "ELF BAR". Accordingly, the Complainant submits that the disputed domain name contains all or at least one of the main features of the Complainant's "ELF BAR" trademark and are likely to cause confusion.

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

The Complainant assures that it has never directly or indirectly authorized the Respondent to use the "ELF BAR" trademark in any form.

The Complainant adds that the Respondent is not a distributor nor a partner of the Complainant.

The Complainant searched the trademark database in China and confirmed that no trademark applications were found under the name of the Respondent "Wei Li".

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

The Complaint contends that the registration of the disputed domain name is difficult to explain as a coincidence when the "ELF BAR" trademark is so well known. The Complainant adds that this clearly shows that the Respondent knew or should have known the Complainant's trademark when registering the domain name.

The Complainant argues that the strength of its trademark is sufficiently well known that the Respondent's mere registration of the disputed domain name itself gives rise to a presumption of bad faith in its subsequent use of the domain name. The Complainant refers to Chapter 3.1.4 of the WIPO Jurisprudential Overview 3.0, stating, according to the Complainant, that "Panels have consistently found

that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”.

Finally, the Complainant provides a screenshot of the webpage to which the disputed domain name resolves. This screenshot shows a webpage similar to the Complainant’s webpage “Verify Products” displayed to allow consumers of the Complainant’s products to verify that the products they have purchased are genuine. The Complainant believes that *“the continuation of this unreasonable use of the disputed domain name will interfere with the Complainant’s normal business activities. This shows that the Respondent by its registration and use of the disputed domain name intentionally creates a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the disputed domain name with the purpose of attracting Internet users to the website for commercial gain as per paragraph 4(b)(iv) of the Policy”*.

iv. Remedies

The Complainant requests that the disputed domain name elfbarl.com should be transferred to the Complainant.

B. Respondent

The Respondent did not reply to 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 provided several certificates of registration of trademark for ELF BAR for the following countries:

- China, “ELF BAR”, No. 47304567, 21 February 2021;
- European Union, “ELF BAR”, No. 018365272, 19 May 2021; and
- United Kingdom, “ELF BAR”, No. UK00003646223, 24 May 2021.

The Complainant also provides a non-translated certificate in Russian language. Therefore, the Panel considers this exhibit inadmissible.

The Respondent has not provided contrary evidence. The Panel is satisfied that the Complainant's ELF BAR trademarks are protected prior to the registration of disputed Domain Name <elfbarl.com> on 9 September 2022.

The disputed domain name, <elfbarl.com> fully incorporates the ELF BAR trademark. The addition of the letter "l" is not enough to confer the disputed domain name a new meaning. Moreover, it is common ground that the rule of principle consists in disregarding the top-level domain (here, ".com").

Therefore, the Panel considers the disputed domain name to be confusingly similar to the Complainant's trademark.

Accordingly, the Panel finds that the Complainant has satisfied the first element.

## **B) Rights and Legitimate Interests**

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.

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under paragraph 4(c) of the Policy include the following:

- (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the 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 domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant claims to have conducted one or more trademark searches in the Chinese trademark database mentioning the Respondent's name and claims to have found no results. However, the Complainant did not provide any document likely to prove that the Complainant carried out such a search.

The Complainant asserts that it has never authorized the Respondent to register or use the disputed domain name. The Panel considers that this assertion establishes the Complainant's *prima facie* case. Consequently, the burden of proof is switched, so that it is up to the Respondent to demonstrate why he believes he has legitimate rights or interests in the domain name.

The Respondent has not provided any evidence to prove its rights or legitimate interests in the disputed Domain Name. The Panel also could not find any rights or legitimate interests under paragraph 4(c) of the Policy.

Accordingly, the second condition of Paragraph 4(a) of the Policy is satisfied.

### **C) Bad Faith**

Under the third condition of the Policy, the Complainant must establish that the disputed domain name has been both registered and is being used in bad faith by the Respondent.

#### **1. The disputed domain name was registered in bad faith**

The Complainant asserts that the ELF BAR trademark is well-known. However, the Complainant does not provide any supportive document likely to demonstrate the notoriety of the trademark. Indeed, the photographs taken in trade fairs make it possible to demonstrate the use of the trademark, but it is not sufficient to prove the notoriety. In the same vein, the Complaint provides sales figures, but does not provide any documents likely to be accepted as proof of notoriety. Moreover, the results of a Google query relating to "ELF BAR" do not allow us to confirm with certainty the well-known nature of the "ELF BAR" trademark.

However, the Panel accepts the Complainant's argument that the registration of the disputed domain name cannot be a coincidence given the very strong similarity of the domain name <elfbarl.com> and the ELF BAR trademark. Further, the argument that the Respondent was aware of the ELF BAR trademark on the day the disputed domain name was registered is supported by the Respondent's use of the Complainant's logo on the page to which the disputed domain name resolves.

Therefore, the Panel concludes that the Respondent registered the domain name in bad faith.

#### **2. The disputed domain name is used in bad faith**

The Complainant demonstrated that the Respondent is using the disputed domain name to display a form intended to allow consumers to verify whether they have purchased genuine e-cigarettes and not counterfeits. The page and form displayed on the Respondent page are almost identical to the Complainant page and form. These facts suggest that the Respondent created such a form in order to collect the identification numbers of genuine e-cigarettes, which raises the suspicion of counterfeit e-cigarette activity. It is well established that counterfeiting activities cannot be considered as activities carried out in good faith. Therefore, the Panel finds that the Respondent is using the domain name in bad faith.

In conclusion, the Panel finds that the Respondent registered and uses the disputed Domain Name in bad faith.

Accordingly, the third condition of Paragraph 4(a) of the Policy is satisfied.

### **6. Decision**

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <elfbarl.com> be transferred to the Complainant.

*Fan Kun*

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Prof. Kun FAN  
Panelist

Dated: 31 May 2023