



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-2301820</b>
<b>Complainant:</b>	<b>Bitmain Technology Company Limited</b> (比特大陆科技有限公司)
<b>Respondent:</b>	<b>Elyesa Bazna</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;bitmain-usa.com &gt;</b>

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

The Complainant is Bitmain Technology Company Limited (比特大陆科技有限公司), of 11/F., Wheelock House, 20 Pedder Street, Central, Hong Kong (香港中環畢打街 20 號會德豐大廈 11 樓). The Complainant is represented by Han Kun Law Offices LLP (北京市汉坤律师事务所), of 9th Floor, Block C1, Oriental Plaza, No. 1 East Chang'an Avenue, Dongcheng District, Beijing (北京市东城区东长安街 1 号东方广场 C1 座 9 层).

The Respondent is Elyesa Bazna of Office 2416, High Streen (*sic*) North, London, IO E6 2JA.

The domain name is <bitmain-usa.com> (“**Domain Name**”), registered by Respondent with Key-Systems GmbH (“**Key-Systems**”), of Im Oberen Werk 1, 66386 St. Ingbert, Germany.

**2. Procedural History**

On 13 October 2023, the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (“**Center**”) under the Uniform Domain Name Dispute Resolution Policy (“**Policy**”) adopted by the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) on 26 August 1999, the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of Directors on 28 September 2013 (“**Rules**”), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“**Supplemental Rules**”). The Center confirmed receipt of the Complaint on 16 October 2023. The Complainant elected this case be dealt with by a one-person panel.

On 16 October 2023, the Center transmitted by email to the Registrar, Key-Systems, a request for registrar verification in connection with the disputed domain name. On 16 October 2023, the Registrar transmitted by email to the Center its verification response,

confirming that Elyesa Bazna is listed as the Registrant. The Respondent's contact email appears as elyesabazna@mail.ru.

On 26 October 2023, the Center told the Respondent about the commencement of the action, asking the Respondent to submit a Response within 20 calendar days, and specifying the due date as by 15 November 2023. The Center informed the Respondent of the Complainant's request to change the language of the proceedings from English to Chinese.

On 16 November 2023, the Center confirmed in an email to the parties that it did not receive a Response Form from the Respondent within the required time.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the Center told the parties the panel had been selected, with Mr. David KREIDER acting as the sole panelist. The Panel determines that the appointment was made under Rule 6 and Articles 8 and 9 of the Supplemental Rules.

On 16 November 2023, the Panel received the file from the Center and should render a decision in this matter by 30 November 2023, if there are no exceptional circumstances.

### **3. Preliminary Issue – Language of the Proceedings**

As the contents of the Complaint (submitted on UDRP standard Form C) was written in Chinese, on 25 October 2023, the Center informed the Complainant that, 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 Center advised that, as confirmed by the Registrar, the language of the Registration Agreement regarding the Domain Name is English, so the language of the proceedings should be English.

On 26 October 2023, the Complainant replied to the Center, explaining that it hopes, because of the topic, that Chinese may be selected as the language of these proceedings due to consideration of procedural efficiency, unless the Respondent disagrees. The Respondent, Elyesa Bazna, did not submit a Response in this matter before the 15 November 2023 deadline, or at all.

The Panel notes the following commentary about the choice of the language of the proceedings in the WIPO Jurisprudential Overview 3.0:

“... [] panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant's mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain

names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement”.

Thus, the factors typically considered by panels focus on whether the use of a language other than that of the registration agreement (the default position under Rule 11) may cause prejudice or unfairness to the respondent party.

Here, the Respondent has defaulted and has not appeared in these proceedings and cannot be heard to complain of unfairness resulting from the choice of language.

The Panel notes that the language of the Domain Name <**bitmain-usa.com**> is written in English and the Complainant’s BITMAIN trademark (the “**Mark**”) is registered in English with the proper authorities in multiple English-speaking jurisdictions. The Panel finds no compelling reason to depart from the default approach under Rule 11 (*i.e.*, the language of the proceeding should be the same as the registration agreement) in this UDRP proceeding.

The Panel decides that English will be the language of these UDRP proceedings.

#### **4. Factual background**

Incorporated in 2014, the Complainant and its affiliates (including but not limited to Beijing Bitmain Technology Co., Ltd.) are the world's leading technology companies in the fields of blockchain and artificial intelligence with business locations in China, Singapore, the United States and elsewhere.

The Complainant’s “Antminer” bitcoin and cryptocurrency mining computer has achieved worldwide renown. It uses a so-called “ASIC”, or “Application Specific Integrated Circuit”, an integrated circuit or “chip” created specifically to perform a single type of calculation known as a “hash” algorithm, such as SHA256 or EquiHash, and is optimized only and exclusively to perform that operation faster and with greater energy efficiency than generic computing devices.

The Complainant and its affiliates have prior registered trademark rights to the Mark which they have used continuously as their trade names in the Chinese mainland, Hong Kong, Singapore, the United States and other countries and regions since 2013. The Complainant’s official website at URL “www.bitmain.cn” under the name of the Complainant's affiliate was registered on 4 November 2013.

The Respondent, Elyesna Bazna, has defaulted and did not submit a response timely, or at all.

#### **5. Parties’ Contentions**

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

The Complainant’s contentions may be summarized:

The Complainant alleges the Domain Name is confusingly identical or substantially similar to the Mark as the Domain Name <**bitmain-usa.com**> incorporates the Complainant's registered "BITMAIN" Mark in its entirety, adding a country-specific "usa" as its suffix

after "BITMAIN", which is likely to confuse the relevant public, but does not distinguish the Domain Name from the Mark. The Complainant notes that past UDRP panels have held that when a domain name contains a trademark or is confusingly similar to a trademark, the domain name is found to be identical or confusingly similar to the trademark, despite the presence or absence of other words in the domain name (see WIPO Case No. D2009-1325, WIPO Case No. D2009-0121, WIPO Case No. D2007-1064).

The Domain Name was registered on 4 May 2023, well after the earliest use and registration of the Mark and <bitmain.cn> domain names by the Complainant and its affiliates. The Complainant claims it is not affiliated with the Respondent and has never let the Respondent register or use the Mark.

The Complainant asserts that the Respondent registered and is using the Domain Name in bad faith, as the Complainant's prior rights and interest in the BITMAIN Mark would have been revealed by a casual Internet search and could easily have been determined had the Respondent acted in good faith. Only if this basic search reveals that the domain name does not infringe on the rights and interests of others, is the registration of the domain name legitimate. The Respondent did not fulfill this basic duty of care when registering the Domain Name.

The Complainant's "BITMAIN" Mark is fictitious, with strong originality and distinctiveness, and has reached high international reputation after long-term use by the Complainant. Here, the registration date of the disputed domain name was 4 May 2023, much later in time than the Complainant's <bitmain.cn> domain.

The Respondent's use of the Domain Name is likely to cause the relevant public to mistakenly believe that the website to which the disputed domain name resolves is the Complainant's official website, which is a typical situation of impersonating the identity of the Complainant and deliberately misleading the relevant public to unfairly obtain commercial benefit.

The Respondent's website to which the Domain Name resolves prominently displays the "BITMAIN" logo and Mark alongside various models of the Complainant's Antminer machines offered for sale. The Respondent's website displays a "CERTIFICATE OF OFFICIAL DISTRIBUTOR" purported to have been issued by the Complainant's affiliate, Bitmain Development PTE, which the Complainant identifies as a fake. The Respondent falsely purports to be an authorized dealer of the Complainant's products and is offering for sale on the Internet product models the same as the products sold by the Complainant.

The Respondent is using the Complainant's registered Mark to impersonate the Complainant to mislead and induce the public to visit the Domain Name and website to obtain an unfair commercial advantage. The Respondent is misrepresenting itself as an authorized BITMAIN dealer by displaying a forged "Official Dealer Certificate" on the website, misappropriating the promotional content and product manuals of the Complainant and its affiliates, and has registered and is using the Domain Name in bad faith.

## B. Respondent

The Respondent's contentions may be summarized:

The Respondent, Elyesna Bazna, has defaulted and did not submit a response timely, or at all.

## 6. Findings

The Domain Name was registered on 4 May 2023, but the Complainant's Mark was registered at least as early as 24 March 2015.

The Complainant has never authorized or licensed the Respondent to register or use its Mark, and has no reason to believe that the Respondent, Elyesna Bazna, has ever been known by the Mark, which is a fictitious and coined name.

The website to which the Domain Name resolves offers for sale a variety of models of the Complainant's highly regarded ANTMINER bitcoin and cryptocurrency mining machines and displays a fake "CERTIFICATE OF OFFICIAL DISTRIBUTOR", thus falsely represents itself as an authorized dealer in the Complainant's products for the purpose, and to mislead the consuming public and free riding on the Complainant's well-established reputation for producing high-quality, sought after computing devices.

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made 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 regarding the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

### A) Identical / Confusingly Similar

A side-by-side comparison leads the Panel to conclude that the Domain Name, which incorporates the Complainant's Mark in its entirety and merely adds the geographic descriptor "USA", is identical or confusingly similar to the Mark in which the Complainant enjoys prior registered rights. The geographic descriptor "USA" only increases the likelihood of confusion, although consumers' actual confusion need not be shown by a complainant to satisfy this Policy element, which is understood to be a mere "standing" requirement with a relatively low threshold.

The Panel finds that Policy ¶ 4(a)(i) has been satisfied.

### B) Rights and Legitimate Interests

The Complainant has made out a *prima facie* case that the Respondent lacks any rights or legitimate interests in or to the Domain Name. The Complainant's case is accepted by the Panel, particularly as the defaulting Respondent has not appeared to deny or refute the Complainant's case.

Further, the sale of competing goods on the Respondent's website cannot constitute good faith "fair use" of the Domain Name.

The Panel finds that Policy ¶ 4(a)(ii) has been satisfied.

### C) Bad Faith

As noted in the “Findings” section above, the website to which the Domain Name resolves offers for sale a variety of models of what purport to be the Complainant’s highly regarded ANTMINER bitcoin and cryptocurrency mining machines and displays a fake “CERTIFICATE OF OFFICIAL DISTRIBUTOR”, thus, the Respondent is using the Domain Name to falsely represents itself as an authorized dealer in the Complainant’s products for the purpose of misleading the consuming public and free riding on the Complainant’s well-established reputation for producing high-quality, sought after computing devices.

On the evidence adduced by the Complainant, the Panel finds that the Respondent registered and is using the Domain Name intentionally, unfairly and in bad faith to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of the website or of the computing products offered for sale on the website, or both.

The Panel finds that Policy ¶ 4(a)(iii) has been satisfied.

### 7. Decision

The Complainant having shown all three elements required under the ICANN Policy, the Panel decides that relief shall be **GRANTED**.

It is ORDERED that the <**bitmain-usa.com**> domain name be **TRANSFERRED** from the Respondent to the Complainant.



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David L. Kreider, Panelist

Dated: 22 November 2023