Asian Domain Name Dispute Resolution Centre

ADNDRC hong kong

**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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| **Case No.:** | HK-2201615 |
| **Complainant:** | 深圳市爱奇迹科技有限公司 (Shenzhen iMiracle Technology Co., Ltd.) |
| **Respondent:** | Nan Xin Guo |
| **Disputed Domain Name(s):** | <elfdar.com> |

## 1. The Parties and Contested Domain Name

The Complainant is 深圳市爱奇迹科技有限公司 (Shenzhen iMiracle Technology Co., Ltd.), of Room 1201, Building 1, Wanting Building, Labor Community, Xixiang Street, Baoan District, Shenzhen.

The Respondent is Nan Xin Guo, of Hu Bei Sheng Gong An Xian Cheng, Huang Gang, Hubei, CN.

The disputed domain name is <elfdar.com>, registered by the Respondent with GODADDY.COM, LLC on 24 September 2021.

## 2. Procedural History

On 3 April 2022, the Complainant submitted a Complaint to the Hong Kong 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, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by the ADNDRC. On 7 April 2022, the ADNDRC Hong Kong Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint.

On 7 April 2022, the ADNDRC Hong Kong Office sent to the Registrar by email a request for registrar verification in connection with the disputed domain name. The Registrar responded to the ADNDRC Hong Kong Office on 8 April 2022 its verification response, confirming the information of the Respondent; and further confirming the language of the registration agreement for the disputed domain name is English.

On 8 April 2022, the ADNDRC Hong Kong Office notified the Complainant to revise its Complaint based on the information provided by the Registrar. On the same day, the

Complainant submitted a revised Complaint to the ADNDRC Hong Kong Office.

On 12 April 2022, the ADNDRC notified the Complainant that the Complaint has been confirmed and the case officially commenced. On the same day, the ADNDRC Hong Kong Office transmitted by email to the Respondent the Written Notice of the Complaint, which informed the Respondent that the Complainant had filed a Complaint against the disputed domain name, together with the Complaint and its attachments according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Hong Kong Office notified ICANN and the Registrar of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time. The ADNDRC Hong Kong Office declared the Respondent's default on 3 May 2022. Since the Respondent did not mention Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC Hong Kong Office informed the Complainant and the Respondent that the ADNDRC Hong Kong Office would appoint a single-member Panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Hongbo (Julia) ZHONG, the ADNDRC Hong Kong Office notified the parties on 5 May 2022 that the Panel in this case had been selected, with Ms. Hongbo (Julia) ZHONG acting as the sole panelist. On the same day, the Panel received the file from the ADNDRC Hong Kong Office and that within 14 days a Decision should be rendered, i.e., on or before 19 May 2022.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceedings 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 proceedings. The language of the current disputed domain name Registration Agreement is English; thus, the Panel determined English as the language of the proceedings.

## 3. Factual background

### A. The Complainant

The Complainant in this case is 深圳市爱奇迹科技有限公司 (Shenzhen iMiracle Technology Co., Ltd). The registered address is Room 1201, Building 1, Wanting Building, Labor Community, Xixiang Street, Baoan District, Shenzhen. The authorized representative in this case is 唐敏杰/Minjie Tang of 北京大成（上海）律师事务所 /Beijing Dacheng Law Offices, LLP (Shanghai).

### B. The Respondent

The Respondent in this case is Nan Xin Guo. The registered address is Hu Bei Sheng Gong An Xian Cheng, Huang Gang, Hubei, CN.

The Respondent is the current registrant of the disputed domain name <elfdar.com>. The Registrar of the disputed domain name is GODADDY.COM, LLC.

## 4. Parties' Contentions

### A. Complainant

The Complainant's contentions may be summarized as follows:

i. The disputed domain name is similar to the trademark owned by the Complainant, which is likely to cause confusion.

The Complainant - 深圳市爱奇迹科技有限公司 (Shenzhen iMiracle Technology Co., Ltd.) - is a world-renowned e-cigarette company from China, established in 2007, headquartered in Shenzhen, having branches in Shanghai, Hong Kong, the United States, Ireland, Germany and other places. The Complainant has established a well-known e-commerce platform at home and abroad to bring safer and more reliable electronic cigarette products to consumers around the world.

"ELF BAR" is an e-cigarette brand owned by the complainant since 2018. The Complainant has a prior right in the trademark "ELF BAR", registered by the Complainant's wholly owned subsidiary on 21 February 2021 and then transferred to the Complainant. Up to now, the Complainant's "ELF BAR" branded products have been sold in dozens of countries around the world with monthly sales over RMB 10 million and to nearly one million consumers.

The Complainant also has a prior domain name registration <elfbar.com>, held by Complainant's wholly owned subsidiary since 30 September 2020.

The main part of the disputed domain name <elfdar.com> is "elfdar" which is different from the Complainant's trademark "ELF BAR" by only one letter. The word "ELF BAR" is an entirely fanciful word of the Complainant, which has very high significance. The domain name used by the Respondent is similar to the trademark owned by the complainant, which would easily lead consumers to confusion.

ii. The Respondent has no rights to or legitimate interests in respect of the domain name.

The Respondent does not enjoy any trademark rights for the word "elfdar" and has no relationship with the Complainant. The Complainant never permitted the Respondent to use its trademark or give its authorization to the Respondent to register any domain name similar to its trademark "ELF BAR".

iii. The disputed domain name has been registered and used in bad faith.

The Respondent has no rights to or legitimate interests in the word "elfdar" but chose such word that is confusingly similar to the Complainant's trademark "ELF BAR" to register the disputed domain name, which indicates the Respondent's maliciousness in domain name selection. The disputed domain name was registered in bad faith.

Furthermore, the website of the disputed domain name was used as a verified fake goods website. The content of the website of the disputed website is completely captured from the Complainant's website <Elfbar.com>. By using the website of the disputed domain name, the Respondent has intentionally attempted to obtain illegal benefits by misleading consumers to believe that the website of

the deputed domain name is the Complainant's website and that the fake goods are the genuine products of the Complainant. Therefore, the disputed domain name was used in bad faith.

In accordance with the relevant provisions and for the above reasons, the Complainant requests that the disputed domain name <elfdar.com> should be transferred to the Complainant.

### B. Respondent

The Respondent did not submit any Response.

## 5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of the following 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

Pursuant to Paragraph 4(a)(i) of the Policy, the Complainant must prove its rights on a trademark or service mark and the disputed domain name is identical or confusingly similar to its trademark and service mark.

The Complainant claims that he has the prior trademark right of "ELF BAR" in China, which was first registered by Shenzhen Weiboli Technology Co., Ltd. ("Weiboli"), a wholly owned subsidiary of the Complainant, and then transferred to the Complainant. The Complainant submitted copies of the relevant trademark registration certificate, trademark transfer certificate and Weiboli's statement in ***Annex 2 of Complaint***. The Complainant states that the trademark "ELF BAR" has been used in the marketplace since 2018 and has obtained a good reputation around the world because of the good quality of its products and Complainant's efforts on promotion, see ***Annex 4 of Complaint***. In addition, The Complainant claims a prior domain name registration <elfbar.com>, held by a wholly owned subsidiary of the Complainant since 30 September 2020, see ***Annex 3 of Complaint***.

Having reviewed ***Annex 2, 3 and 4 of the Complaint***, the Panel finds that: 1) The trademark "ELF BAR" was registered in China on 21 February 2021 in the name of Weiboli in Class 34 under the registration No. 47304567 covering the goods of Cigarettes; Cigarette Cases; Cigarette Mouthpieces; Smoking Lighters; Cigarette Filters; Tobacco Bags; Electronic Cigarettes; Cigars; Cigarettes; Snuff etc., being valid until 20 February 2031; 2) The registration No. 47304567 was transferred from Weiboli to the Complainant on 20 November 2021 and now it is under the name of the Complainant; and 3) Weiboli declares in its statement that, as a wholly owned subsidiary of the Complainant, Weiboli was authorized by the Complainant to register the trademark "ELF BAR" in China on behalf of the Complainant. The actual owner of the trademark is the Complainant who has been using this trademark in the marketplace since the launch of the

trademark "ELF BAR" in 2018. The Respondent did not make any objection to the Complainant's evidence and his claims. The Panel discovered that the Complainant's trademark "ELF BAR" was successfully registered on 21 February 2021 and was used in the marketplace in 2018, which is earlier than the registration date of the disputed domain name, i.e., 24 September 2021. In this regard, the Panel confirmed that the Complainant has prior rights to the trademark "ELF BAR".

The disputed domain name <elfdar.com> is composed of "elfdar" and ".com". As a generic top-level domain suffix, ".com" is technically required to operate a domain name and does not have the capacity to identify a source and thus should be disregarded in the determination of confusing similarity. The distinctive part of the disputed name <elfdar.com> therefore is "elfdar". Both "elfdar" and the Complainant's trademarks "ELF BAR" consist of six (6) English letters. There is only one letter different between them, wherein five of the six letters are the same in composition and in sequence.

The Panel therefore holds that the disputed domain name <elfdar.com> is confusingly similar to the Complainant's trademark "ELF BAR". Accordingly, the Complainant has proven the element required by Paragraph 4(a)(i) of the Policy.

**B) Rights and Legitimate Interests**

Paragraph 4(c) of the Policy states that the following circumstances in particular, but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the rights or legitimate interests to the domain name:

(i) Before any notice to the Respondent of a dispute, the use of, or demonstrable preparations to use, a domain name or a name corresponding to said 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 has made legitimate noncommercial or fair use of a domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant contends that the Respondent has no rights or legitimate interests in respect to the disputed domain name because: 1) the Respondent does not enjoy any trademark right; 2) the Complainant has no relationship with the Respondent; and 3) the Complainant never permitted the Respondent to use "elfbar" as a trademark or gave its authorization to the Respondent to register any domain name. The Complainant has submitted prima facie evidence required by Paragraph 4(a)(ii) of the Policy and the burden of proof was transferred to the Respondent.

The Respondent did not submit any Response in this case. Therefore, the Respondent failed to prove its rights and legitimate interests under the Paragraph 4(c) of the Policy. Accordingly, the Panel finds that the Complainant has satisfied the second element as provided under Paragraph 4(a) of the Policy.

**C) Bad Faith**

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

Under Paragraph 4(b) of the Policy, the following circumstances in particular, but without limitation, are evidence of registration and use of a disputed domain name in bad faith:

i. Circumstances indicating that the Respondent has registered or has acquired a domain name primarily for the purpose of selling, renting, or otherwise transferring said domain name registration to a Complainant who is the owner of the trademark or service mark or to a competitor of said Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
ii. The Respondent has registered a domain name in order to prevent an owner of a trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
iii. The Respondent has registered a domain name primarily for the purpose of disrupting the business of a competitor; or
iv. By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to their website or other on-line location, by creating a likelihood of confusion over a Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

The Complainant alleges that the Respondent has acted in bad faith by registering and using the disputed domain name. The Respondent did not respond to the Complainant's contentions.

According to the evidence provided by the Complainant, the information of the disputed domain name <elfdar.com> was discovered by the Public Security Bureau of Luchuan County, Guangxi Province ("Bureau") during their actions of cracking down on trademark crimes. After seizing nearly 100,000 fake e-cigarette products branded with "ELF BAR", the Bureau found that the disputed domain name was used to set up a verified fake goods website, see ***Annex 5 of Complaint***. In addition, the contents of the website are copied from the Complainant's website <elfbar.com>, see ***Annex 6 of Complaint***. It is clear that the Respondent has intentionally attempted to seek illegal benefits by misleading consumers to believe that the verified fake goods on the website of the disputed domain name are genuine products from the Complainant. The Panel is of the view that the disputed domain name was used in bad faith.

Given that the Respondent has failed to prove any right to or legitimate interest in the word "elfdar" but chose this word that is confusingly similar to Complainant's trademark "ELF BAR" to register the disputed domain name, the Panel is of the view that the disputed domain name was registered in bad faith.

In light of the above, the Panel holds that this is sufficient to establish bad faith under Paragraph 4(b) of the Policy. Accordingly, the third element as provided under Paragraph 4(a) of the Policy is satisfied.

✧ *The above-mentioned Annexes to the Complaint are not attached to this Decision*.

## 6. Decision

For all the foregoing reasons, in accordance with Paragraphs 4(a) of the Policy and 15 of the Rules, the Panel decides that the disputed domain name <elfdar.com> should be transferred to the Complainant - 深圳市爱奇迹科技有限公司 (Shenzhen iMiracle Technology Co., Ltd.)

Ms. Hongbo (Julia) ZHONG
Panelist

Dated: 18 May 2022