



Asian Domain Name Dispute Resolution Centre
hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No. HK-2201677

Complainant: Imiracle (ShenZhen) Technology Co., Ltd. [爱奇迹（深圳）技术有限公司]

Respondent: Gang Xiao

Disputed domain name(s): elfbarer.com

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 Gang Xiao, of Yi Chun Shi, Ke Ji Yuan, Yichun, Jiangxi Province, China.

The domain name at issue is elfbarer.com, registered by the Respondent with 1API GmbH.

2. Procedural History

On 18 October 2022, the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Hong Kong Office) and elected this case to be dealt with by a one-person 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 18 October 2022, the ADNDRC Hong Kong Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, 1API GmbH, a request for registrar verification in connection with the disputed domain name.

On 19 October 2022, the Registrar transmitted by email to the ADNDRC Hong Kong Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details. The Registrar also pointed out that the language of the Registration Agreement is English.

After receiving the Registrar's confirmation, the ADNDRC Hong Kong Office invited the Complainant to revise the Complaint accordingly. On 20 October 2022, the Complainant submitted the revised Complaint in English to the ADNDRC Hong Kong Office.

On 21 October 2022, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced. On the same day, the ADNDRC Hong Kong Office transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC Hong Kong Office had sent the Complaint and its attachments through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Hong Kong Office notified ICANN and the Registrar, 1API GmbH, of the commencement of the proceedings.

The Respondent failed to submit a response within the specified time period. The ADNDRC Hong Kong Office notified the Respondent's default. Since the Respondent did not mention the 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 one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Yang Anjin, the ADNDRC Hong Kong Office notified the parties on 11 November 2022 that the Panel in this case had been selected, with Mr. Yang Anjin acting as the sole panelist. The Panel determines that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On 11 November 2022, the Panel received the file from the ADNDRC Hong Kong Office and should render the Decision within 14 days, i.e., on or before 25 November 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 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 language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

3. Factual Background

A. The Complainant

The Complainant in this case is Imiracle (ShenZhen) Technology Co., Ltd. [爱奇迹（深圳）技术有限公司]. The registered address is 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 authorized representative in this case is Beijing Dacheng Law Offices, LLP(Shanghai).

B. The Respondent

The Respondent in this case is Gang Xiao. The registered address is Yi Chun Shi, Ke Ji Yuan, Yichun, Jiangxi Province, China.


The Respondent is the current registrant of the disputed domain name “elfbarer.com”, which was registered on 30 August 2022 and will expire on 30 August 2023 according to the WHOIS information. The registrar of the disputed domain name is 1API GmbH.

4. Parties’ Contentions

A. Complainant

The Complainant’s affiliated company Shenzhen iMiracle Technology Co., Ltd, established in 2007, is a well-known e-cigarette company from China. The company’s headquarter is located at Shenzhen, and has branches in Shanghai, Hong Kong, the United States, Ireland, Germany and other places. Adhering to the core values of “positive, striving, and win-win”, the Complainant established a well-known e-commerce platform at home and abroad - Heaven Gifts, to bring safer and more reliable electronic cigarette products to consumers around the world. Due to the adjustment of the company’s business strategy, the Complainant is now taking over the main business and trademark rights of the ELF BAR®.

ELF BAR® is an e-cigarette brand owned by the Complainant and its affiliates. Since the beginning of the ELF BAR brand in 2018, ELF BAR® had a good reputation in the world for the good quality and promotion of its products. In order to promote the ELF BAR® brand and to protect its precious intellectual property rights, the Complainant’s affiliated company, Shenzhen Weiboli Technology Co., Ltd.(“Weiboli”) was granted registration of ELF BAR® trademark in

China (on February 21, 2021) and trademark“” (on September 28, 2021) , approved goods include e-cigarette in Class 34: snuff; tobacco; cigarette cases, cigarette puffs, cigarette lighters for smoking, cigarette filters, cigarette pouches, electronic cigarettes, cigars, cigarettes. Due to the strategic adjustment of the company, the above trademark has been transferred to the Complainant on May 13, 2022, and the transfer has been completed.

(1) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The main part of the disputed domain name “elfbarer.com” is “elfbarer”;“er” is a noun-forming suffix, usually add to nouns. From the point of view of domain name recognition, consumers mainly identify the content of elfbar, the suffix “er”has no meaning. And the main distinctive part of the domain name “elfbar” is exactly the same as the Complainant's trademark. The word “elfbar” is entirely a fanciful word of the Complainant, which has a very high significance. The domain name used by the Respondent can easily lead to consumer confusion.

At the same time, it was confirmed by the Police Station that the disputed domain name was used as the authenticity verification website of elfbar’s counterfeit goods. Consumers scan the QR code on the fake goods and go directly to the Verify Product page of the disputed domain name. In this way, consumers may believe the disputed domain name is the real official ELF BAR® product authenticity verification website of the Complainant.

(2) The Respondent has no rights or legitimate interests in respect of the domain name

The disputed domain name was registered on 30 August 2022. It was not only later than the date of the first use of the ELF BAR® trademark on e-cigarette products (dating back to 2018), later

than the first day of elfbar® trademark application in China (filing date: 16 June 2020), and later than the registration of the Complainant's domain name elfbar.com (registration date: 30 September 2020), but also far later than the ELF BAR® brand products gained great reputation.

The Respondent does not enjoy any elfbar® trademark rights. The Complainant never permit Respondent use ELF BAR® trademark or give its authorization to Respondent to register any domain name with ELF BAR® or any similar word. The Respondent is not entitled to any rights of disputed domain name. And, in light of the Complainant and Complainant's affiliates, who do not have any relationship with the Respondent, the Respondent does not enjoy any legitimate interests of disputed domain name.

The Respondent used the infringing domain name as an authenticity check site for ELF BAR® fakes, misleading consumers who buy fake ELF BAR® products into believing that they are buying genuine products. The Complainant has never authorized the Respondent use ELF BAR® trademark in any way, the Respondent did not (and never did) have popularity because of the name Elfbar.

The Respondent registered the disputed domain name and use it to infringe the ELF BAR® trademark rights of the complainant.

In summary, the Respondent dose not enjoy any rights or legitimate interests in the disputed domain name.

(3) The disputed domain name has been registered and is being used in bad faith

The Respondent's malicious can be reflected from the vocabulary of the domain name chosen by it. The word "elfbar" does not exist in English vocabulary, which is a fanciful word created by Complainant. The significant recognition part of the disputed domain name is "elfbar", which is the same as the Complainant's trademark and it can easily cause confusion of consumers for the Respondent.

The disputed domain name was discovered during the inspections of the fake ELF BAR® goods seized by Public Security Bureau of Dalang town, Dongguan city, when they were handling the crime of counterfeiting registered trademarks. As the verification website of fake goods, it attempts to mislead consumers that the fake goods they buy are genuine products sold by the complainant, so as to seek illegal benefits.

The Complainant's ELF BAR® brand is well known and has been specifically linked to the Complainant due to the excellent quality of the Complainant's ELF BAR® products and the long-term promotion of the Complainant.

Based on the Respondent's behavior of using the disputed domain name as the verification website of fake ELF BAR® products and the high popularity of ELF BAR®, it can be fully proved that the Respondent has a good understanding of the Complainant products and trademarks, and tries to make use of the popularity of the Complainant's products to seek illegal profits. Its registration of the disputed domain name can be identified as malicious infringement.

As mentioned above, the Respondent does not enjoy any lawful rights and interests with the disputed domain name. However, the Respondent still based on bad motives to choose to register the disputed domain name and use it as a verification site for ELF BAR® fake goods.

In summary, the disputed domain name has been registered and is being used in bad faith.

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

B. Respondent

The Respondent did not reply to the Complainant's contentions and made no submission in the proceedings.

5. Discussions and 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 trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) Respondent's domain name has been registered and is being used in bad faith.

According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or the respondent has acquired the domain names primarily for the purpose of selling, renting, or otherwise transferring the domain names registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain names; or
- (ii) the respondent has registered the domain names in order to prevent the owner of the 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 the domain names primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain names, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

Respondent in Default

The Policy and the Rules provide that "[i]f a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint." The Panel finds that no exceptional circumstances exist. Accordingly, the Panel will decide the dispute based upon the Complaint and the evidence submitted therewith.

A. Identity or Confusing Similarity

According to paragraph 4(a) of the Policy, the Complainant should prove that it has protectable rights in the mark to which it contends the Respondent's domain name is identical or confusingly similar. In general, the Complainant should own the protectable right prior to the registration date of the disputed domain name, namely 30 August 2022, the registration date of the disputed domain name "elfbarer.com" in this case.

The Panel notes that according to the evidence provided, on 13 May 2022, the Complainant obtained the trademark "ELF BAR", with the Chinese Trademark Reg. No. 47304567 in class 34, from its affiliate company. This trademark was registered on 21 February 2021 and presently valid in China.

Hence, the Panel concludes that the Complainant enjoys the prior trademark right over "ELF BAR" and has satisfied the threshold requirement of being eligible to claim rights.

The Panel also notes that the trademark mentioned above has been actively used by the Complainant and its affiliates especially on e-cigarette products.

The disputed domain name ends with ".com", this suffix only indicates that the domain name is registered under this gTLD, and ".com" is not distinctive without legal significance since the use of a gTLD is technically required to operate a domain name. Thus, the Panel only needs to examine the main part of the disputed domain name "elfbarer".

The differences between the Complainant's trademark "ELF BAR" and the main part of the disputed domain name "elfbarer" are as follows: (i) the trademark is constituted of upper case letters while the domain name is in lower case; (ii) there is a blank space between "ELF" and "BAR" in the trademark while there is no space in "elfbarer"; and (iii) there is an extra "er" in the disputed domain name "elfbarer" than "ELF BAR".

In English, each lower case letter has one and only upper case letter correspondingly, which have identical meaning and pronunciation. That is, the disputed domain name using lower case letters, rather than upper case letters, does not distinguish this domain name from the trademark.

Under most circumstances, a blank space among separate words does not necessarily change the meaning and pronunciation of these words. Also, with regard to domain name, the blank space among letters is not allowed for technical requirement. The public may reasonably expect "ELFBAR" to be used as the domain name of "ELF BAR".

When "elfbar" is combined with "er" as a domain name, "er" is only a small part of the disputed domain name. Particularly, when "ELF BAR", as a brand, is added an extra "er" to its end, this "er" has very limited effect on the appearance and pronunciation compared to "ELF BAR". The Panel notices that when "er" is put after a brand name, it is increasingly prevalent that the public may deem it as a description of consumers, staff or supporters of the company the brand directing to. Under this circumstance, using "brand name + er" as the domain name, will highlight and emphasize the brand; also, the meaning of the domain name may be construed as this company's consumers, staff or supporters.

The slight difference between the main part of the disputed domain name – “elfbar.com” and the Complainant’s trademark “ELF BAR” is completely negligible in the case that their appearances, pronunciations and lengths are highly similar, which does nothing to dispel confusing similarity, but instead references the Complainant’s trademark “ELF BAR”, which is used for Complainant’s e-cigarette products.

The Panel therefore finds that the disputed domain names “elfbarer” is confusingly similar to the Complainant’s registered trademarks.

Accordingly, the Complainant has proven the element required by the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests of the Respondent

The Panel accepts that the Complainants has amply demonstrated that the Respondent lacks any rights or legitimate interests, and by virtue of its default, the Respondent has failed to come forward with any evidence to rebut that finding [including the examples listed in paragraph 4(c) of the Policy].

There is similarly no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain names without intent for commercial gain.

Accordingly, the Panel finds that the Complainant has satisfied the second condition under paragraph 4(a)(ii) of the Policy.

C. Bad Faith

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another.

For the reasons discussed under this and the preceding heading, the Panel considers that the Respondent’s conduct in this case constitutes bad faith registration and use of the disputed domain names within the meaning of paragraphs 4(b)(iv) and 4(a)(iii) of the Policy.

The Complainant alleges that the word “elfbar” is fabricated by the Complainant and does not exist in English vocabulary. The Respondent does not present any grounds to convince the Panel that it is reasonable for the Respondent to use this word “elfbarer”, with high distinctiveness, in the disputed domain name.

On the contrary, the Panel notes that according to the evidence provided, the disputed domain name is used to establish a website, on which “ELF BAR” is used as LOGO apparently, to promote similar products of the Complainant. Meanwhile, the Respondent is suspected to sell counterfeit products of “ELF BAR” e-cigarette products, and the disputed domain name is used to redirect to the “Verify Product” page for authenticity verification of the counterfeit products. Obviously, the consumers will be misled to think the products promoted on the website redirected by the disputed domain name are the genuine products from the Complainant or its affiliates.

It can be reasonably deduced that the Respondent clearly was aware of the Complainant and had the Complainant's "ELF BAR" mark in mind, and deliberately attempted to confuse the consumers through the use of the disputed domain name to seek illegal benefits.

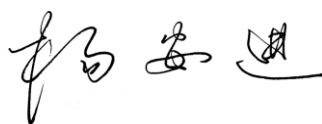
The Panel believes that the Respondent intentionally creates confusion with the Complainant's trademark by maliciously registering and using the disputed domain names for the purpose of commercial interests, and deliberately lures Internet users to visit its website. Such behavior is clearly malicious and falls within the "bad faith" provision Section 4b(iv) of the Policy, namely: your (the Respondent's) use of the domain name is deliberately trying to attract Internet users access to your (the Respondent's) website or other online website to obtain commercial interests, and the method is to make your (the Respondent's) website or URL or the source, sponsor, affiliation or recognition of products or services on the website or URL similar to the complainant's mark, so as to cause confusion.

6. Decision

Based on the above analysis, the Panel decides that:

The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and the Respondent has no rights or legitimate interests in respect of the domain names; and the domain names have been registered and is being used in bad faith.

Accordingly, pursuant to paragraph 4(a) of the Policy and 15 of the Rules, the Panel decides that the Disputed domain name "elfbarer.com" should be transferred to the Complainant Imiracle (ShenZhen) Technology Co., Ltd. [爱奇迹（深圳）技术有限公司].



Yang Anjin
Sole Panelist

Dated: 21 November 2022