



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2201676
Complainant:	Bitmain Technologies Limited
Respondent:	Orwigs Barbara
Disputed Domain Name(s):	<in-bitmain.shop>

1. The Parties and Contested Domain Name

The Complainant is Bitmain Technologies Limited, of Unit A1, 11/F, Success Commercial Building, 245-251 Hennessy Road, Hong Kong. The authorized representative of the Complainant is Han Kun (Shenzhen) Law Offices, of 20/F, Kerry Plaza Tower 3, 1-1 Zhongxinsi Road, Futian District, Shenzhen 518048, Guangdong, People’s Republic of China (PRC).

The Respondent is Orwigs Barbara, of New Orleans, LA, United States 70032.

The domain name at issue is <in-bitmain.shop>, registered by the Respondent with NameCheap, Inc., of 4600 East Washington Street, Suite 305, Phoenix, AZ 85034, USA.

2. Procedural History

On 13 October 2022, pursuant to the Uniform Domain Name Dispute Resolution Policy (“the Policy”), the Rules for the Uniform Domain Name Dispute Resolution Centre Policy (“the Rules”) and the Asian Domain Name Dispute Resolution Centre Supplemental Rules (“the ADNDRC Supplemental Rules”), the Complainant submitted a Complaint in the Chinese language to the Hong Kong Office of the ADNDRC (“the Centre”) and elected this case to be dealt with by a single-member panel. The Centre acknowledged receipt of the Complaint and notified the Registrar of the disputed domain name on 14 October 2022. The Centre received a reply from the Registrar on 14 October 2022.

On 14 October 2022, the Centre notified the Complainant of the deficiency of the complaint and requested Complainant to rectify, within 5 calendar days (on or before 19 October 2022), the deficiency by updating the information of the Respondent in accordance with the WHOIS information provided by the Registrar. On the same day, the Centre reminded the Complainant that according to Article 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. In this case, the language of the Registration Agreement of the disputed domain name is English, therefore the language of the proceedings of this Complaint should be English. The Complainant was requested to respond regarding the language of the proceedings on or before 19 October 2022.

On 14 October 2022, the Complainant submitted a revised Complaint to the Centre and requested to change the language of proceedings to Chinese. After reviewing the revised Complaint, the Centre confirmed the complaint is in administrative compliance with the Policy and the Rules on 21 October 2022.

On 21 October 2022, the Centre sent a Written Notice of Complaint to the Respondent, notifying the Respondent that a complaint had been filed against the Respondent by the Complainant and the deadline for submitting a response was 10 November 2022. On the same day, the Centre notified the Respondent that the Complainant requested to change the language of the proceeding to Chinese and requested the Respondent to respond to such on or before 26 October 2022. The Respondent did not file a response with the Centre within the prescribed period.

On 11 November 2022, the Centre listed Prof. Jyh-An Lee as a candidate for sole panelist in the case. Prof. Jyh-An Lee confirmed his availability and position to act independently and impartially between the parties on 14 November 2022, and was appointed as the sole Panelist for the captioned case. Both parties were informed of the appointment on the same day.

3. Language of Proceedings

According to Article 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. Section 4.5.1 of the *WIPO Overview of WIPO Panel Views on Selected UDRP Questions (Third Edition)* states that “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.”

In the present case, the language of the Registration Agreement of the disputed domain name is English. Therefore, the default language of proceeding is English. Despite the fact that the Registration Agreement is in English, the Complainant has submitted its Complaint in Chinese and has chosen Chinese as the language of proceeding without providing any justifying reasons. Nevertheless, there is no evidence showing that the Respondent understands Chinese. The disputed domain name is neither in Chinese nor identical or similar to the Complainant’s Chinese mark. Moreover, the Panel does not find (1) any content on the

webpage under the disputed domain name is in Chinese; (2) any prior case involving the Respondent was in Chinese; (3) any prior correspondence between the parties was in Chinese; and (4) any evidence of other Respondent-controlled domain names are registered or used in Chinese. Considering all these factors together, the Panel holds that English is a more proper language than Chinese for the present proceeding.

The Complainant has submitted its Complaint in Chinese. As mentioned above, there is no evidence showing that the Respondent understands Chinese. However, the Panel decides not to order the Complainant to translate the Complaint into English because (1) although the Respondent should have known from the above-mentioned Written Notice of Complaint, which was written in both English and Chinese, that this is a domain name dispute, it did not file any response with respect to the language of proceeding; and (2) there might be “unwarranted delay in ordering the complainant to translate the complaint” into English, and such delay contradicts the fast-track nature of UDRP proceedings by imposing extra costs and time on the parties. See *Bitmain Technologies Limited v. Platin System/Platin Server HK-2201601*.

In this case, the language of the Registration Agreement is English, and both Parties have had an opportunity to argue their position on this point. Under such circumstances, the Panel finds that no agreement was reached among the parties on the change of language of proceeding. Therefore, the Panel decides that the language of proceeding in the present case is the language of the Registration Agreement of the disputed domain name, which is English.

4. Factual background

A. For Complainant

The Complainant, Bitmain Technologies Limited (比特大陆科技有限公司) was incorporated on 10 January 2014. The Complainant and its affiliated company Beijing Bitmain Technology Co., Ltd. (北京比特大陆科技有限公司) are technology firms with international reputation, offering products including chips, servers and cloud solutions applied in the areas of blockchain and artificial intelligence, and have subsidiaries in China, the United States, Singapore, and other locations in the world. The international reputation of the Complainant and its affiliates has been illustrated by the fact that they have been listed in the Hurun Global Unicorn List 2019, Hurun China 500 Most Valuable Private Companies 2019, Hurun China Most Valuable Chip Design Companies 2020, the Silicon 100, and etc. The Complainant’s Antminer products are the industry-leading products that hold a majority share of the global market and have been rated as top mining products by several domestic and foreign media.

The Complainant owns a series of valid trademark registrations incorporating the word “BITMAIN” in classes 9, 35, 36 or 42 in multiple jurisdictions including Singapore, the European Union, the United States, Switzerland and China (hereinafter collectively referred to as “the BITMAIN trademarks”). The Complainant has adduced evidence to show that its BITMAIN trademarks have been extensively used in its business activities and promotional materials since 2014. The Complainant is also the registrant of the domain name <bitmain.cn>.

B. For Respondent

The Respondent did not file any response with the Centre within the prescribed period.

5. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The domain name in dispute is identical or confusingly similar to the Complainant's registered trademarks

The substantive part of the disputed domain name is "in-bitmain", which entirely incorporates the Complainant's registered trademark "bitmain". The additional part "in-" in the disputed domain name is less distinctive and cannot distinguish the disputed domain name from the Complainant's registered trademark. Therefore, the disputed domain name is confusingly similar to the Complainant's registered trademark.

- ii. The Respondent has no rights or legitimate interests in the registration of the domain name in dispute

The Complainant contends that there is no evidence indicating the Respondent enjoys any prior rights or legitimate interests in respect of the disputed domain name. Firstly, the domain name in dispute was registered on 9 June 2022, which is much later than the time of the Complainant's and its affiliated companies' use and registration of the BITMAIN trademarks, as well as their use of the <bitmain.cn> domain name. Secondly, there is no relationship between the Complainant and the Respondent. The Complainant has never authorized the Respondent to register or use any trade name, trademark, or domain name related to the BITMAIN marks.

- iii. The Respondent has registered and is using the disputed domain name in bad faith

The Complainant contends that the Respondent has registered and is now using the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy.

Firstly, the Complainant has prior right in the BITMAIN trademarks. The mark "BITMAIN" is a compound word with high distinctiveness which corresponds with the Complainant's corporate name in Chinese, and has acquired international reputation through the Complainant's continuous use. Considering that the registration date of the disputed domain name is much later than the registration and use of the Complainant's prior trademarks, the Complainant contends that the Respondent was or at least should be aware of the Complainant's prior marks when registering the disputed domain name. Therefore, the registration of the disputed domain name, which completely incorporates the Complainant's prior marks and could easily cause confusion among the public, is in bad faith.

Secondly, the Complainant contends that Respondent has been using the disputed domain name in a confusing manner with an intention to mislead the public into believing that the Respondent or the disputed domain name is related to the Complainant, given her following conducts on the webpage directed by the disputed domain name:

- a) Extensively displaying the Complainant's registered trademarks including "Bitmain" and "Antminer";
- b) Engaging in the sales of computer and crypto devices similar to the Complainant's core business, including an "Antminer S19 XP" model identical to one of the Complainant's own products.
- c) Copying the information, instruction and slogan of the Complainant regarding the Antminer S19 XP model.
- d) Procuring the disputed domain name to point to the website <bitmain.com>, previously held by the Complainant's affiliated company, by clicking on several tabs on the disputed website.

Based on the above, the Complainant contends that the use of the disputed domain name is in bad faith.

B. Respondent

The Respondent did not file any response within the prescribed period.

6. 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

In the present case, the Complainant has adduced evidence to show that it and its affiliated companies have maintained valid registrations for the BITMAIN trademarks in multiple classes in Singapore, the European Union, the United States, Switzerland and China.

The disputed domain name is <in-bitmain.shop>, which entirely incorporates the Complainant's registered trademark. When assessing whether the disputed domain name is identical or confusingly similar to the complainant's trademark, it has been well established that the generic top-level part ".shop" should not be considered. Furthermore, with reference to *LEGO Juris A/S v. huangderong* WIPO Case NO. D2009-1325, *National Football League v. Alan D. Bachand, Nathalie M. Bachand d/b/a superbowl-rooms.com* WIPO Case No. D2009-0121, and *National Football League v. Peter Blucher d/b/a BluTech Tickets* WIPO Case No. D2007-1064, the Panel accepts the Complainant's contention that the addition of the insignificant part "in-", consisting of the word "in" and a hyphen, in the second-level domain name, is less distinctive and not sufficient to differentiate the disputed domain name from the Complainant's prior trademark, and thus could easily mislead consumers to believe that the Respondent or the disputed domain name is somehow associated with or endorsed by the Complainant. Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trademark as stipulated by Paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

There is no evidence suggesting that the Respondent has been commonly referred to by the disputed domain name. The Respondent's name and other information provided by the Registrar do not show the Respondent has any association with "BITMAIN", and thus there is no justification or apparent need for the Respondent to use the Complainant's registered trademark in the disputed domain name.

Furthermore, the Complainant has declared in its Complaint that the Respondent is not in any form associated with the Complainant or its subsidiary, nor is the Respondent's registration and use of the disputed domain name authorized by the Complainant. The Respondent did not submit a response and consequently failed to adduce evidence to prove she has any right or legitimate interest in the disputed domain name. It is therefore inferred that the Respondent in this case does not have any right or legitimate interest in the disputed domain name as stipulated by Paragraph 4(a)(ii) of the Policy.

C) Bad Faith

Paragraph 4(b) of the ICANN Policy specifies four types of circumstances that could be evidence of the registration and use of a domain name in bad faith. They include: (i) circumstances indicating that the holder of the domain name has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 your documented out-of-pocket costs directly related to the domain name; or (ii) the holder of the domain name has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or (iii) the holder of the domain name has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the holder of the domain name has intentionally attempted to attract, for commercial gain, Internet users to his 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 his web site or location or of a product or service on his web site or location.

In the present case, the Complainant has adduced evidence to show that it has been in operation and widely reported or awarded since at least 2014. Most of the Complainant's BITMAIN marks were registered with the respective national trademark offices from 2015 to 2019. The disputed domain name was registered in June 2022, far later than the registration and use of the Complainant's trademarks.

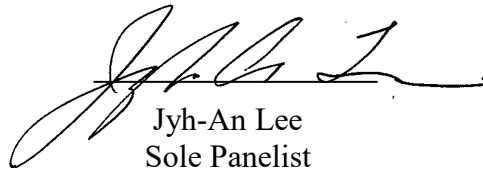
As of the date of this decision, the disputed website is no longer active and passively held by the Respondent. However, the Complainant has submitted evidence to show that by adding a prefix "voskco" in the disputed domain name, the disputed website will direct to a webpage with seven different indexes displayed, four of which point to one of Bitmain official websites (<https://shop.bitmain.com>), previously held by the Complainant's affiliated company, or a pirated webpage copying information from Bitmain's official website. In particular, one of the indexes displayed on the disputed website, "S19XP-groupbuy", was named after the Complainant's product Antminer S19 XP, and offers for sale the "Bitcoin Miner S19 XP" model. The above conducts could easily cause confusion among consumers and should qualify as a use in bad faith as stipulated by Paragraph 4(a)(iii) of the Policy.

Meanwhile, the above conduct indicates that the Respondent was aware of the Complainant and its services when the disputed domain name was registered and had nevertheless registered the disputed domain name in bad faith, with the intention to free ride on the Complainant's reputation to attract Internet users to the infringing website instead of the Complainant's own homepage. Considering the similarity between the disputed domain name and the Complainant's trademarks, and the fact that the Respondent had to have been aware of the Complainant and its trademarks, it is inconceivable that the Respondent registered the disputed domain name for any reason other than in bad faith. Therefore, the Respondent is intentionally attempting to attract, for commercial gains, Internet users to the infringing website by creating a likelihood of confusion with the Complainant's mark.

As such, the Panel finds that the disputed domain name has been registered and is being used in bad faith as stipulated by Paragraph 4(a)(iii) of the Policy.

7. Decision

For all of the foregoing reasons, the Panel decides that the domain name registered by Respondent is confusingly similar to the Complainant's registered trademark, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent's domain name has been registered and is being used in bad faith. Accordingly, pursuant to Paragraph 4(i) of the Policy, the Panel orders that the registration of the domain name <in-bitmain.shop> be transferred to the Complainant.



Jyh-An Lee
Sole Panelist

Dated: 28 November 2022