



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-2201675
<b>Complainant:</b>	Bitmain Technologies Limited
<b>Respondent:</b>	Terry Watson
<b>Disputed Domain Name(s):</b>	<bitmaine9.com>

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**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 Terry Watson, of PoBox 850 Narellan NSW, Sydney 2567, Australia.

The domain name at issue is <bitmaine9.com>, registered by the Respondent with NameCheap, Inc., of 4600 East Washington Street, Suite 305, Phoenix, AZ 85034, USA.

**2. Procedural History**

On 11 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 11 October 2022. The Centre received a reply from the Registrar on the same day.

On 12 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 17 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 notified 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 to this notification on or before 17 October 2022.

On 13 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 in both English and Chinese versions, 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. On 21 October 2022, the Centre received an email reply from the Respondent, requesting the Complaint and the supporting documents to be submitted in writing and in English to facilitate investigation, and at the same time offered to transfer the disputed domain name at a required price. The Centre replied to the Respondent by email on 21 October 2022 and 24 October 2022, explaining the procedures and its neutral position in the proceedings, the rules for determination of the language of proceedings, and reminded the Respondent of the deadline of 10 November 2022 for filing a Response to the Written Notice of Complaint. However, the Respondent did not file a Response within the prescribed deadline.

On 11 November 2022, the Centre listed Prof. Jyh-An Lee as a candidate for sole panelist. 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.

Once the Panel was constituted, the Center referred to the Panel for resolution the parties' dispute related to the language of the proceeding. In considering that issue, the Panel noted that paragraph 11(a) of the Rules provides that "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 Panel also noted paragraphs 10(b) and 10(c) of the Rules, which provide that the parties should be treated equally, that each party should be given a fair opportunity to present its case, and that the proceeding should take place with due expedition.

The Panel ultimately decided that the language of the proceeding would be English and explained its ruling to the Parties in Administrative Panel Procedural Order No.1 dated 28 November 2022, which stated:

"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 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. See *Bitmain Technologies Limited v. Platin System/Platin Server*, HK-2201601.

Furthermore, in deciding whether to require the Complainant to translate the Complaint into the language of the Registration Agreement, the Panel should take into consideration factors such as whether the Respondent is able to understand and effectively communicate in the language in which the Complaint has been made and would suffer no real prejudice, and whether the expenses of requiring translation and the delay in the proceedings can be avoided without at the same time causing injustice to the parties. See e.g., *SWX Swiss Exchange v. SWX Financial LTD*, WIPO Case No. D2008-0400.

As mentioned above, in the present case, it appears unclear to the Panel whether the Respondent is able to communicate in Chinese, and thus the change of language may cause prejudice to the Respondent's ability to respond and defend himself for the registration of the disputed domain name. Meanwhile, the Respondent has objected to the Complainant's request to change the language of the proceeding to Chinese in previous correspondence with the Centre and indicated his willingness to participate in the proceeding should the Complaint be submitted in English. On the other hand, previous correspondence indicates that there is no difficulty for the Complainant to communicate in English, and therefore an order to translate the Complaint into English will not cause real difficulty or expenses for the Complainant to participate in the proceeding."

Based on the above reasons, the Panel ordered the Complainant to submit a revised Complaint in the English language, accompanied by a translated List of Evidence, within 20 calendar days of the Administrative Panel Procedural Order (i.e., on or before 18 December 2022) with a copy to the Respondent. The Panel further offered the Respondent the possibility to respond to these translations within 20 calendar days upon receipt of the revised Complaint in English.

On 16 December 2022, the Complainant filed an updated Complaint and List of Annexes in the English language in accordance with Administrative Panel Procedural Order No.1 with the Centre. The Centre acknowledged receipt and transmitted the same to the Respondent on the same day. The Respondent was given a further 20 calendar days (i.e., on or before 5 January 2023) to respond to the revised Complaint. On 6 January 2023, the Centre confirmed that no response was filed by the Respondent within the prescribed deadline and notified the Parties that a final decision will be reached by the Panel within fourteen calendar days of the expiry of the second Response period (i.e., on or before 19 January 2023).

### **3. Factual background**

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 owns a series of valid trademark registrations for “Bitmain”, “**BITMAIN**”, “Antminer” and “**ANTMINER**” in classes 9, 35, 36, 41 or 42 in multiple jurisdictions, including Singapore, the European Union, the United States, Switzerland and China. The Complainant has adduced evidence to show that its “Bitmain” and “Antminer” 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>.

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

#### 4. 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 consists of “bitmain” and “e9”. The Complainant contends that the first part is identical to the Complainant’s registered trademark, while the latter part consisting of a letter “e” and a number “9” is indistinctive. The Complainant further relies on *WIPO Case No. D2009-1325*, *WIPO Case No. D2009-0121* and *WIPO Case No. D2007-1064* to contend that a domain name is identical to a trademark when the domain name contains or is confusingly similar to the trademark, regardless of the presence of other words in the domain name.

Meanwhile, the additional part “e9” in the disputed domain name is also identical to one of the model names of the Complainant’s Bitmain Antminer series. The Complainant thus contends that the registration of the disputed domain name by the Respondent would increase the possibility of confusion among the relevant public. 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 the domain name in dispute was registered on 28 August 2021, 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 registration and use of the <bitmain.cn> domain name. Meanwhile, there is no relationship between the Complainant and the Respondent, and the Complainant has never authorized the Respondent to register or use any trade name, trademark, or domain name related to the BITMAIN marks. The Complainant therefore contends that there is no evidence indicating the Respondent enjoys any prior rights or legitimate interests in respect of the disputed domain name.

- 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. Citing *Zippo Manufacturing Company v. Huangyang Case No. CN-1400815*, the Complainant argues that the registrant of a domain name should bear a certain duty of care when registering a domain name in relation to the subject domain name's potential infringement of the legitimate rights and interests of others, which the Respondent had failed to discharge. The Complainant's "Bitmain" trademark 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 the following conducts on the webpage directed by the disputed domain name:

- a) using names and marks identical to the "Bitmain", "", "Antminer" and "" trademarks, trade name and domain name that the Complainant and its affiliates have prior rights to;
- b) selling computer products which falls into the main business scope of the Complainant, and the name of the "Antminer" products sold thereon is identical to the Complainant's registered trademark "". Besides, the product model "Bitmain Antminer E9" sold thereon is completely identical to the product model published and sold by the Complainant.
- c) copying the introduction of the Complainant's affiliate posted on its official website <bitmain.com> and using it under the "Everything You Need To Know About Bitmain Antminer E9" section on the disputed webpage, by which the Respondent proclaims to be the manufacturer of the product "Bitmain Antminer E9" and is a Chinese company incorporated in 2013.

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 with the Centre within the prescribed period.

## **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**

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 <bitmaine9.com>. 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 ".com" should not be considered. Therefore, the substantive part of the disputed domain name is "bitmaine9", which entirely incorporates the Complainant's registered trademarks. Furthermore, the Panel accepts the Complainant's contention that the additional part "e9" in the disputed domain name is generally considered less distinctive. Meanwhile, the evidence submitted by the Complainant is sufficient to show that the Complainant has published and marketed an "E9" model of its Antminer series in 2021, and the publication of the same has attracted massive media coverage in China. The addition of the Complainant's model name in the disputed domain name would only cause more confusion among the relevant public with respect to the relation between the Complainant and the disputed website, as well as the source of the products offered on the disputed website. Therefore, the Panel accepts the Complainant's contentions and finds the disputed domain name 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 he 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” trademarks were registered with the respective national trademark offices from 2015 to 2019. The disputed domain name was registered in August 2021, far later than the registration and use of the Complainant’s trademarks. The Respondent, who engages in the same industry as the Complainant, should have known about the Complainant or its products when registering the disputed domain name.

Meanwhile, the Complainant’s “Bitmain” trademark is still displayed on the disputed website in a substantive and confusing manner. In particular, the Respondent has been using the disputed domain name to offer for sale its own “Bitmain E9” miner, the name and description of which are identical to those of the Complainant’s Bitmain E9 model. On the top-left corner of the disputed website, the Complainant’s “” logo is also used in combination with the Complainant’s model name “BITMAIN E9” and the disputed domain name “BITMAINE9.COM”, which would easily add to consumer confusion with respect to the source of the products. As such,

the Panel finds that the disputed domain name is being used in bad faith as stipulated by Paragraph 4(a)(iii) of the Policy.

Meanwhile, the above conducts also indicate that the Respondent was aware of the Complainant and its products 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 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 marks.

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.

## 6. 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 trademarks, 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 <bitmaine9.com> be transferred to the Complainant.



Jyh-An Lee  
Panelist

Dated: 17 January 2023