



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2301849
Complainant:	Imiracle (Shenzhen) Technology Co., Ltd.
Respondent:	文兵 李
Disputed Domain Name(s):	<elfibar.com>

1. The Parties and Contested Domain Name

The Complainant is Imiracle (Shenzhen) Technology Co., Ltd. of Room 1606, T5 Office Building, Qianhai China Resources Financial Centre, 5035 Menghai Avenue, Nanshan Street, Qianhai Hong Kong-Shenzhen Cooperation Zone, Shenzhen, China.

The Respondent is 文兵 李, of 中国广东省揭阳市揭东区.

The domain name at issue is <elfibar.com>, registered by the Respondent with GoDaddy.com, LLC, of 14455 North Hayden Rd.Suite 219 Scottsdale, AZ 85260 (“the Registrar”).

2. Procedural History

The Complaint was filed in English with Asian Domain Name Dispute Resolution Centre (“ADNDRC”) on 12th December 2023. On 12th December 2023, ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On 13th December 2023, the Registrar transmitted by email to ADNDRC its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On 27th December 2023, the ADNDRC advised the Complainant to correct certain deficiencies. After the corrections were made by the Complainant on 28th December 2023, ADNDRC verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (“the Policy”), the Rules for ICANN Uniform Domain Name Dispute Resolution Policy (“the Rules”), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“the Supplemental Rules”).

In accordance with the Rules and the Supplemental Rules, ADNDRC formally notified the Respondent that the Complaint and the proceedings commenced on 2nd January 2024. In accordance with Articles 5 of the Rules, the due date for Response was 22nd January 2024.

The Respondent did not submit any response. Accordingly, ADNDRC confirmed and notified the Respondent's default on 23rd January 2024.

ADNDRC appointed C. K. Kwong as the sole panelist in this matter on 23rd January 2024. The Panel finds that it was properly constituted.

3. Factual background

The Complainant was established in 2017. It took over the main business from its affiliated company, Shenzhen Imiracle Technology Co. Ltd., a well-known e-cigarette company established in China in 2007 and also the trademark "ELF BAR". The disposable e-cigarettes of the Complainant have a wide range of sizes, flavours and nicotine levels.

The Complainant is the owner of numerous trademarks consisting of or comprising the expression ELF BAR whether in one word or two words. These registrations include:-

- (a) Chinese Trademark Registration No. 47304567 for the mark "ELF BAR" registered on 21st February 2021 in respect of goods under International Class 34; and
- (b) European Trademark Registration No. 018365272 for the mark "ELFBAR" registered on 29th December 2020 in respect of goods under International Class 34.

The evidence produced by the Complainant shows its first registration for the mark "ELF BAR" well before the registration of the disputed domain name <elfibar.com> on 7th February 2023.

Annex 14 to the Complaint shows the website to which the disputed domain name resolved in March to May 2023, at which contents identical to the corresponding part contained in the Complainant's website for verification of the Complainant's genuine products, was found.

Other than the particulars shown in the printout of the database searches conducted by the Complainant on the WhoIs Database (as provided in Annex 3 to the Complaint) and the webpages shown in Annex 14 to the Complaint, there is no evidence concerning the background, businesses or activities of the Respondent.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Complainant is headquartered in Shenzhen. The ELF BAR brand was established in 2018 for marketing disposable e-cigarettes for vapes which are innovative products in the form of a device with a smart heating system, pre-filled with e-liquid and usually operated by a small single-use battery. The range of disposable vapes marketed under the trademark ELF BAR have become one of the most popular brands in the market only within a few years since they were first sold. The vapes marketed under the brand name "ELF BAR" are known for their fruity, sweet, candy-inspired liquids with more than 30 flavours available

across 2 dozens of disposable device styles which have been very well received by the users. The ELF BAR products enjoy a monthly sales of over 10 million units and over 1 million consumers around the world.

- ii. The Complainant has built its own platforms and also used other well-known e-commerce and well-known industry platforms for marketing its products [see Annex 6 to the Complaint on the online sales channels of the Complainant]. It has also organized exhibitions throughout the year in many countries [see Annex 8 to the Complaint]. The ELF BAR hashtag on Tiktok had 1.5 billion views at the start of 2023 [see Annex 9 to the Complaint]. The Complainant has enjoyed a high level of popularity and influence because products bearing its mark ELF BAR has been used and promoted extensively.
- iii. The disputed domain name embodying the word “elfibar” is different from the Complainant’s trademark ELF BAR by only one letter. The disputed domain name is confusingly similar to the Complainant’s trademark. The addition of the letter “i” does not create a new meaning.
- iv. The Complainant has prior rights to the trademarks ELF BAR and ELFBAR. They have registered the trademarks well before the registration of the disputed domain name.
- v. The disputed domain name resolved to a website which provided a verification function corresponding to that in the Complainant’s official website. There was even suggestions by third parties on e-cigarettes sales platforms that counterfeit ELF BAR products were offered on the website to which the disputed domain name resolved.
- vi. The Respondent has not applied for registration of the trademark “ELF BAR” or similar marks. The Respondent is not the Complainant’s distributor or business partner. The Complainant has never directly or indirectly authorized the Respondent to use the word ELF BAR as trademark or domain name in any form.
- vii. The disputed domain name cannot represent the Respondent as he has a totally different name 文兵李.
- viii. The Respondent has no rights or legitimate interest in the disputed domain name.
- ix. If the Respondent had searched for registration of the ELF BAR or ELFBAR mark or similar marks prior to the registration of the disputed domain name, they would have discovered the Complainant’s registration of its trademarks “ELF BAR” and “ELFBAR”. The close similarity between the disputed domain name and the ELF BAR marks as well as the contents of the website to which the disputed domain name resolved, show that the Respondent knew or should have known of the Complainant’s trademarks when it registered and used the disputed domain name. The Respondent did not take steps to avoid registering a domain name which is confusingly similar to the Complainant’s trademark ELF BAR. Such act in choosing and applying for registration of the disputed domain name was malicious. The use of the disputed domain name will interfere with the Complainant’s normal business activities.

- x. Registration and use of the disputed domain name was intentional to create a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the disputed domain name with the purpose of attracting internet users to the website for commercial gain.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

5. Findings

A. Language

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. The language of the Registration Agreements of the disputed domain name <elfibar.com> is English. Accordingly, the language of the proceedings of this Complaint shall be English. I have no reason to determine otherwise.

B. Notice of Proceedings

- i. The contact information of the Respondent and the disputed domain name were fully set out in the WhoIs search results provided in Annex 3 to the Complaint and the WhoIs search results as of 13th December 2023 as provided by the Registrar ("the Data Base Records").
- ii. On 2nd January 2024, ADNDRC forwarded the Notification of Complaint and Commencement of Administrative Proceedings according to the contact details of the Respondent, including those found in the Complaint, WhoIs, and Registrar Verification. The said notification was sent by email as per the contact particulars so provided with copies to the Registrar.
- iii. In the circumstances, the Panel finds that the proper parties to these proceedings have been properly notified. As long as the Complainant or ADNDRC as the case may be communicated with the Respondent using the contact information which the Respondent has chosen to provide to the Registrar as reflected in Data Base Records, their respective notice obligations will be discharged and the Respondent is bound accordingly.
- iv. The Panel is satisfied that ADNDRC has discharged its responsibility under paragraph 2(a) of the Rules to employ reasonably available means calculated to achieve actual notice of the Complaint to the Respondent.

C. The Three Elements

In rendering its decision, the Panel must adjudicate the dispute in accordance with paragraph 15(a) of the Rules which provides that, "the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Paragraph 14(b) of the Rules further provides that, “If a Party, in the absence of exceptional circumstances, does not comply with any provisions of, or requirement under, these Rules or any requests from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate”. Paragraph 5(f) of the Rules further provides that, “if a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint”.

The failure of the Respondent to respond does not automatically result in a favourable decision for the Complainant. It is specifically required under paragraph 4(a) of the Policy for the Complainant to establish each of the three elements as provided therein. See *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. D2002-1064 and *Berlitz Investment Corp. v. Stefan Tinculescu*, WIPO Case No. D2003-0465.

The said three elements are considered below.

1. Identical or Confusingly Similar

On the evidence available, the Panel has no hesitation in finding that the Complainant has rights in the trademarks ELF BAR and ELFBAR by reason of the trademark registrations recited in Section 3 above.

Furthermore, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark ELF BAR. The dominant or principal component of the disputed domain name is elfibar, which embodies the Complainant’s ELF BAR or ELFBAR trademarks in entirety. The addition of the letter “i” in between the 2 sets of letters “ELF” and “BAR” or ELF BAR, does not prevent the disputed domain name from being confusingly similar to the Complainant’s trademarks ELF BAR or ELFBAR, as it remains clearly recognizable in the disputed domain name.

Phonetically, the word “elfibar” and “elf bar” or “elfbar” are very similar when verbally pronounced.

It is well-established practice to disregard the gTLD part of a domain name, such as “.com”, when assessing whether a domain name is identical or confusingly similar to the mark in issue. *Société Anonyme des Eaux Minérales d’Evian and Societe des Eaux de Volvic v. Beroca Holdings B.V.I. Limited*, WIPO Case No. D2008-0416.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy is established.

2. Rights or Legitimate Interests

The Complainant needs to establish a *prima facie* case showing that the Respondent has no rights or legitimate interests in respect of the disputed domain name. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455. Once such *prima facie* case is made, the burden will shift to the Respondent to prove that it has rights or legitimate interests in the disputed domain name.

The Complainant has confirmed that it has not authorized, licensed, or permitted the Respondent to use the mark ELF BAR.

There is no explanation on the record as to why it was necessary for the Respondent to adopt the term “elfibar” in the disputed domain name.

There is no evidence before the Panel to suggest that the Respondent is commonly known as <elfibar.com>.

Given the commercial nature of the contents of the website to which the disputed domain name resolved, the Respondent cannot claim to be using the confusingly similar disputed domain name for a legitimate noncommercial or bona fide offering of goods or services under the present circumstances.

The Complainant has put forward a strong *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

The Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name.

3. Registered and Used in Bad Faith

The Complainant has registered its ELF BAR and ELFBAR trademarks well before the registration of the disputed domain name by the Respondent. There was also substantial prior use of the Complainant's ELF BAR mark.

The word(s) "ELF BAR" or "ELFBAR" comprising the Complainant's trademark(s) were incorporated in the disputed domain name in their entirety. The website to which the disputed domain name resolved related to the same type of goods marketed by the Complainant. In the absence of any explanation under the above circumstances, one must conclude that the Respondent must have been aware of the existence of the Complainant and its trademark(s) ELFBAR and ELF BAR at the time of the registration and use of the disputed domain name.

The use of the disputed domain name disrupts the Complainant's business by directing internet users to the website to which the disputed domain name resolved. The Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to said website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the said website or products on the said website.

The Panel finds that the circumstances under paragraph 4(b)(iii) and (iv) of the Policy have been established. Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith under paragraph 4(a)(iii) of the Policy.

6. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <elfibar.com> be transferred to the Complainant.



KWONG CHI KEUNG
Panelist

Dated: 6th February 2024