



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2101583
Complainant:	Bitmain Technologies Limited
Respondent:	Real Deal
Disputed Domain Name(s):	<bitmainminning.com>

1. The Parties and Contested Domain Name

The Complainant is Bitmain Technologies Limited, of Unit A1 of Unit A, 11th Floor, 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 Real Deal, of 1115W gardena, Gardena, California, United States, 90248.

The domain name at issue is <bitmainminning.com>, registered by Respondent with Instra Corporation Pty Ltd., of GPO Box 988, Melbourne Victoria, Australia 3001.

2. Procedural History

On 27 December 2021, the Complainant submitted a Complaint in Chinese to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("ADNDRC"), pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 24 October 1999. On 29 December 2021, the ADNDRC confirmed receipt of the Complaint. The Complainant elected that this case be dealt with by a single member Panel.

On 28 December 2021, the ADNDRC transmitted by email to the Registrar, Instra Corporation Pty Ltd a request for registrar verification in connection with the disputed domain name. On 30 December 2021, the Registrar transmitted by email to the ADNDRC its verification response, stating that the Respondent, Real Deal, is the holder of the domain name <bitmainminning.com> and that the language of the registration agreement is the English language.

The ADNDRC noted the information of the Respondent in the Complaint was different from the Whois information provided by the Registrar. On 31 December 2021 the ADNDRC transmitted by email to the Complainant asking the Complainant to amend the information of the Respondent in the Complaint Form with reference to the Whois information provided by the

Registrar. On 5 January 2022 the Complainant submitted the amended Complaint to the ADNDRC. On 6 January 2022, the ADNDRC confirmed the administrative compliance of the Complaint.

On 31 December 2021, the ADNDRC transmitted by email a notice to the Complainant concerning the language of proceedings, noting the language of the registration agreement was English and that the language of proceedings should be English. On 4 January 2021, the Complainant requested the proceedings proceed in Chinese, subject to any contrary view of the Panelist.

On 6 January 2022, the ADNDRC transmitted a Written Notice of Complaint, forwarding the Complaint along with annexures to the Respondent, requesting that the Respondent submit its Response within 20 calendar days. The Notice specified the due date for the Response as being on or before 26 January 2022.

Also on 6 January 2022, the ADNDRC transmitted a notice concerning the language of proceedings to the Respondent in English and Chinese, noting the registration agreement was in English but that the Complainant had requested the proceedings be in Chinese. The Respondent was asked to make a submission on the language of proceedings by 11 January 2022. The notice stated that the Panelist would make the final determination of the language of proceedings.

On 27 January 2022, the ADNDRC confirmed in an email to the parties that it had not received a Response from the Respondent within the required period of time.

The ADNDRC, having received on 31 January 2022, a Declaration of Impartiality and Independence and Statements of Acceptance, from Mr. Douglas Clark, notified the parties on 31 January 2022 that the panel in this case had been selected, with Mr. Douglas Clark as the Panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

3. Factual background

The Complainant and its related companies (including but not limited to Beijing Bitmain Technology Limited Company) are technology companies, offering products including chips, servers and cloud solutions, which are mainly used in the areas of blockchain (especially in the fields of bitcoin mining machines) and artificial intelligence. The Complainant and its related companies have places of business in China, Singapore, the United States, and other locations.

The Complainant's Antminer products that hold a majority share of the global market for bitcoin mining machines.

The Complainant is the right holder of the trademark “ **BITMAIN** ” registered in multiple countries and regions as set out below:

#	Trademark	Trademark Number	Class	Date of Registration	Country/Region of Registration
1	BITMAIN	40201504948W	9	2015.03.24	Singapore
2	BITMAIN	40201504949X	36	2015.03.24	Singapore

3	BITMAIN	40201504951W	42	2015.03.24	Singapore
4	BITMAIN	013913521	9, 36, 42	2015.08.31	EU
5	BITMAIN	4884613	9	2016.01.12	USA
6	BITMAIN	4980879	42	2016.06.21	USA
7	BITMAIN	16620637	36	2016.05.21	Mainland PRC
8	BITMAIN	16620401	9	2016.05.21	Mainland PRC
9	BITMAIN	16660721	42	2016.05.21	Mainland PRC
10	BITMAIN	718190	9, 35, 36, 41, 42	2018.06.29	Switzerland
11	BITMAIN	6115174	9, 35, 36, 42	2019.01.18	Japan

The Complainant and its related companies also have a number of domain names registered incorporating Bitmain including <bitmain.com> registered since 2007. The Complainant and its related companies have been using marks including “Bitmain” and “ **BITMAIN** ” as their trade name since 2013. (The Complainant itself was incorporated in 2014).

The Respondent

There is no clear information as to the identity of the Respondent. The webpage under the disputed domain name is used to apparently sell the Complainant’s products, but provides as one of its addresses the headquarters of the Complainant’s group in Beijing.

4. Parties’ Contentions

The Parties contend as follows.

A. Complainant

i. Identical or Confusingly Similar

The Complainant contends that the disputed domain name <bitmainminning.com> and the trademark BITMAIN are confusingly similar. The disputed domain name contains BITMAIN in its entirety as the distinctive part of the disputed domain name. The additional word “minning” has no distinctiveness and is a clear misspelling of “mining”. This exacerbates the degree of confusingly similarity.

ii. Rights or Legitimate Interests

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraphs 4(a) (ii) and particularly, 4(c) of the Policy.

There is no evidence indicating that the Respondent enjoys any prior legal rights or legitimate interests in respect of the domain name in dispute. Firstly, the domain name in dispute was registered on September 15, 2021, which is much later than the time of the Complainant's and its related companies' earliest use and registration of the trademarks. 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 "Bitmain".

iii. Registered and Used in Bad Faith

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

First, due to the confusing similarity between the Disputed Domain Name and the Bitmain Trade Marks, and the fact that the Respondent had to have been aware of the Complainant and its Bitmain Trade Marks, it is inconceivable that the Respondent registered the Disputed Domain Name for any reason other than in bad faith. Second, the Respondent on the website under the disputed domain name provides contact details of the Complainant's China headquarters and sells Antminer products. It is using the disputed domain to attract consumers for commercial benefits.

B. Respondent

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

5. Findings

Preliminary Issue – Language of Proceedings

According 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.

In this case, the language of the Registration Agreement for the disputed domain name is in English. Based on the given evidence, there is no agreement between the Complainant and the Respondent regarding the language of the proceeding. The Respondent did not respond as to the language of the proceeding. The Complainant has filed its Complaint in Chinese and has requested that English be the language for the proceeding

In accordance with paragraph 11(a) of the Rules, the Panel hereby determines that the language of the proceeding shall be in English and Chinese after considering the following circumstances:

- the ADNDRC has notified the Respondent in both English and Chinese of the language of the proceeding and the Complaint;
- the Respondent has not commented on the language of the proceeding;

- an order for the translation of the Complaint and other supporting documents will result in expenses for the Complainant and a delay in the proceeding;
- The Complaint was accompanied by one panel decision in another case in English which sets out the Complainant's rights and would give the Complainant an understanding of the claim;
- The Panel considers the merits strongly in favour of the Complainant;
- The Panel will render its decision in English.

Further, this Panelist decided in *Zappos.com, Inc. v. Zufu aka Huahaotrade*, WIPO Case No. D2008-1191, that a respondent's failure to respond to a preliminary determination by the Center as to the language of the proceeding "should, in general, be a strong factor to allow the Panel to decide to proceed in favour of the language of the Complaint".

The Panel therefore accepts the Complaint filed in Chinese but will render its decision in English.

Substantive Issues

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

The disputed domain name <bitmainminning.com> is confusingly similar to the Complainant's trademark. The disputed domain name incorporates the Complainant's BITMAIN trade mark in full. The word "minning" is added, which is a clear misspelling of "mining". This exacerbates the confusion by relating to the Complainant's business. The disputed domain name is therefore confusingly similar to the Complainant's registered trademark.

The first element of paragraph 4(a) of the Policy is therefore satisfied.

B) Rights and Legitimate Interests

The Respondent has not responded to the Complainant to assert any rights or legitimate interests.

The Complainant owns several BITMAIN trademarks in the world. The Respondent has no business or any kind of relationships (licensor, distributor) with the Complainant.

The Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. See *Croatia Airlines d.d. v Modern Empire Internet Ltd.*, WIPO Case No. D2003 0455.

The Respondent appears to offer for sale the Complainant's products on the website under the disputed domain name. Panels have recognized that resellers using a domain name containing the complainant's trademark to undertake sales related to the complainant's goods or services may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name. As set out in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0903, the panel in that case held that to be "*bona fide*" within the meaning paragraph 4(c)(i) of the Policy, the offering should meet the following requirements ("*Oki Data Requirements*"):

- The respondent must actually be offering the goods or services at issue;
- The respondent must use the site to sell only the trade marked goods; otherwise, it could be using the trade mark to bait Internet users and then switch them to other goods;
- The site must accurately and prominently disclose the registrant's relationship with the trade mark owners; it may not, for example, falsely suggest that it is the trade mark owner, or that the website is the official site; and
- The respondent must not try to corner the market in all domain names, thus depriving the trade mark owner of reflecting its own mark in a domain name.

In this case, the Respondent does not meet, at least, the third requirements set out above. The website under the disputed domain name does not accurately and prominently disclose the Respondent's relationship with the Complainant and, in fact, appears to claim to be the Complainant.

Considering the absence of a response by the Respondent and the fact that the Respondent was granted neither a license nor an authorization to make any use of the Complainant's trademark, and that the Respondent does not satisfy the *Oki Data Requirements*, the Panel finds the Respondent has failed to demonstrate any rights or legitimate interests in the disputed domain name.

The second element of paragraph 4(a) of the Policy is therefore satisfied.

C) Bad Faith

The Panel finds that the disputed domain name <bitmainminning.com> was registered in bad faith and is being used in bad faith.

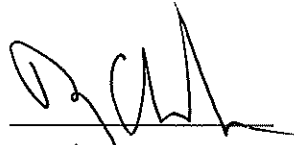
The disputed domain name resolves to a site selling what appears to be the Complainant's products and gives as one address that of the Complainant's China headquarters. There is no doubt the Respondent knew of the Complainant when registering the disputed domain name and is continuing to use the disputed domain name in bad faith to attract consumers to its website.

The third part of the paragraph 4(a) of the Policy is therefore satisfied.

6. Decision

The Complainant has established all three elements under the ICANN Policy.

Accordingly, the Panel orders that the disputed domain name, <bitmainminning.com> be transferred to the Complainant.

A handwritten signature in black ink, appearing to read 'D. Clark', written over a horizontal line.

Douglas Clark
Sole Panelist
February 15, 2021