



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2201652
Complainant:	Imiracle (ShenZhen) Technology Co., Ltd.
Respondent:	WANG Weiqiang
Disputed Domain Name(s):	<elfbar-teoh.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 Complainant authorized TANG Minjie, attorney in Dentons Law Offices, LLP (Shanghai), as its representative in this case.

The Respondent is WANG Weiqiang, of Wananlu Bao Beijing, China.

The domain name at issue is elfbar-teoh.com, registered by Respondent with GoDaddy.com, LLC (the Registrar).

2. Procedural History

On August 25, 2022, the Complainant filed a Complaint with the Hong Kong Office (HK Office) of Asian Domain Name Dispute Resolution Centre (ADNDRC) pursuant to the Uniform Policy for Domain Name Dispute Resolution, approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October 1999 (the Policy), the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of Directors on 28 September 2013 (the Rules) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the Supplemental Rules).

On August 25, 2022, the HK Office transmitted by email to the Registrar a request for confirmation of the related registration information and confirmation that the disputed domain name has been locked and will not be transferred to another holder or registrar during the current administrative proceeding or for a period of 15 business days after the proceeding is concluded. On the same day, the HK Office received email from the Registrar that confirmed (i) the disputed domain name is registered at Go Daddy, (ii) the registrant is WANG Weiqiang (the Respondent), (iii) the Policy applies to the domain name, (iv) the language of the registration agreement for the domain name is English, (v)

the WHOIS information for the domain name, and (vi) the disputed domain name will remain locked during the pending administrative proceeding.

On August 25, 2022, the HK Office notified the Complainant by email to confirm that the Complaint concerning the disputed domain name had been received and the Complaint had been transmitted to the concerned Registrar. The Complaint would be reviewed upon receipt of the Registrar's confirmation of the WHOIS information.

On August 26, 2022, upon review of the Complaint, the HK Office sent notification of deficiencies to the Complainant by email and asked the Complainant to update the information of the Respondent with reference to the WHOIS information and provide the English version of the registration agreement since the language of the agreement for the disputed domain name is English.

On August 29, the Complainant updated documents upon the request, and HK Office therefore confirmed by email that the Complaint is in administrative compliance with the Policy and the Rules. On the same day, the HK Office sent a written notice of complaint by email to the Respondent, however, it did not receive a response from the Respondent in respect of the domain name within the required time.

The Complaint elected to have the Complaint decided by one Panelist and the Respondent made no objection. On September 19, 2022, the HK Office appointed Mr. XIE Guanbin as the sole Panelist in this matter and the panelist confirmed his independence and impartiality between the parties. On the same day, the HK Office confirmed the Panelist by email with the parties and sent the case file to the Panelist.

3. Factual background

The Complainant is Imiracle (ShenZhen) Technology Co., Ltd., 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. It was established in 2007 and mainly operates in the e-commerce and e-cigarette industries.

The Respondent is WANG Weiqiang, an individual with an address in Beijing, China. The disputed domain name was created on April 26, 2022 and the expiration date is on April 26, 2023.

4. Parties' Contentions

A. Complainant

- i. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complaint claimed that its affiliated company Shenzhen iMiracle Technology Co., Ltd. (Shenzhen iMiracle), is a well-known e-cigarette company from China, established in 2007. The company's headquarter is located at Shenzhen, and has branches in Shanghai, Hong Kong, the United States, Ireland,

Germany and other places. The Complainant established a well-known e-commerce platform at home and abroad - Heaven Gifts, to bring safer and more reliable e-cigarette products to consumers around the world. Known by consumers as "the messenger who brings gifts from heaven".

The Complainant submitted that the Complaint is based on the trademark "ELF BAR" (Registration Number 47304567). See Annex 2 to the Complaint. The ELFBAR brand began in 2018, and ELF BAR® enjoyed a good reputation around the world for the good quality and promotion of its products. In order to promote the ELFBAR brand and to protect its precious intellectual property rights, the Complainant's affiliated company, Shenzhen Weiboli Technology Co., Ltd. (Shenzhen Weiboli) was granted ELF BAR® trademark on Class 34 in China on February 21, 2021. Due to the strategic adjustment, the above trademark has been transferred to the Complainant on May 13, 2022. See Annex 2 and 3.

The Complaint claimed that main part of the disputed domain name "elfbar-teoh.com" is "elfbar-teoh", where "teoh" may confuse consumer with "tech" which is the abbreviation of "technology". It indicates the nature of the commodity (ie, technology cigarettes) and the nature of the Complainant (ie, technology company), which is lack of distinctiveness. The main distinctive part of the domain name "elfbar" is exactly the same with the Complainant's trademark. The word "elfbar" is entirely a fanciful word of the Complainant, which has a very high identification significance. The domain name used by the Respondent can easily confuse consumers.

In addition, the Complaint pointed out that the Police Station had confirmed that the disputed domain name was used as the authenticity verification website of elfbar's counterfeit goods. By scanning the QR code on the fake goods, consumers could directly enter into the product verification page under the disputed domain name. In this way, consumers may believe the disputed domain name is the real elfbar product of the Complainant.

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

The disputed domain name was registered on April 26, 2022. It was not only much later than the first date of using ELF BAR® trademark in e-cigarette products and services (the date can be traced back to 2018) and the first date of ELF BAR® trademark application in China (2020), but also far later than the date that ELF BAR® brand products gained great reputation and high visibility.

Since the Complainant neither permitted the Respondent to use ELF BAR® trademark nor give its authorization to the Respondent to register any domain name with ELF BAR® or any similar word, the Respondent is not entitled to any rights of the disputed domain name. Furthermore, in light of the Complainant and Complainant's affiliate, who have no relationship with the Respondent, the Respondent does not enjoy the legitimate interests of disputed domain name.

Additionally, the Respondent used the disputed domain name as an authenticity verification website for elfbar fakes, misleading consumers to believe that they

are buying genuine products, and the Respondent did not (and never did) have popularity on the name of elfbar.

- iii. The disputed domain name(s) has/have been registered and is/are being used in bad faith.

The Complainant claimed that the Respondent's bad faith can be reflected from its selection of the vocabulary of the domain name. The word "elfbar" is a fanciful word created by Complainant and ELF BAR® brand, the well known trademark, has been specifically linked to the Complainant due to the excellent quality of the ELF BAR® brand product and the long-term promotion. By using "elfbar" as the recognition part of the domain name, to verify fake products, the Respondent should be considered to have well known the plaintiff's products and trademarks, but still attempts to make use of the high visibility of the plaintiff's products to seek illegal profits. Its registration of the disputed domain name can be identified as malicious infringement.

The Complainant again pointed out that the disputed domain name was discovered for verifying fake goods during the inspections by Zhong Tang Police Station, when handling the criminal case of counterfeiting registered trademarks. It can prove the disputed domain name has been registered and used in bad faith. See Annex 5 and Annex 6.

For the foregoing grounds, the Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

The Respondent did not submit any response within the required time.

5. Findings

Pursuant to the Registration Agreement between the Respondent and the Registrar, the ICANN Uniform Domain Name Dispute Resolution Policy shall apply to this dispute resolution Proceeding.

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 domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

Pursuant to the WHOIS registration information provided by the Registrar, the disputed domain name was created on April 26, 2022.

With regard to the prior trademark, the Complainant submitted as evidence the trademark registration certificate of "ELF BAR" (No. 47304567), issued by China National Intellectual Property Administration (CNIPA), which indicates the trademark was registered by Shenzhen Weiboli and would be valid from February 21, 2021 to February 20, 2031. Shenzhen Weiboli transferred the "ELF BAR" trademark to Shenzhen iMiracle, and CNIPA issued a trademark assignment certificate on November 20, 2021. Whereafter, Shenzhen iMiracle transferred the aforesaid trademark to the Complainant, and CNIPA issued a trademark assignment certificate on May 13, 2022. In addition to the "ELF BAR" trademark, the Complainant also submitted a trademark certificate of "" (No. 54149297), registered by Weiboli and being valid from September 28, 2021 to September 27, 2031. Weiboli transferred the trademark to Shenzhen iMiracle, verified by a trademark assignment certificate issued by CNIPA on November 20, 2021. Shenzhen iMiracle then transferred the trademark to the Complainant, verified by a trademark assignment certificate issued by CNIPA on May 13, 2022. See Annex 2 to the Complaint.

With regard to the prior domain name, the information of WHOIS and GoDaddy's website in Annex 3 to the Complaint shows "elfbar.com" was created by Heaven Gifts International Limited (Heaven Gifts) on September 29, 2020, and is set to automatically renew on September 29, 2024. The Complainant furthermore provided a certificate of affiliated company shows that "elfbar.com" is actually owned and used by the Complainant. Both Heaven Gifts and the Complainant affixed their company seal on the certificate. See Annex 3 to the Complaint.

Whereas the Respondent has no response to the Complainant's evidence, the Panel, pursuant to the Policy, accepts the content of the aforesaid evidence and finds that the Complainant has prior trademark rights in "ELF BAR" and "", and prior rights in domain name of "elfbar.com" for purposes of this proceeding.

The domain name at issue, elfbar-teoh.com, consists of three parts, namely elfbar, teoh and.com. "Teoh", similar to tech, a common abbreviation of technology, can be understood that the website corresponding to the disputed domain name is related to technology, therefore, the significance of identification is low. ".com" is the suffix of the generic top-level domain name, which does not have any identification function. "elfbar" is the main part of the disputed domain name and has the function of identification. Since "elfbar" is identical to the main part of the Complainant's prior domain name "elfbar.com", and on the other hand, highly similar to the Complainant's prior trademark "ELF BAR", mere difference between lowercase and uppercase letters, the Panel finds the disputed domain name is confusingly similar to the prior trademark and domain name in which the Complainant has rights.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The Complainant claimed it has rights in prior trademark but never permitted or authorized the Respondent to use its trademark or register any domain name with ELF BAR ® or any similar word, therefore, the Respondent is not entitled to any rights of the disputed domain name. The Panel is of the opinion that the Complainant has established a *prima facie* case

in respect of the lack of rights and legitimate interests of the Respondent, and then the Respondent shall carry the burden of proof for its rights and legitimate interests in the disputed domain name.

As stated in paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the respondent's rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

However, the Respondent neither refuted the Complaint, nor did it submit any evidence to prove its rights or interests. The Panel cannot conclude the Respondent has rights or legitimate interests in the disputed domain name in accordance with the present evidence.

The Panel therefore finds the Complaint has satisfied paragraph 4(a)(ii) of the Policy.

C) Bad Faith

The Policy provides, at Paragraph 4(b), circumstances which are Evidence of Registration and Use of a domain name in Bad Faith. "For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent 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 the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 the respondent's web site or location or of a product or service on the respondent's web site or location"

The Complainant claimed in this case that the Respondent's bad faith can be fully proved by its selection of the word "elfbar", a fanciful work created by the Complainant, and its

use of the disputed domain name as a verification website for elfbar fake products. As showed in Annex 4, elfbar is the Complainant's brand in e-cigarette industry. The disputed domain name was discovered by Zhong Tang Police Station, Shenzhen Public Security Bureau, Guangdong province, in the process of handling a crime of counterfeiting registered trademarks. After verifying the anti-counterfeiting code on the seized e-cigarette, the police found the QR code points to a verification website for elfbar e-cigarette products under the disputed domain name. See Annex 5 and 6 to the Complaint.

In virtue of no response submitted by the Respondent, the Panel considers, by registering and using of the disputed domain name to verify fake elfbar e-cigarettes, the Respondent intends to confuse customers and mislead customers into believing the Complainant is the source of or related to the Respondent's website and the fake elfbar products on the Respondent's website, which demonstrates the bad faith of the Respondent and therefore meets the circumstance stipulated in paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds the Respondent registered and used the disputed domain name in bad faith, and that paragraph 4(a)(iii) of the Policy has been satisfied.

6. Decision

For all the foregoing reasons, pursuant to paragraph 4(a) of the Policy and paragraph 15 of the Rules, the Panel orders that the disputed domain name "elfbar-teoh.com" be transferred to the Complainant.



XIE Guanbin
Panelist

Dated: October 3, 2022