



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-2201659</b>
<b>Complainant:</b>	<b>爱奇迹（深圳）技术有限公司 Imiracle (ShenZhen) Technology Co., Ltd.</b>
<b>Respondent:</b>	<b>Ken Lo</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;elfsbar.com&gt;</b>

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**1. The Parties and Contested Domain Name**

The Complainant is 爱奇迹（深圳）技术有限公司 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.

The Respondent is Ken Lo, of Baoan Street, Shenzhen, Guangdong, China.

The domain name at issue is <elfsbar.com>, registered by the Respondent with GoDaddy.com, LLC, of 14455 North Hayden Road Suite 219 Scottsdale, AZ 85260 U.S.A..

**2. Procedural History**

On September 2, 2022, pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”) and the Rules for the Uniform Domain Name Dispute Resolution Policy (the “Rules”), the Complainant submitted a Complaint to the Hong Kong Office (“HK Office”) of the ADNDRC (“ADNDRC”). On September 5, 2022, the HK Office sent to the Complainant by email an acknowledgment of the receipt of the Complaint and reviewed the format of the Complaint for compliance with the Policy, the Rules and the HK Office Supplemental Rules. The HK Office also notified the Registrar of the Complaint by email. On September 6, 2022, the Registrar replied to the HK Office informing the identity of the Registrant.

On September 7, 2022, the HK Office informed the Complainant that the information of the Respondent in the Complaint was different from the WHOIS information provided by the Registrar. On the same day, the Complainant submitted an amended Complaint to the HK Office. The HK Office confirmed receipt and forwarded the amended Complaint to the Respondent. The due date of the Response was September 27, 2022. The Respondent did not file a Response and on September 28, 2022, the HK Office informed the Parties of the

Respondent's default. On the same day, the HK Office appointed Francine Tan as the sole panelist in this matter.

### **3. Factual background**

The Complainant is 爱奇迹（深圳）技术有限公司 iMiracle (ShenZhen) Technology Co., Ltd. The Complainant states that its affiliated company, Shenzhen iMiracle Technology Co., Ltd, is a well-known e-cigarette company established in China in 2007. Its headquarters is located in Shenzhen, and it has branches in Shanghai, Hong Kong, the U.S., Ireland, Germany, among others. The Complainant states that it established a well-known e-commerce platform locally and abroad, known as "Heaven Gifts", to bring safer and more reliable electronic cigarette products to consumers around the world.

Due to the adjustment of the company's business strategy, the Complainant is now taking over the main business and trade mark rights of ELF BAR.

ELF BAR is an e-cigarette brand owned by the Complainant and its affiliates. The Complainant states that ELF BAR products have enjoyed a good reputation worldwide for their quality since the ELF BAR brand was launched in 2018.

The <elfbar.com> domain name was registered on September 30, 2020 in the name of Heaven Gifts International Limited. Due to the adjustment of the company's business strategy, the Complainant has taken over the main business and trademark rights in ELF BAR, including Chinese Trade Mark Registration No. 47304567 for "ELF BAR" (registered by the Complainant's affiliated company, Shenzhen Weiboli Technology Co., Ltd. on February 21, 2021).

The disputed domain name was registered on June 17, 2022 and resolves to a website which not only directs hyperlinks to the Complainant's official website, but also fraudulently verifies the authenticity of counterfeit ELF BAR goods. Consumers may scan the QR code on counterfeit goods and be directed to the product verification page of the disputed domain name.

### **4. Parties' Contentions**

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is confusingly to the Complainant's ELF BAR trade mark in which it has rights. The additional letter "s" in the disputed domain name does not remove the confusing similarity with the Complainant's ELF BAR trade mark.
- ii. The Respondent has no rights or legitimate interest in respect of the disputed domain name. The Complainant never permitted, authorized or licensed the Respondent to use the ELF BAR trade mark in any manner or to register the disputed domain name. The Respondent has no trademark rights in ELF BAR.

- iii. The Respondent registered and is using the disputed domain name in bad faith. The disputed domain name is a fanciful term created by the Complainant. The disputed domain name was discovered by the Complainant's employees who obtained the disputed domain name by scanning an anti-counterfeit code on the packaging of a counterfeit product. The website to which the disputed domain name resolves ("the Respondent's website") passes off as the Complainant by containing links to the Complainant's official website and as a verification website of fake goods, which attempts to mislead consumers that the goods they are buying are genuine products sold by the Complainant, to reap illicit benefits. The ELF BAR trade mark is well known and exclusively associated with the Complainant. The Respondent is using the disputed domain name to attract and confuse Internet users into believing that he is affiliated with the Complainant when he is in no way associated with the Complainant. The Respondent's use of the disputed domain name for fraudulent purposes is evidence that the Respondent has actual knowledge of the Complainant and its ELF BAR trade mark.

B. Respondent

The Respondent did not file a Response to the Complaint.

## 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 trade mark 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 Complainant has provided evidence of its trademark registrations for, and rights in, the ELF BAR mark.

The disputed domain name consists of a misspelling of the Complainant's ELF BAR mark, with the addition of the letter "s" between "elf" and "bar". The Panel finds that the disputed domain name is confusingly similar to the Complainant's ELF BAR mark. It is well established that a domain name which consists of a common, obvious, or intentional misspelling of a trademark would be considered to be confusingly similar to the relevant mark for purposes of the first element. (See *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition* ("WIPO Overview 3.0"), section 1.9.) The inclusion of the generic Top-Level Domain ("gTLD") ".com", does not remove the identity with the Complainant's ELF BAR trade mark as the gTLD is merely a technical requirement for domain name registrations.

The first element of paragraph 4(a) of the Policy has been satisfied.

## **B) Rights and Legitimate Interests**

The Panel finds that the Complainant has demonstrated a *prima facie* case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. There is no evidence that the Respondent is commonly known by the disputed domain name. The Respondent does not appear to use the disputed domain name for a legitimate noncommercial or fair use, without intent for commercial gain. The Respondent's conduct, namely of:

- (i) blatant use of the Complainant's ELF BAR trade mark on the Respondent's website as well as attempt to pass off the website as the Complainant's official website; and
- (ii) purporting to verify the authenticity of counterfeit ELF BAR goods as genuine goods of the Complainant despite not being licensed or authorized by, or being affiliated to, the Complainant,

constitute evidence of the Respondent's lack of rights and legitimate interests in the disputed domain name. The use of the disputed domain name for illegal activity can never confer rights or legitimate interests on the Respondent. (See *WIPO Overview 3.0*, section 2.13.)

Once a complainant has established a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect of the disputed domain name. (See *WIPO Overview 3.0*, section 2.1.) The Respondent did not submit a Response to the Complaint, nor has he provided any explanation or evidence to show he has rights or legitimate interests in the disputed domain name. The Respondent has therefore failed to rebut the Complainant's *prima facie* case. In any event and more importantly, considering how the disputed domain name has been fraudulently used by the Respondent, it is not conceivable that the Respondent would be able to show that he has rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The second element of paragraph 4(a) of the Policy has been satisfied.

## **C) Bad Faith**

A complainant has the burden of proving that the respondent registered and is using the disputed domain name in bad faith. Paragraph 4(b) of the Policy states that:

“[T]he 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 [the respondent 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 [its] 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's ELF BAR trade mark was registered in China in 2021 and the brand was established in 2018, which predate the registration of the disputed domain name. Given the popularity and reputation of the Complainant's ELF BAR trade mark (which has not been disputed by the Respondent), the appearance of the Respondent's website, and how the disputed domain name is being used by the Respondent, it is evident that the Respondent was well aware of and specifically targeted the Complainant and its ELF BAR trade mark.

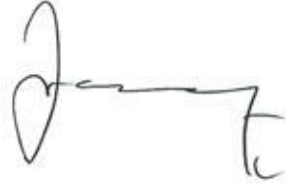
The Respondent is not an authorized reseller, licensee or affiliate of the Complainant. The Panel is persuaded that the Respondent has attempted to pass off as the Complainant or as being associated with the Complainant, to pass off the verification of counterfeit ELF BAR goods as genuine, and to ride off the reputation and goodwill of the Complainant. The Respondent's intention is to lead consumers to believe that the disputed domain name is the official ELF BAR product authenticity verification website of the Complainant.

Additionally, the disputed domain name is confusingly similar to the Complainant's ELF BAR mark. The circumstances of this case show a blatant attempt by the Respondent to confuse and/or mislead Internet users seeking for the Complainant's website or ELF BAR products. Hence, the Panel finds that the disputed domain name was registered and has been used in bad faith, per paragraph 4(b)(iv) of the Policy.

The third element of paragraph 4(a) of the Policy has been satisfied.

**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 <elfsbar.com> be transferred to the Complainant.

A handwritten signature in black ink, appearing to read 'Francine Tan', written in a cursive style.

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Francine Tan  
Panelist

Dated: October 7, 2022