



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.: HK-2201678
Complainant: Anwar Aldabbagh
Respondent: Imiracle (ShenZhen) Technology Co., Ltd
Disputed Domain Names: <elfbarusa.co>

1. The Parties and Contested Domain Name

The Complainant is **Anwar Aldabbagh** (hereinafter referred to as the “**Complainant**”), of 13336 Spectrum, Irvine, CA 92618, United States of America.

The Authorized Representative of the Complainant is **Mandana Jafarinejad, Esq.**, of 1 Park Plaza, Suite 600, Irvine, CA 92614, United States of America.

The Respondent is **Imiracle (ShenZhen) Technology Co., Ltd**, (hereinafter referred to as the “**Respondent**”) 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 Authorized Representative of the Respondent is **Minjie, Tang** of Room 1712, Enterprise square, No.228 Meiyuan Road, Jingan District, Shanghai, China.

The domain name at issue is <elfbarusa.co> (hereinafter referred to as the “**Disputed Domain Name**”), registered with GoDaddy.com LLC, 14455, North Hayden Rd, Suite

219, Scottsdale, Arizona, AZ 85260, United States of America (hereinafter referred to as the “**Registrar**”).

2. **Procedural History**

On 21 October 2022, the Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (hereinafter referred to as the “**Centre**”), in accordance with the Uniform Domain Name Dispute Resolution Policy (the “**Policy**”) approved by the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the “**Rules**”) approved by ICANN Board of Directors on 28 September 2013, and the Asian Domain Name Dispute Resolution Centre (“**ADNDRC**”) Supplemental Rules to the ICANN Uniform Domain Name Dispute Resolution Policy and the Rules for the Uniform Domain Name Dispute Resolution Policy (the “**Supplemental Rules**”) effective from 31 July 2015.

On the same day, the Centre confirmed receipt of the Complaint and requested the Complainant to “*state the grounds upon which it believes that the Complaint should be accepted, despite the fact that a decision has already been rendered [HK-2201658] regarding this domain name and the same parties*”. The Centre requested the Complainant to provide the “*grounds*” on or before 26 October 2022.

On 26 October 2022, the Complainant’s representative responded by stating that the Complainant has been using the registered trademark “**ELFBAR**” since at least June 2019; only became aware of the matter [HK-2201658] when the Registrar notified the Complainant of the transfer; No “*continuous use*” by the Respondent had been established; the Claimant has lawful rights in the Disputed Domain Name; and the grounds associated with the statute of limitation.

On 28 October 2022, the Centre provisionally accepted the Complainant’s information as contained within its correspondence of 26 October 2022 on the caveat that the appointed Panel will have the final say as to “*whether or not the Complaint should proceed to a full decision on the merits*”.

On 28 October 2022, the Centre notified the Registrar of the Complaint and requested the Registrar to verify information associated with the Disputed Domain Name.

On the very same day, the Registrar transmitted to the Centre its verification response disclosing registrant information for the Disputed Domain Name in which the Registrar stated that Imiracle Technology Co., Ltd is the registrant of the Disputed Domain Name; that the ICANN Policy is applicable to the Disputed Domain Name; that the language of the Registration Agreement of the Disputed Domain Name is English as provided by the Whois database; and confirmed that the Disputed Domain Name will remain locked during the pending administrative proceeding.

On 31 October 2022, the Centre informed the Complainant that the Registration Agreement of the Registrar was not attached to the Complaint and requested the Complainant to provide a copy to the Centre by 5 November 2022.

On 5 November 2022, the Complainant provided the Centre with a copy of the Registration Agreement.

On 8 November 2022, the Centre verified that the Complaint satisfied the formal requirements in accordance with the Policy and the Rules, as such the Centre shall forward the Complaint to the Respondent and the proceedings shall formally commence.

On the same day and in accordance with Article 2(a) of the Rules, the Centre wrote to the Respondent informing the Respondent that a Complaint relating to the Disputed Domain Name was filed by the Complainant and that under Article 5 of the Rules, the due date for the Respondent to file a Response was on or before 28 November 2022. The Centre also informed that Respondent that a decision concerning the same Disputed Domain Name was rendered previously in the case of HK-2201658.

On 22 November 2022, the Respondent through their representative filed a Response to the Complaint with the Centre. The Centre thereafter forwarded the Response to the Complainant.

On 22 November 2022, the Centre wrote to Dr. Christopher To enquiring as to his availability to act as a Sole Panelist in relation to the Disputed Domain Name and whether he is in a position to act impartially and independently between the Parties.

On 24 November 2022, Dr. Christopher TO informed the Centre of his impartiality and independence, to ensure compliance with Article 7 of the Rules.

On 25 November 2022, the Centre appointed Dr. Christopher To as the Panelist (the “**Panel**”) in this matter.

The Panel finds that it was properly constituted. and in accordance with Article 15(a) of the Rules, the Panel is of the view that it shall decide the Complaint on the basis of statements and documents submitted to it by the Complainant and the Respondent (hereinafter referred to as the “**Parties**”).

According to Article 15(d) of the Rules, this Panel shall issue a reasoned decision.

3. Factual background

A decision [HK-2201658] involving the same Disputed Domain Name and the Parties was rendered on 7 October 2022. The respondent in that case [HK-2201658] now files a Complaint for this Panel to decide.

Complainant

The Complainant is an individual based in California, United States of America.

The Complainant’s Complaint enclosed the previous filed complaint in relation to HK-2201658 (*reference Complainant’s Annex 1*) and a copy of the California Secretary of State Electronic Certificate of Registration of Trademark/Service Mark in relation to the trademark “**ELFBAR USA**” Registration Number 02023459, under classification 34 that was filed on 14 September 2022 (*reference Complainant’s Annex 2*).

Respondent

The Respondent in its Response stated 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 United States of America, Ireland, Germany, among other places. The Respondent 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.

The Respondent in its Response included a copy of the decision rendered in HK-2201658 (*reference Respondent’s Annex 1*).

The Complainant alleged that that the Respondent purchased an interest in the “ELFBAR” trademark from a third party and begun using the trademark in or around 13 May 2022, whereas the Respondent states that the “ELFBAR” trademark was not purchased from a third party but was transferred to it by its affiliates (*reference Respondent’s Annex 2*).

Under WIPO Overview 3.0, paragraph 1.4:

“A trademark owner’s affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint.”

The Respondent would be in a position to satisfy the requirements to file the original complaint under [HK-2201658], even when the Respondent’s affiliates held the trademark.

Disputed Domain Name

According to the decision [HK-2201658] the Disputed Domain Name <elfbarusa.co> was registered on 23 June 2022. In line with the decision of [HK-2201658] the Disputed Domain Name was subsequently transferred and registered by the Respondent on 21 October 2022.

4. Parties' Contentions

Complainant



The Complainant's contentions may be summarized as follows:

- i. The Disputed Domain Name contains the term "ELFBAR" which has been used by the Complainant since June 2019.
- ii. The Respondent has no rights and legitimate interests in the Disputed Domain Name, given that the Complainant has been using the "ELFBAR" mark in the United States of America before the Respondent and consistently since June 2019.
- iii. No other entities were using the "ELFBAR" mark in or around June 2019.
- iv. The Complainant states that it has been continuously using the "ELFBAR" mark in association with goods under the classification category of 34 for more than 3 years. As a result of the Complainant's commercial success, other entities have since started to use the "ELFBAR" mark.
- v. No other entity has used the "ELFBAR" mark earlier than the Complainant.
- vi. In the earlier case [HK-2201658], the Respondent's complaint alleged that the Respondent purchased an interest in the "ELFBAR" mark from a third party and began using the "ELFBAR" mark in or around 13 May 2022.
- vii. There is no evidence that the Respondent has continuously used the Disputed Domain Name earlier than the Complainant.

Respondent

The Respondent's contentions may be summarized as follows:

- i. The Complainant does not have trademark rights pertaining to "ELFBAR" mark in any jurisdiction other than the State of California. The Complainant applied for trademark registration in the State of California on 14 September 2022 (Date of Registration).
- ii. The Complainant registered the Disputed Domain Name on 23 June 2022 and not as alleged in June of 2019.

- iii. The Complainant has not provided any evidence in support of the Complainant's stance that it has been using the "ELFBAR" mark since June of 2019.
- iv. The Respondent states that it has legitimate interests and rights in the Disputed Domain Name from the very beginning.
- v. ELFBAR is an e-cigarette brand owned by the Respondent and its affiliates.
- vi. Upon filing the ELFBAR trademark on 16 June 2020, the Respondent's affiliated company, Shenzhen Weiboli Technology Co., Ltd was granted trademark registration in China on 21 February 2021. The Respondent's affiliated company, Shenzhen Weiboli Technology Co., Ltd was also granted trademark registration in Russia on 20 April 2021, by the European Union Intellectual Property Office on 19 May 2021, in Malaysia on 29 January 2021, Great Britain and Northern Ireland on 24 May 2021 (*reference Respondent's Annex 3*).
- vii. The Respondent's affiliated company, Shenzhen Weiboli Technology Co., Ltd was granted registration of ELFBAR trademark in China on 21 February 2021 (with a filing date of 16 June 2020) and trademark "" was granted registration on 28 September 2021. These trademarks were transferred to the Respondent on 13 May 2022.
- viii. The Respondent's registered trademark rights in "ELFBAR" in China are earlier than the Complainant's registration in the State of California.
- ix. The Complainant infringed the Respondent's "ELFBAR" mark and has maliciously filed a trademark () application in the United States of America (Application Filing date 3 September 2022) similar to the trademark () which is owned by the Respondent's affiliate IMIRACLE (HK) LIMITED (Application Filing date 3 July 2021) (*reference Respondent's Annexes 4 and 5*). The Complainant's filing is later than that of the Respondent.
- x. The elfbar.com domain name was registered on 30 September 2020, in the name of Heaven Gifts International Limited and was subsequently transferred to the Respondent, whereas the Complainant registered the Disputed Domain Name on 23 June 2022.

- xi. The Loudi City Xinhua Country Public Security Bureau discovered that the Disputed Domain Name was used in counterfeiting activities (*reference Respondent's Annex 6*).
- xii. The Respondent's first use of the 'ELFBAR' trademark on e-cigarette products dates back to 2018, much earlier than the Respondent's registration of the trademark in China (Application Filing date 16 June 2020) and the registration of the elfbar.com domain name (30 September 2020) (*reference Respondent's Annex 7*).
- xiii. The Complainant is using the Disputed Domain Name to deceive consumers into believing that the goods sold on the Disputed Domain Name website are that of the Respondent. As a result, the Respondent filed a case with the Centre [HK-2201658] which rendered (decision dated 7 October 2022) the transfer of the Disputed Domain Name to the Respondent.
- xiv. The Respondent contends that it has never authorised the Complainant to use the "ELFBAR" trademark.
- xv. The Complainant has a good understanding of the "ELFBAR" products and trademarks and is attempting to use the popularity of the products for commercial gains while disrupting the Respondent's business.
- xvi. The Complainant has no legitimate interests and rights in the Disputed Domain Name and is acting in bad faith.

5. Findings

This is a re-filed case involving the same Disputed Domain Name and the same Parties. It is generally accepted that a re-filed case in which a final decision has been rendered may only be accepted under limited circumstances.

Under WIPO Overview of the WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") paragraph 4.18, it suggests some limited circumstances:

"(i) when the complainant establishes that legally relevant developments have occurred since the original UDRP decision, (ii) a breach of natural justice or of due process has objectively occurred, (iii) where serious misconduct in the original case (such as perjured evidence) that influenced the outcome is subsequently identified, (iv) where new material evidence that was reasonably unavailable to the complainant during the original case is presented, or (v)

where the case has previously been decided (including termination orders) expressly on a “without prejudice” basis.

In the refiling itself, a complainant must clearly indicate the grounds it believes would justify acceptance of the refiled complaint... It remains however for any appointed panel to ultimately determine whether such preliminarily-accepted refiled complaint should proceed to a decision on the merits.”

The Complainant through correspondence with the Centre on 26 October 2022 stated that it only became aware of the previous matter [HK-2201658] when the Registrar notified the Complainant of the transfer.

Although the Complainant has not “*clearly indicate[d] the grounds it believes would justify acceptance of the refiled complaint*” in the Complaint. Nevertheless, the Panel is of the view that it should give the Complainant the benefit of doubt and proceed to decide on the Disputed Domain Name, based upon (i) the Complaint and evidence adduced by the Complainant as contained within the attachments; and (ii) the Response and evidence adduced by the Respondent as contained within the attachments.

Article 10(d) of the Rules states that:

“The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.”

Similarly, Article 11(a) of the Rules provides that:

“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.”

As the Registration Agreement is in the English language as confirmed by the Registrar in its correspondence with the Centre of 28 October 2022, then in accordance with Article 11(a) of the Rules, the language of the administrative proceedings shall be English, unless this Panel decides otherwise.

In these circumstances given that the Complaint and Response before the Panel is drafted in the English language, the Panel considers that it would be appropriate (and without prejudice to any of the parties) for the present proceedings to be conducted in the English language in line with Article 11(a) of the Rules.

The Policy provides, at Paragraph 4(a), that each of three elements/findings must be made in order for a Complainant to prevail:

- A. Disputed Domain Name is **identical or confusingly similar** to a trademark or service mark in which Complainant has rights; and
- B. The Respondent has no **rights or legitimate interests** in respect of the Disputed Domain Name; and
- C. Disputed Domain Name has been registered and is being used in **bad faith** by the Respondent.

The Panel would like to state that the burden of proof rests with the Complainant to establish the three elements contained within Paragraph 4(a) of the Policy as stated above by a preponderance of the evidence for the Panel to determine in accordance with Article 10(d) of the Rules.

A. Identical / Confusingly Similar

Proof by a Complainant that it has rights in a trademark or a service mark, whether as owner or licensee, is an essential prerequisite to relief under the Policy.

The Complainant has provided the Panel with a copy of the California Secretary of State Electronic Certificate of Registration of Trademark/Service Mark in relation to the trademark “**ELFBAR USA**” Registration Number 02023459, under classification 34 that was filed on 14 September 2022 (*reference Complainant’s Annex 2*).

Under the California Secretary of State Electronic Certificate of Registration of Trademark/Service Mark document, it stated that the trademark (under the heading of “*U.S. Patent and Trademark Information*”) was first filed on 31 December 2020 (Serial/File number 9043681) but was subsequently “**Abandoned**”.

Also, under the California Secretary of State Electronic Certificate of Registration of Trademark/Service Mark document it states that Registrant or Authorized Representative is “**ANWR AL AYOUN ALDABBAGH**” whereas the Complainant in this case is “**Anwar Aldabbagh**”.

The Respondent has provided the Panel with copies of trademark registrations in China on 21 February 2021, in Russia on 20 April 2021, by the European Union Intellectual Property Office on 19 May 2021, in Malaysia on 29 January 2021, Great Britain and Northern Ireland on 24 May 2021 (*reference Respondent’s Annex 3*).

The Respondent’s trademark registration in Russia was filed on 28 September 2020, earlier than that stated in the Complainant’s trademark registration under the California Secretary of State Electronic Certificate of Registration of Trademark/Service Mark document.

For the Complainant to succeed under the Policy in relation to an unregistered mark, the Complainant must produce evidence proving that it has provided goods or services under the unregistered mark and thereby acquired a reputation such that members of the public would associate those goods or services with the Complainant and not with others not authorised by the Complainant to use the mark. See WIPO Overview 3.0, paragraph 1.3:

“To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services.

Relevant evidence demonstrating such acquired distinctiveness (also referred to as secondary meaning) includes a range of factors such as (i) the duration and nature of use of the mark, (ii) the amount of sales under the mark, (iii) the nature and extent of advertising using the mark, (iv) the degree of actual public (e.g., consumer, industry, media) recognition, and (v) consumer surveys.”

The Complainant makes no claim to unregistered trademark or service mark rights and has provided no evidence that it has acquired a reputation in the “ELFBAR” name such as to give rise to any such rights. The Complainant merely made assertions in its Complaint without backing up such assertions with the necessary details to convince this Panel otherwise of the Complainant’s alleged ownership in respect of registered or unregistered rights in the trademark.

The threshold test for confusing similarity under the Policy involves a comparison between the relevant trademarks/marks/logos/wordings and the Disputed Domain Name to ascertain the presence of the trademarks/marks/logos/wordings in the Disputed Domain Name. To satisfy this test, the relevant trademarks/marks/logos/wordings would generally need to be recognizable as such within the Disputed Domain Name, with the addition of merely descriptive, common, or geographical wording typically being regarded as insufficient to prevent a finding of confusing similarity.

The Disputed Domain Name contains two elements: (i) “elfbarusa” and (ii) Top-Level Domain (TLD) “.co”. It is well established that the TLD “.co” does not have trademark significance, conferring no distinctiveness to the domain name sufficient to avoid user confusion, and should be ignored for identifying the “*confusing similarity*” element (See WIPO Overview 3.0, paragraph 1.11).

On a side-by-side comparison of the Disputed Domain Name and the textual components of the “ELFBAR” trademark, the trademark is recognizable within the Disputed Domain Name. In fact, the Disputed Domain Name incorporates the entirety of the trademark/wordings with the word “ELFBAR”. Whereas the addition of “USA”, to the end of the word “ELFBAR” is insufficient to prevent a finding of confusing similarity (See WIPO Overview 3.0, paragraph 1.8).

Whilst this Panel is satisfied that the “ELFBAR” trademark is identical or confusing similar to the Disputed Domain Name, the Complainant has not been able to show that it has acquired rights in the trademark.

For the foregoing reasons, the Panel concludes that the Complainant has not discharged the burden of proof to establish the elements of identical and confusingly similar trademark or service mark in accordance with Paragraph 4(a) (i) of the Policy.

B. Rights and Legitimate interests

As the Complainant has failed to satisfy paragraph 4(a)(i) of the Policy, the Panel does not need to consider the second requirement under paragraph 4 (a) (ii) of the Policy.

Nevertheless, even if this element was considered, the Panel would find that the Complainant had failed to establish that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, given that the Complainant merely asserts without providing any supporting evidence in its Complaint to back up such assertions. The Panel is simply unable to make a determination purely on bare assertions alone, in the absence of supporting evidence.

In the circumstances, the Panel concludes that the Complainant has not discharged its burden of proof to show that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name pursuant to paragraph 4(a) (ii) of the Policy.

C. Bad Faith

Paragraph 4(b) of the Policy sets out four (4) factors in which the Panel shall take into consideration in determining whether the Respondent has registered and used the Disputed Domain Name in bad faith. Namely:

- “(i) circumstances indicating that you have registered or you have 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) you have 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) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or*
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location.”*

Either one (1) of these four (4) factors being evident, as stated above, would amount to registration, and use in bad faith on the part of the Respondent.

Bad faith cannot be presumed, but once the Complainant has presented some evidence to establish a prima facie case, the onus then shifts onto the Respondent to either justify or explain its business conduct.

As the Complainant has failed to satisfy paragraphs 4(a)(i) and 4(a)(ii) of the Policy, the Panel does not need to consider the third requirement under paragraph 4(a)(iii) of the Policy.

Nevertheless, even if this element was considered, the Panel would find that the Complainant had failed to establish that Disputed Domain Name have been registered and is being used in bad faith by the Respondent. In fact, the Complainant merely made assertions without providing details and evidence in support of the bad faith use by the Respondent.

The Respondent's trademark registration pre-dates the Complainant's trademark registration. The Complainant has also failed to show that it had any unregistered or common law rights in the "ELFBAR" trademark prior to the Respondent's registration of the trademark. While in the Complaint, the Complainant asserted that "ELFBAR" trademark "*has been used by the complainant since at least June 2019*"; "*complainant began using the mark in the United States in June of 2019*"; "*has been continuously using the mark for more than 3 years*"; and "*used continuously by the complainant for at least two years*". The complainant has not provided the Panel with evidence to back up these assertions.

Once again, the Panel is simply unable to make a determination purely on bare assertions alone, in the absence of supporting evidence.

In the circumstances, the Panel concludes that, the Complainant has not discharged the burden of proof to establish that the Respondent registered and used the Disputed Domain Names in bad faith in accordance with Paragraph 4(a) (iii) of the Policy.

In conclusion, the Panel finds that the information contained within the Complaint and the evidence presented by the Complainant is insufficient to satisfy the threshold required under the Policy for the Complainant's case to prevail.

6. Reverse Domain Name Hijacking

Although the Respondent did not request a finding of Reverse Domain Name Hijacking (“**RDNH**”), the Panel considers this an appropriate case to enter such a finding.

Article 15(e) of the Rules provides that:

“...If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding...”

Article 1 of the Rules define RDNH as “*using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name.*”

WIPO Overview 3.0, paragraph 4.16 sets out examples of the reasons articulated by panels for the finding of RDNH:

“(i) facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements – such as the complainant’s lack of relevant trademark rights, clear knowledge of respondent rights or legitimate interests, or clear knowledge of a lack of respondent bad faith... such as registration of the disputed domain name well before the complainant acquired trademark rights, (ii) facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint, including relevant facts on the website at the disputed domain name or readily available public sources such as the Whois database, (iii) unreasonably ignoring established Policy precedent notably as captured in this WIPO Overview – except in limited circumstances which prima facie justify advancing an alternative legal argument, (iv) the provision of false evidence, or otherwise attempting to mislead the panel, (v) the provision of intentionally incomplete material evidence – often clarified by the respondent, (vi) the complainant’s failure to disclose that a case is a UDRP refiling, (vii) filing the complaint after an unsuccessful attempt to acquire the disputed domain name from the respondent without a plausible legal

basis, (viii) basing a complaint on only the barest of allegations without any supporting evidence.

Given the undertakings in paragraphs 3(b)(xiii) and (xiv) of the UDRP Rules, some panels have held that a represented complainant should be held to a higher standard.”

The fact that a Complaint has failed is not in itself sufficient to warrant a finding of RDNH. Three related factors in the present case warrant such a finding.

First, the Panel considers that the Complainant instituted the proceeding without any real prospect of success, given the barest of allegations as contained within the Complaint. In essence the Panel finds that the Complainant has failed to provide any argument or evidence which could support its Complaint.

Second, the Complainant attached two documents in support of it's Complaint (namely the Respondent's previously submitted complaint under [HK-2201658] and a copy of the California Secretary of State Electronic Certificate of Registration of Trademark/Service Mark). With such limited information (and a different name "Registrant or Authorized Representative" stated in the Certificate of Registration compared to that of the Complainant in the Complaint) provided as supporting evidence in the Complaint, it demonstrates that the Complainant knew that it could not succeed under the Policy but still decided to file a Complaint.

Third, the Complainant has not provided this Panel with the legal basis to justify advancing its Complaint even though it was represented in the proceedings.

Given the circumstances, the Panel finds that the Complaint was brought in bad faith, in an attempt at RDNH, and constitutes an abuse of administrative proceeding.

7. Decision

For the foregoing reasons and in accordance with Paragraph 4(a) of the Policy and Article 15 of the Rules, the Panel is not satisfied that the Complainant has sufficiently proved the existence of all three elements pursuant to Paragraph 4(a) of the Policy. The Panel concludes that the relief requested by the Complainant shall be denied. The Panel orders that the Disputed Domain Name <elfbarusa.co> shall remain with the Respondent.

A handwritten signature in black ink, appearing to read "Christopher To", written over a horizontal line.

Dr. Christopher To
Panel

Dated: 6 December 2022