



Asian Domain Name Dispute Resolution Centre

hong kong

**(Hong Kong Office)**

## **ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-2301770</b>
<b>Complainant:</b>	<b>Imiracle (Shenzhen) Technology Co., Ltd.</b>
<b>Respondent:</b>	<b>Ping knell</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;elfbar-code.com&gt;</b>

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### **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 Ping knell of 1538 Hillview Drive, New York, US.

The domain name at issue is <elfbar-code.com>, registered by Respondent with GoDaddy.com, LLC.

### **2. Procedural History**

- i. On 20 June 2023, the Complainant's authorized representative Chofn Intellectual Property, submitted the Complaint together with the accompanying Annexures to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (Centre) via emails 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).
- ii. On 20 June 2023, the Centre notified the Registrar, GoDaddy.com, LLC, of the disputed domain via email and requested verification and information on the domain name. The Centre also confirmed receipt of the Complaint and requested that the case filing fee be settled.
- iii. On 21 June 2023, the Registrar responded with the following verification and information: -
  - a) the Disputed Domain Name <elfbar-code.com> is registered with the Registrar;




- b) the identity of the registrant or holder of the Disputed Domain Name is Ping knell;
  - c) ICANN's Uniform Domain Name Dispute Resolution Policy is applicable to the Complaint;
  - d) the language of the registration agreement for the Disputed Domain Name is English;
  - e) the Disputed Domain Name's expiration date is 12 September 2023;
  - f) the Disputed Domain Name will remain locked during the proceedings; and
  - g) WHOIS information on the Disputed Domain Name.
- iv. On 21 June 2023, the Centre notified the Complainant's authorized representative of deficiencies in the Complaint. The information of the Respondent in the Complaint is different from the WHOIS information provided by the Registrar. The Centre requested that the relevant Disputed Domain Name should be provided and amended in Part 9 of the Complaint. The said deficiencies were required to be rectified within 5 calendar days.
- v. On 21 June 2023, the Complainant's authorized representative sent the amended complaint form to the Centre.
- vi. On 23 June 2023, the Centre requested the Complainant's authorized representative to amend Part 9 of the Complaint and provide the relevant Disputed Domain Name.
- vii. On 25 June 2023, the Complainant's authorized representative sent the amended complaint form to the Centre.
- viii. On 26 June 2023, the Centre confirmed that the Complaint is in compliance with the Uniform Domain Name Dispute Resolution Policy and its Rules, and informed the Complainant that the Complaint will be forwarded to the Respondent and that proceedings will be formally commenced in accordance with the Uniform Domain Name Dispute Resolution Policy and its Rules after receiving a copy of the transaction slip for payment verification.
- ix. On 27 June 2023, a copy of the transaction slip was sent by the Complainant's authorized representative to the Centre and the Centre confirmed receipt of the transaction slip on the same day. The Centre confirmed receipt of the case filing fee on 4 July 2023.
- x. On 27 June 2023, the Centre transmitted to the Respondent the Written Notice of Complaint via email and notified the Respondent that it is required to participate in mandatory administrative proceedings and that the Respondent may submit a Response on or before 17 July 2023.
- xi. On 18 July 2023, the Centre sent confirmation that it did not receive a Response from the Respondent and, in accordance with the Complainant's request for the case to be decided by a single-member Panel, contacted Michael Soo Chow Ming.
- xii. On 18 July 2023, Michael Soo Chow Ming confirmed his availability and ability to act independently and impartially vis-à-vis the parties, and he was appointed as panelist on 24 July 2023.

### 3. Factual background

#### A. Complainant

The “**ELF BAR**” brand was established in 2018 and focuses on innovative products featuring a smart heating system. “**ELF BAR**” brand offers disposable e-cigarettes in a wide range of sizes, flavors, and nicotine levels, catering to users in dozens of countries across five continents. The Complainant in this case, Imiracle (Shenzhen) Technology Co., Ltd., was established in 2017. The Complainant’s affiliated company, Shenzhen iMiracle Technology Co., Ltd, is a well-known e-cigarette company established in China in 2007. Due to an adjustment in the company’s business strategy, the Complainant has now taken over the main business operations and trademark rights of “**ELF BAR**”.

The Complainant is also the proprietor of the following trademark registrations: -

Registration No	Mark	Country / Territory	Class	Reg Date
47304567	<b>ELF BAR</b>	China	34	21.02.2021
018365272	<b>ELFBAR</b>	EUIPO	34	19.05.2021
UK00003646223	<b>ELFBAR</b>	The United Kingdom	34	15.10.2021
1619099	 ELFBAR	WIPO	34	22.07.2021
1680758	 ELFBAR	WIPO	34	22.06.2022
543428	 ELFBAR	Uruguay	34	23.03.2023

#### B. Respondent

The Respondent did not file a Response within the prescribed time period.

### 4. Parties’ Contentions

#### A. Complainant

The Complainant’s contentions can be summarized as follows:

- i. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.
  - a) The “**ELF BAR**” brand has rapidly gained popularity since its establishment a few years ago. Based in Shenzhen, the Complainant has expanded with branches in Shanghai, Hong Kong, the United States, Ireland, and Germany. The Complainant’s disposable vapes are pre-filled with e-liquid and feature single-use batteries. Renowned for their diverse fruity and candy-inspired e-liquids, they offer over 30 flavors and various device styles. With a vast

consumer base spanning many countries and monthly sales exceeding 10 million units, the “**ELF BAR**” brand serves over 1 million customers.

- b) The Complainant operates its own platforms for “**ELF BAR**” product sales and also sells through well-known e-commerce and industry platforms. In 2021, they entered the UK market with tremendous success, selling 2.5 million Elf Bar 600s per week, dominating two-thirds of all disposable e-cigarette sales. The “**ELF BAR**” brand’s popularity extends to numerous countries in Europe and beyond.
- c) The Complainant demonstrates a commitment to sustainability and environmental responsibility. On World Environment Day, the Complainant showcased its dedication to eco-friendly practices and industry compliance, emphasizing extensive recycling efforts to reduce e-waste generation. Expanding the presence of the “**ELF BAR**” brand to EU TPD-compliant countries and non-EU regions, the Complainant actively participates in various exhibitions, strengthening its global impact in the vaping industry.
- d) Between 2020 and 2022, disposable vape usage significantly increased in some countries, with vapers using disposables rising from 6-7% to 45-50%. Brands like “**ELF BAR**” played a key role in driving this growth. The “**ELF BAR**” brand resonated particularly well with younger vapers, evidenced by its massive popularity on social media platforms like TikTok, where the **elfbar** hashtag received 1.5 billion views at the start of 2023. Despite a trademark dispute leading to a name change in the United States, “**ELF BAR**” remains a prominent player in the disposable vape market, with its products available on multiple US e-cigarette selling websites.
- e) “**ELF BAR**”, as both corporate name and core product trademarks, has enjoyed widespread usage and promotion over the years, establishing itself as highly recognizable worldwide. A simple Google search overwhelmingly links to results related to the Complainant, solidifying its unique association with the “**ELF BAR**” brand. The brand’s extensive popularity and influence underscore the Complainant’s strong market position and brand identity, supporting its claim of unique correspondence with the “**ELF BAR**” name and trademarks.
- f) The Complainant contends the Disputed Domain Name “**elfbar-code.com**” has the generic top-level domain “.com” and the symbol “-”, which are not distinctive and should be ignored in assessing confusing similarity. The remaining part of the domain name, “**elfbar-code**”, where “code” is a common English word, is similar to the Complainant’s official website, showing likelihood of confusion. The Complainant argues that the important part of the domain name is “**ELFBAR**”, which matches the Complainant’s “**ELF BAR**” trademarks.
- g) Previous UDRP decisions support the direct comparison of the disputed domain name’s character composition with the Complainant’s mark to determine similarity. In this case, the domain name “**elfbar-code.com**” fully encompasses the Complainant’s “**ELF BAR**” trademarks, leading to potential confusion.

- ii. The respondent has no rights or legitimate interests in respect of the Disputed Domain Name.
  - a) The Complainant contends that the Disputed Domain Name effectively impersonates or suggests sponsorship or endorsement by the owner of the trademarks and does not constitute fair use.
  - b) The Complainant conducted searches in various countries' trademark databases and confirmed that no trademark applications were found under the name of the Respondent, **Ping knell**.
  - c) The Complainant has confirmed that the Respondent is not associated with the Complainant as a distributor or partner, and the Complainant has never directly or indirectly authorized the Respondent to use the "**ELF BAR**" trademarks and domain name in any manner.
  - d) The Respondent's name is **Ping knell**, making it evident that the Respondent cannot claim relevant name rights for "**ELF BAR**". Therefore, the Respondent lacks any rights or legitimate interest in the disputed domain name.
  
- iii. The Disputed Domain Name has been registered and is being used in bad faith.
  - a) The Complainant asserts its prior right to the "**ELF BAR**" trademarks, which had a significant global presence before the registration of the Disputed Domain Name on 12 September 2022. The Complainant argues that if the Respondent registered the domain name without bad faith, the Respondent should have chosen a non-confusing name and conducted a trademark search to avoid suspicion.
  - b) The Complainant's investigation found that the website linked to the Disputed Domain Name overlaps with the Complainant's project and contains references to the "**ELF BAR**" trademarks, suggesting the Respondent was aware of the Complainant's "**ELF BAR**" trademarks during registration.
  - c) Considering the instant reach of the internet and search engines, the Complainant believes that the Respondent knew or should have known about the Complainant's "**ELF BAR**" trademarks, making the registration of the Disputed Domain Name appears malicious.
  - d) The Respondent's use of the Disputed Domain Name to imitate the Complainant's "**ELF BAR**" brand for profit is consistent with Paragraph 4(b)(iv) of the Policy and indicates bad faith. The evidence shows the Respondent pointed the domain to a website related to the Complainant's business, strengthening the belief that the Respondent acted in bad faith at the time of registration. In conclusion, the Complainant believes that the Respondent registered and used the Disputed Domain Name in bad faith.

Based on the above, the Complainant requests the Disputed Domain Name <elfbar-code.com> be transferred to the Complainant.

**B. Respondent**

The Respondent did not file a Response within the prescribed time period.

**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 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.

Given that the Respondent failed to file a Response within the prescribed time, the Panel will consider and render a decision based on the information and materials submitted by the Complainant only.

**A) Identical / Confusingly Similar**

- i. The Complainant has provided evidence of owning registered "ELF BAR" trademarks in various countries and territories since 2021, establishing the Complainant's prior rights over these trademarks. The Disputed Domain Name, <elfbar-code.com>, includes the entire "ELF BAR" trademarks of the Complainant.
- ii. According to Paragraph 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), if a domain name incorporates the entirety of a trademark or a dominant recognizable feature of the mark, it will generally be considered confusingly similar to that mark for UDRP purposes.
- iii. As seen in the case of EAuto, L.L.C. v Triple S. Auto Parts d/b/a Kung Fu Yea Enterprises, Inc.; WIPO Case No. D2000-0047, it was established that when a domain name incorporates an entire distinctive mark, it creates enough similarity between the mark and the domain name to be deemed confusingly similar.
- iv. The Complainant has provided compelling evidence showcasing the widespread recognition of the "ELF BAR" brand worldwide, confirming the well-known status of the Complainant's "ELF BAR" trademarks. Consequently, the presence of these renowned "ELF BAR" trademarks in the Disputed Domain Name is sufficient to establish the Disputed Domain Name as confusingly similar to the Complainant's trademarks.
- v. This principle was established in Ansell Healthcare Products Inc. v Australian Therapeutics Supplies Pty, Ltd.; WIPO Case No. D2001-0110: -

**“The incorporation of a Complainant’s well-known trademark in the registered domain name is considered sufficient to find the domain name confusingly similar to the Complainant’s trademark: see Quixtar Investments, Inc. v. Smithberger and QUIXTAR-IBO, Case No. D2000-0138 (WIPO, April 19, 2000) (finding that because the domain name <quixter-sign-up.com>incorporates in its entirety the Complainant’s distinctive mark, QUIXTER, the domain name is confusingly similar); Hewlett-Packard Company v. Posch Software, Case No. FA95322 (Nat. Arb. Forum, Sept. 12, 2000).**

[emphasis added]

- vi. The Panel agrees with the Complainant’s claim that the generic “.com” and the symbol “-” in the Disputed Domain Name “**elfbar-code.com**” should not be considered when determining confusing similarity with the Complainant’s “**ELF BAR**” trademarks. Past domain name cases have established that the inclusion of gTLDs, ccTLDs and/ or hyphen is not relevant in deciding whether a domain name is identical or confusingly similar to a Complainant’s trademarks. This principle was affirmed in decisions such as **Volkswagen Group Singapore Pte Ltd v Webmotion Design**; Case No.: rca/dndr/2003/01 (int), **Rollerblade, Inc. v Chris McCrady**; WIPO Case No. D2000-0429, and **Rohde & Schwarz GmbH & Co. KG v Pertshire Marketing, Ltd.**; WIPO Case No. D2006-0762.
- vii. It has also been established that the addition of generic words to a trademark does not prevent confusion, as decided in **Fondation Le Corbusier v Monsieur Bernard Weber, Madame Heidi Weber**; WIPO Case No. D2003-0251: -

*“Each Disputed Domain Name includes the trademark LE CORBUSIER with the addition of a generic word: art, museum, fondation, foundation, centre or center. **The combinations obtained are generic and do not stop the confusion caused by the use of the trademark LE CORBUSIER**: The Body Shop International PLC. v. CPIC Net and Syed Hussain, WIPO Case No. D2000-1214; Space Imaging, eResolution Case No. AF0298. The words foundation and museum were found to be descriptive in Indivision Picasso v. Manuel Mu iz Fernandez [Hereisall], WIPO Case No. D2002-0496 as was the word center in Nintendo of America Inc. v. Berric Lipson, WIPO Case No. D2000-1121.”*

[emphasis added]

- viii. The Panel finds that the term “code” in the remaining part of the Disputed Domain Name “**elfbar-code.com**” is also generic and lacks distinctive value to avoid confusion with the Complainant’s “**ELF BAR**” trademarks. Ultimately, “**ELF BAR**” remains the most prominent and distinctive element in the Disputed Domain Name, contributing to the likelihood of confusion.
- ix. Therefore, the Panel concludes that the Disputed Domain Name is identical or confusingly similar to the Complainant’s “**ELF BAR**” trademarks, satisfying the first element in paragraph 4(a) of the Policy.

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

- i. Upon thorough review of the presented facts, the Panel concludes that the Complainant has established a prima facie case demonstrating that the Respondent lacks any rights or legitimate interests concerning the Disputed Domain Name.
- ii. The Complainant has confirmed that the Respondent has no affiliation with the Complainant as a distributor or partner, and the Respondent has never been directly or indirectly authorized to utilize the “**ELF BAR**” trademarks and domain name in any form.
- iii. Furthermore, there is no evidence indicating that the Respondent possesses any trademark registrations.
- iv. The Respondent’s name is “**Ping knell**”, making it implausible for the Respondent to have any relevant name rights for “**ELF BAR**” and “**elfbar-code**”. There is no indication that the Respondent is commonly known by the Disputed Domain Name or that the Respondent has used it for legitimate non-commercial purposes or fair use without intent for commercial gain.
- v. The Respondent did not submit a response to the Centre, failing to present any evidence proving the Respondent’s right or legitimate interest in the Disputed Domain Name. As stated in Paragraph 2.1 of the WIPO Jurisprudential Overview 3.0, when the Complainant establishes a prima facie case of the Respondent lacking rights or legitimate interests, the burden shifts to the Respondent to provide relevant evidence demonstrating such rights or legitimate interests. In the absence of such evidence, the Complainant is considered to have fulfilled the second element.
- vi. In other words, the absence of rights or legitimate interests is confirmed when a Complainant presents a prima facie case, and the Respondent chooses not to respond (**De Agostini S.p.A. v Marco Cialone**; WIPO Case No. DTV2002-0005).
- vii. Based on the above findings, the Panel determines that the Respondent possesses no rights or legitimate interests concerning the Disputed Domain Name.

## **C) Bad Faith**

- i. In order to establish bad faith under the Policy, the Complainant is required to show that the registration and use of the Disputed Domain Name were conducted in bad faith. This requirement is detailed in Paragraph 4(b) of the Policy, which states: -

*“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 Registrant 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 Registrant's documented out-of-pocket costs directly related to the Domain Name; or*

- (ii) *the Registrant 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 Registrant has engaged in a pattern of such conduct; or*
- (iii) *the Registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or*
- (iv) **by using the Domain Name, the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant'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 Registrant's web site or location or of a product or service on the Registrant's web site or location.**

[emphasis added]

- ii. The Complainant has presented evidence demonstrating the extensive global presence, high distinctiveness, and widespread recognition of the Complainant's "ELF BAR" trademarks. These marks are used to identify the Complainant's products, and internet searches related to "ELF BAR" lead directly to the Complainant and its products.
- iii. In **eBay Inc. v Renbu Bai**; WIPO Case No. D2014-1693, it was decided that: -

*"Prior panels have found that knowledge, **actual or inferred, of a strong mark is evidence of registration in bad faith.** See *Caesars World, Inc. v. Forum LLC*, WIPO Case No. D2005-0517 ("**[T]he Complainant's worldwide reputation, and presence on the Internet, indicates that Respondent was or should have been aware of the marks prior to registering the Disputed Domain Name.**"); see also *The Gap, Inc. v. Deng Youqian*, WIPO Case No. D2009-0113 ("**[T]he Panel concurs with previous WIPO UDRP decisions holding that registration of a well-known trademark as a domain name is a clear indication of bad faith in itself, even without considering other elements**")."*

[emphasis added]

- iv. The website linked with the Disputed Domain Name shares content with the Complainant's project and includes references to the Complainant's "ELF BAR" trademarks. The Respondent has failed to refute the Complainant's assertion that the Respondent was aware of the Complainant's business name and trademarks at the time of registering the Disputed Domain Name on 12 September 2022.
- v. In **Maori Television Service v Damien Sampat**; WIPO Case No. D2005-0524, it was found that: -

*“A finding of bad faith may be made whether **the Respondent knew or should have known of the registration and use of the trade mark prior to registering the domain**”*

[emphasis added]

- vi. It is reasonable to infer that the Respondent had awareness of the Complainant’s well-known “**ELF BAR**” trademarks when registering the Disputed Domain Name. Hence, the Panel concludes that the Respondent intended to exploit the Complainant’s reputation and trademarks for illegitimate purposes by incorporating “**ELF BAR**” into the Disputed Domain Name.
- vii. In **Alstom v Yulei**; WIPO Case No. D2007-0424, it was decided that: -

*“Therefore, the Panel finds that **it is not conceivable that the Respondent would not have had actual notice of the Complainant’s trademark rights at the time of the registration of the domain name.** Consequently, in the absence of contrary evidence from the Respondent, **the Panel finds that the ALSTOM trademarks are not those that traders could legitimately adopt other than for the purpose of creating an impression of an association with the Complainant.**”*

[emphasis added]

- viii. The Respondent also did not refute the Complainant’s claim that the Disputed Domain Name was linked to a website related to the Complainant’s business, causing confusion with the Complainant’s “**ELF BAR**” trademarks regarding the product’s source, sponsorship, affiliation, or endorsement. As a result, the Panel finds that the Respondent is using the Disputed Domain Name in bad faith to falsely imply an association with the Complainant and the Complainant’s “**ELF BAR**” trademarks, intentionally leading to confusion among Internet users, within the meaning of Paragraph 4(b)(iv) of the Policy.
- viii. In **Oki Data Americas, Inc. v ASD, Inc.**; WIPO Case No. D2001-0903, it was found as follows: -

*“The site must accurately disclose the registrant’s relationship with the trademark owner; **it may not, for example, falsely suggest that it is the trademark owner, or that the website is the official site, if, in fact, it is only one of many sales agents.** E.g., *Houghton Mifflin Co. v. Weatherman, Inc.*, WIPO Case No. D2001-0211 (WIPO April 25, 2001) (no bona fide offering where website’s use of Complainant’s logo, and lack of any disclaimer, suggested that website was the official Curious George website); *R.T. Quaipe Engineering v. Luton*, WIPO Case No. D2000-1201 (WIPO Nov. 14, 2000) (**no bona fide offering because domain name <quaipeusa.com> improperly suggested that the reflected site was the official U.S. website for Quaipe, an English company;** moreover, respondent’s deceptive communications with inquiring consumers supported a finding of no legitimate interest); *Easy Heat, Inc. v. Shelter Prods.*, WIPO Case No. D2001-0344 (WIPO June 14, 2001) (no bona fide use when respondent suggested that it was the manufacturer of complainant’s products).”*

[emphasis added]

- ix. Therefore, The Panel concludes that the Respondent registered and/or has used the Disputed Domain Name in bad faith, as per the definition in paragraph 4(a)(iii) of the Policy.

**6. Decision**

Based on the foregoing reasons, the Complaint is allowed and the Disputed Domain Name, **<elfbar-code.com>**, is to be transferred to the Complainant.



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Michael Soo Chow Ming  
Panelist

Dated: 8<sup>th</sup> August 2023