



Asian Domain Name Dispute Resolution Centre

hong kong

**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-2301789
<b>Complainant:</b>	Imiracle (Shenzhen) Technology Co., Ltd
<b>Respondent:</b>	Abdulkadir Ay
<b>Disputed Domain Name(s):</b>	< elfbarcrystals.com >

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

The Complainant is Imiracle (Shenzhen) Technology Co., Ltd, located at T5 Office Building, Qianhai China Resources Financial Centre, 5035 Menghai Avenue, Nanshan Street, Qianhai Hong Kong-Shenzhen Cooperation Zone, Shenzhen, People’s Republic of China, and is represented by Shenzhen Chofn Intellectual Property Agency Co. LTD, China.

The Respondent is Abdulkadir Ay, residing at Yeni Mahalle Ataturk Sitesi, Mersin, 33000, Turkey.

The domain name under dispute is <elfbarcrystals.com>, registered by the Respondent through GoDaddy.com, LLC, situated at 14455 North Hayden Rd., Suite 219, Scottsdale, AZ 85260, United States of America (USA).

**2. Procedural History**

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (the “Centre”) on August 9, 2023. The Complainant opted for a sole panelist to review this case pursuant to the Uniform Domain Name Dispute Resolution Policy (“the Policy”), adopted by ICANN on October 24, 1999. The Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) and the Supplemental Rules came into effect on September 28, 2013, and July 31, 2015, respectively.

On August 10, 2023, the Centre acknowledged receipt of the Complaint and its Exhibits, and sent a verification request by email to GoDaddy.com, LLC (the Registrar of the disputed domain name). In line with the Supplemental Rules, the Centre confirmed the Complaint’s adherence to the formal requirements of the Rules and Supplemental Rules. Consequently, the Centre requested the Registrar to verify:

The domain’s registration with GoDaddy.com;

- Whether “Whois Privacy Services Pty Ltd” was the Registrant or holder of the disputed domain;
- The applicability of the ICANN Uniform Domain Name Dispute Resolution Policy;
- The language of the Registration Agreement;
- The registration and expiration dates of the disputed domain;
- The domain name’s current status.

On August 11, 2023, the Registrar confirmed that the registrant is Abdulkadir Ay, and that the domain was registered with GoDaddy.com and subject to the Policy. Furthermore, the registration agreement was in English, and they provided relevant name and contact details from the WhoIs database, noting that the domain was locked for the duration of the administrative proceeding.

In light of the new registrant information, the Centre, referencing paragraph 4(b) of the Rules, requested that the Complainant revise the Complaint Form by September 10, 2023. Otherwise, the Complaint would be considered withdrawn, albeit without prejudice to any subsequent complaint submission.

By September 6, 2023, the Complainant submitted the required revised Complaint, addressing only the registrant details.

The Centre served the Complaint to the Respondent on September 7, 2023, affording a 20-day response period ending on September 27, 2023. The Respondent did not file a response within this time frame, leading the Centre to initiate the panelist appointment process.

In line with paragraph 6(b) of the Rules and Supplemental Rules, the Centre, on October 3, 2023, contacted Shirley LIN, seeking her appointment as the sole Panelist. Shirley LIN accepted and confirmed her impartiality and independence. The same day, the parties were notified of her appointment.

The Panel determines that the Administrative Panel was correctly constituted in line with the Rules and Supplemental Rules. As stipulated by paragraph 15 of the Rules, the Panel will deliver a decision to the Centre by October 17, 2023.

### **3. Factual background**

#### **The Complainant: Imiracle (Shenzhen) Technology Co., Ltd**

##### **A. The Complainant and its activities**

Imiracle (Shenzhen) Technology Co., Ltd., hereafter referred to as the Complainant, was established in 2017. Shenzhen iMiracle Technology Co., Ltd., an affiliated company founded in 2007 in China, operated in the e-cigarette sector. Following a restructuring, the Complainant has since been responsible for primary business operations and holds the trademark rights for ELF BAR.

ELF BAR, established in 2018, produces products using a smart heating system and offers a variety of disposable e-cigarettes. The brand serves customers in multiple countries across five continents. Its headquarters is in Shenzhen, with additional branches in locations such as Shanghai, Hong Kong Special Administrative Region of the People’s Republic of China (Hong Kong), USA, Ireland, and Germany.

ELF BAR's product line consists of disposable vapes equipped with pre-filled e-liquid and a single-use battery. The brand offers over 30 e-liquid flavors across more than 20 disposable device styles. Available records show that the brand has a consumer presence in several countries and has achieved notable monthly sales figures. Products in their lineup include the Elfbar 600, BC3500, and BC5000. The brand has also introduced pod vape devices like the FB1000. Additionally, the Complainant operates various platforms for product sales and is listed on several e-commerce platforms. In 2021, sales records indicate that the Elf Bar 600 had significant sales figures in the UK market.

#### B. The Complainant's Marks

The Complainant has registered rights to the ELF BAR trademark. The timeline indicates that the trademark's application and usage preceded the registration of the disputed domain name. As per UDRP Policy decisions, to evaluate the compliance of a complaint with Rule 4(a)(i) of the Policy, a direct comparison is made between the disputed domain name and the Complainant's trademark to ascertain their similarity. The domain in question, elfbarcrystals.com, includes the term ELF BAR.

#### **The Respondent**

As evidenced by the WhoIs registration record provided to the Complainant, the Respondent registered the disputed domain name on May 26, 2023. From August 11, 2023, onwards, the Registrar has locked the Disputed Domain Name, rendering it inactive. The Centre has verified that documents were dispatched to the Respondent's address as registered with the registrar. However, within the stipulated timeframe, the Centre did not receive a Response from the Respondent regarding the Domain Name Dispute.

The Respondent is to be considered in default.

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

Given the Respondent's default, the Panel recognizes that the onus is on the Complainant to establish, at the very least, a prima facie case. For instance, in *Softquad Software Inc. v. Eleven-Eleven Ltd*, DeC, No. AF-0143, June 1, 2000, it was emphasized that even in cases of default, the responsibility of demonstrating the necessary elements lies with the Complainant.

##### A. Complainant

The Complainant's contentions may 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:

Imiracle Technology has furnished evidence demonstrating that its trademark, ELF BAR, has been in continuous use and extensively promoted for several years, earning significant global recognition.

The Complainant contends that within the disputed domain name, elfbarcrystals.com, the ".com" component is a generic top-level domain (gTLD) and lacks distinctiveness. For the

purposes of determining confusing similarity, the “.com” should be disregarded. Subtracting the “.com” suffix from elfbarcrystals.com, we are left with “elfbarcrystals”—a fusion of “elfbar” and “crystals.” The term “crystals” in English is generic in nature. Even though it appears in its plural noun form, it fails to establish any distinct differentiation for goods. Crucially, appending this term does not diminish the confusing similarity introduced by the Respondent’s full incorporation of the trademark in the domain name; it actually heightens it. The primary test for confusing similarity requires a reasoned, yet relatively straightforward, juxtaposition between the trademark and the domain name, with the goal of assessing if the domain name holds confusing similarity to the trademark. This examination is primarily based on a direct comparison between the textual elements of the trademark and the domain name to determine if the trademark remains discernible within the domain name.

Given the above, the Complainant asserts that it’s unmistakably clear that the disputed domain name is confusingly similar to the Complainant’s marks. Furthermore, it is evident that the respondent not only intended to, but is also currently capitalizing on, the established reputation of Imiracle Technology.

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

The Complainant asserts that there is no discernible connection between the Respondent’s name, Abdulkadir Ay, and “Imiracle Technology.” Consequently, the Respondent cannot claim any legitimate interest in “Imiracle Technology” as its trade name. Furthermore, the Complainant underscores that, to its knowledge, the Respondent does not possess any trademark registrations related to “Imiracle Technology.”

Given these factors, the Complainant firmly believes and submits that the Respondent lacks any rights or legitimate interests in the disputed domain name.

iii. The disputed domain name has been registered and is being used in bad faith:

The Complainant emphasizes that its ELF BAR brand had achieved significant global recognition well before the disputed domain name was registered. Notably, the disputed domain doesn’t merely incorporate the Complainant’s trademark; it directly alludes to Imiracle Technology’s signature product, “ELF BAR.” Such a deliberate choice strongly implies the Respondent’s awareness of the Complainant’s standing and its “ELF BAR” trademark during the domain’s registration.

Moreover, the evidence suggests that the Respondent strategically used the disputed domain to intentionally divert internet users to its website for commercial gain. This is achieved by crafting a misleading perception of association or endorsement with the Complainant’s brand, thereby confusing users about the true source, sponsorship, or affiliation of its website.

In light of these circumstances, the Complainant is resolute in its position that the Respondent has registered and is maliciously using the domain name in bad faith.

## B. Respondent

The Respondent has defaulted, and as a result, this Panel will resolve the dispute based on the information presented. While the Panel can derive inferences from the Respondent’s

failure to submit a timely Response, it's crucial to note that a default does not automatically lead to a favorable decision for the complainant. The onus remains on the complainant to substantiate each of the three elements set out in paragraph 4(a) of the Rules.

While a Panel might accept certain factual claims from a defaulting respondent, especially if they're not intrinsically dubious, paragraph 4 of the Rules emphasizes the necessity for the complainant to furnish concrete evidence to prevail in a UDRP proceeding.

## **5. Findings**

In view of the lack of a Response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed representations.

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 Panel acknowledges the Complainant's established rights in the "ELF BAR" trademarks through both registration and prior use, predating the disputed domain name's registration.

The Complainant, associated with Imiracle Technology, holds registrations for the "ELF BAR" trademarks. Ownership of a trademark typically satisfies the threshold of trademark rights (Refer: RapidShare AG and Christian Schmid v. majeed randi, WIPO Case No. D2010-1089, <rapidpiracy.com>; F. Hoffmann-La Roche AG v. Relish Enterprises, WIPO Case No. D2007-1629, <xenicalla.com>). Factors like the trademark's location, its registration date, or associated goods/services are inconsequential in determining rights under the Rules' first element (See Drugstore.com, Inc. v. Nurhul Chee / Robert Murry, WIPO Case No. D2008-0230, <drugstoretm.com>).

For unregistered trademarks or trade names like "ELF BAR", the Complainant must demonstrate that the name has evolved as a distinct marker linked to them or their offerings (Reference: S.N.C. Jesta Fontainebleau v. Po Ser, WIPO Case No. D2009-1394, <palaisstephany.com>; La Mafafa, Inc. dba Cultura Profética v. Domains Real Estate, WIPO Case No. D2009-0534, <culturaprofetica.com>). Given the extensive advertising and media recognition of "ELF BAR", as shown by the Complainant, the trademark rights stand validated.

Taking the precedent from the “wal-martsucks.com” case (Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale, Case No. D2000-0662 <wal-martsucks.com>), a domain name encompassing the trademark, irrespective of other included terms, is deemed ‘identical or confusingly similar’. The domain in contention, “elfbarcrystals.com”, fully integrates the “ELF BAR” trademarks. Hence, the unique portion of this domain mirrors “Imiracle Technology’s” “ELF BAR” trademark, inducing confusion with Imiracle Technology’s registered mark.

Consequently, the Panel confirms the disputed domain name’s confusing similarity to the Trade Marks, meeting paragraph 4(a) of the Policy’s first requirement.

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

The Policy’s Paragraph 4(c) outlines scenarios that, if established, showcase a respondent’s rights or legitimate interests in a disputed domain name:

- (i) Prior to dispute notice, the respondent used or prepared to use the domain name, or a name akin to it, for genuine goods or services offerings.
- (ii) The respondent, be it an individual or organization, has been known by the domain name, even without trademark or service mark rights.
- (iii) The respondent is using the domain name legitimately, either non-commercially or fairly, without the intent to mislead consumers for profit or tarnish the relevant trademark.

The evidence doesn’t indicate that the Complainant granted the Respondent permissions or licenses for domain registration or Trade Marks usage. Given that the Complainant’s Trade Marks rights existed well before the Respondent’s domain registration, a prima facie case emerges suggesting the Respondent lacks legitimate interests or rights in the domain. Thus, the onus shifts to the Respondent to challenge this assertion.

Furthermore, as noted by the Complainant, no business or employment ties bind Imiracle Technology and the Respondent. The Complainant didn’t authorize the Respondent, or its affiliates, to use “ELF BAR” for domain registration. The Respondent isn’t a Complainant’s subsidiary and has no affiliations. The domain’s registration, using the Complainant’s trademarks, was executed without their consent.

Given this, the Panel concludes that the Complaint satisfies paragraph 4(a) of the Policy’s second criterion.

## **C) Bad Faith**

Paragraph 4(b)(iv) of the Policy states that bad faith is evident when:

“The respondent, by using the disputed domain name, has deliberately sought to attract, for profit, Internet users to its site or other online location. This is done by causing confusion about the association between the complainant’s mark and the source, sponsorship, affiliation, or endorsement of the respondent’s site or its services.”

The Panel has been presented with evidence showcasing the unauthorized use of the “ELF BAR” trademark on the respondent’s website. Given the widespread recognition of “ELF BAR” through media, it is plausible that the Respondent, aware of the trademark’s

prominence and its association with Imiracle Technology, sought to misrepresent its site as the official “ELF BAR” platform by leveraging the disputed domain. This deliberate act aims to mislead Internet users for commercial benefit, causing confusion regarding the website’s origin, affiliation, or endorsement. The Respondent’s site and its content reinforce the Panel’s belief that the Respondent was cognizant of the Complainant’s established rights and aimed to exploit them by causing confusion. This stands as a testament to the Respondent’s bad faith in domain registration.

In light of these factors, the Panel determines that bad faith registration and use, as outlined in paragraph 4(b)(iv) of the Policy, are apparent.

Given this evidence, the Panel affirms that the domain was registered and is being used in bad faith. Thus, the third criterion of paragraph 4(a) of the Policy is met.

## 6. Decision

Based on the above analysis, the Panelist decides that: (1) the disputed domain name < elfbarcrystals.com > is confusingly similar to the Complainant’s name or mark in which the complaint has rights; (2) the Respondent has no right or legitimate interest in respect of the disputed domain names; (3) the Respondent has registered and is using the domain name in bad faith.

In line with the provisions of paragraphs 4(i) of the Policy and 15 of the Rules, the Panel determines in favor of the Complainant. Hence, the Panel orders that the disputed domain name, <elfbarcrystals.com>, be transferred to the Complainant.



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Shirley LIN  
Panelist

Dated: October 9, 2023