



Asian Domain Name Dispute Resolution Centre

hong kong

**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-2301852
<b>Complainant 1:</b>	Imiracle (Shenzhen) Technology Co., Ltd.
<b>Complainant 2:</b>	Imiracle (HK) Limited.
<b>Respondent:</b>	Wen Bing Li
<b>Disputed Domain Name(s):</b>	< lost-marry.com >

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

The Complainant 1 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 Complainant 2 is Imiracle (HK) Limited., of 19H maxgrand plaza No.3 Tai Yau St, San Po Kong Kln, HongKong, China. The Complainants authorized Shenzhen Chofn Intellectual Property Agency Co. LTD, of A905, Xinhao Yidu, No.7018, Caitian Road, Lianhua Yicun Community, Huafu Street, Futian District, Shenzhen, China, as its representative in this case.

The Respondent is Wen Bing Li, of Jie Dong Ou, Jie Yang Shi, Guangdong, China.

The domain name at issue is lost-marry.com, registered by the Respondent with GoDaddy.com, LLC, of 14455 North Hayden Rd.Suite 219 Scottsdale, AZ 85260.

**2. Procedural History**

On December 18, 2023, the Complainants 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 21 August 2023 (the Supplemental Rules).

On December 19, 2023, the HK Office notified by email to the Complainants the Receipt of Complaint and transmitted by email to the Registrar a Notification 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 December 20, 2023, the HK Office received email from the Registrar that confirmed (i) the disputed domain name is registered through GoDaddy.com, LLC, (ii) the registrant is Wen Bing Li (the Respondent), (iii) the language of the registration agreement for the domain name is English, (iv) the Policy applies to the domain name, (v) the WHOIS information for the domain name, and (v) the disputed domain name will remain locked during the pending administrative proceeding

On December 28, 2023, the HK Office sent a Notification of Deficiencies of the Complaint to the Complainants by email, among which the WHOIS information of the disputed domain name provided by the Registrar was transmitted to the Complainants. On the same day, the Complainants updated the Complaint upon the request.

On December 29, 2023, HK Office 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 Complainant elected to have the Complaint decided by one Panelist and the Respondent made no objection. On January 19, 2024, the HK Office appointed Mr. XIE Guanbin as the sole Panelist in this matter and the panelist confirmed his independent and impartial act between the parties.

### **3. Factual background**

The Complainant 1 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 Complainant 1 is the holder of a Chinese trademark "LOST MARY", and the registration date is on February 7, 2022.

The Complainant 2 is Imiracle (HK) Limited., of 19H maxgrand plaza No.3 Tai Yau St, San Po Kong Kln, HongKong, China. The Complainant 1 was established in 2017 and Complainant 2 was established in 2022. The Complainant 2 is the holder of a WIPO international trademark "LOST MARY", and the registration date is on August 4, 2021. In addition, the Complainant 1 is the sub-subsidiary company of the Complainant 2.

The Complainants' affiliated company, Shenzhen iMiracle Technology Co., Ltd, is a well-known e-cigarette company established in 2007. The Complainants are now taking over the main business and trademark right.

The Respondent is Wen Bing Li, of Jie Dong Ou, Jie Yang Shi, Guangdong, China. The disputed domain name was created on February 7, 2023 and the expiration date is on February 7, 2024.

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

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is identical or confusingly similar to a trademark in which the complainants have rights.

The Complainants claimed that they have the prior right of the trademark "LOST MARY" and submitted Annex 5. The complaint 2 currently holds a WIPO international trademark "LOST MARY", and the registration date is on August 4, 2021. The above international registration is also protected in the United States, the United Kingdom, the European Union and other countries and regions. The Complainant 1 currently holds a trademark registration of "LOST MARY" in Classes 34 (Reg. No. 58073794) in China registered on February 7, 2022.

The Complainants then claimed their brand LOST MARY has a high level of popularity and influence around the world and submitted Annex 6-11. LOST MARY, being launched in 2022, has become one of the most popular brands on the market. At the end of 2023, according to data from Nielsen IQ, the Complainants' ELFBAR and LOST MARY e-cigarette sales account for over half of the disposable e-cigarette market in the United Kingdom. According to TIKTOK data, the Complainants' three official videos on the official LOST MARY United Kingdom account have accumulated over 240,000 views and have millions of views on YouTube. The data provided by similar web shows that Complainants' official website of the LOST MARY brand had about 94,600 visits in November 2023, with visitors coming from the United States, the United Kingdom, France, China, etc. In addition, Supreme becomes master distributor for ELFBAR and LOST MARY in the United Kingdom and LOST MARY products are currently available for sale on a number of online e-cigarette retail platforms in the United Kingdom. In the United States, the Complainants currently have a number of offline shops. According to Annex 12, LOST MARY has gained high distinctiveness through extensive publicity and use.

The distinctive part of disputed domain name is lost-marry, which is different from the Complainant's trademark LOST MARY by only two letters. This is a case of "typo-squatting", where the disputed domain name is a slight misspelling of Complainants' registered trademark in order to divert Internet traffic. In addition, the Complainants believe that the addition of the symbol – and letter r do not give lost-marry a new meaning, therefore, the symbol – and letter r should not be compared to the Complainants' trademark in this case.

The Complainants finally alleged that the disputed domain name can easily lead to consumer confusion.

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

The Complainant searched the trademark database in China and confirmed that no trademark applications were found under the name of the Respondent Wen Bing Li. According to the Complainant's feedback, the Respondent is not in the identity of the Complainants' distributor or partner, and the Complainants have

never directly or indirectly authorized the Respondent to use the LOST MARY trademark and domain name in any form. In addition, the Respondent doesn't enjoy the relevant name rights for LOST MARY.

The Complainants also confirmed that the anti-counterfeiting verification carried out on the web page to which the disputed domain name points is counterfeit.

In summary, the Respondent does not have any rights or legitimate interest in the domain name.

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

The Complainants claimed that, prior to the registration of the disputed domain name, the LOST MARY brand already has a very large audience in the United Kingdom, United States and France. The registration of the disputed domain name is difficult to explain as a coincidence when the LOST MARY trademark is so well known. The Respondent knew or should have known the Complainants' trademark when registering the domain name.

The Respondent has pointed the disputed domain name to a website related to the Complainant's business, and the Complainant confirmed that the anti-counterfeiting verification carried out on the web page to which the disputed domain name points is counterfeit, see Annex 15. The Respondent's use of the disputed domain name to deliberately imitate the Complainants' LOST MARY brand for profit is consistent with Policy 4(b)(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. And in conjunction with the bad faith use described above, it is possible to in turn find that the Respondent acted in bad faith at the time of registration of the domain name.

In summary, the Complainants alleged that the Respondent has registered and used the disputed domain name in bad faith.

## B. Respondent

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

## 5. Findings

Pursuant to the Registration Agreement (Annex 1) between the Respondent and the Registrar, the ICANN Uniform Domain Name Dispute Resolution Policy shall apply to this dispute resolution Proceeding.

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**

In accordance with the WHOIS registration information provided by the Registrar, the disputed domain name was created on February 7, 2023.

To prove their prior trademarks, the Complainants submitted a WIPO international trademark "LOST MARY" held by Complainant 2, which was registered on August 4, 2021, and also a Chinese trademark "LOST MARY" held by the Complainant 1, which was registered with the earliest date on February 7, 2022, recorded by China National Intellectual Property Administration. The Trademarks are valid and the registration is before the creation date of the disputed domain name.

The Panel, pursuant to the Policy, accepts the content of the aforesaid evidence and confirms that Complainants have prior trademark rights in "LOST MARY" for purposes of this proceeding.

With regard to the disputed domain name, it consists of two parts, i.e. lost-marry, and .com. ".com" is the suffix of the international top-level domain name and does not have any distinctive function. With respect to the main part of the disputed domain name, "lost-marry" can be recognized as the distinctive part. However, "lost-marry" is different from the Complainants' trademarks "LOST MARY" by only two letters, which has a high degree of possibility to lead to confusion of the connection between the Complainant and the website under the disputed domain name.

Accordingly, the Panel finds the disputed domain name is confusingly similar to the prior trademarks in which the Complainants have rights. The Complainant has satisfied paragraph 4(a)(i) of the Policy.

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

The Complainants have right in prior trademarks "LOST MARY" as found in A), and the Complainants further confirmed neither prior connection with the Respondent nor permission or authorization are given to the Respondent to use their trademarks within the context of the disputed domain name, therefore, the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel is of the opinion that the Complainants have 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.

Since the Respondent does not make any refutation against the Complainants, 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 Complaints have satisfied paragraph 4(a)(ii) of the Policy.

### **C) Bad Faith**

The Policy provides, at Paragraph 4(b), Evidence of Registration and Use 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 your web site or location or of a product or service on the respondent's web site or location.

The Complainants claimed that the Respondent used the disputed domain name <lost-marry.com> intentionally to attempt to attract internet users for commercial gain, by misleading users into believing that the Respondent and the disputed domain name is connected with Complainants' "LOST MARY" trademark and business or that it is otherwise affiliated with, or sponsored or endorsed by the Complainants. The disputed domain name is effectively identical with and certainly confusingly similar to the Complainants' "LOST MARY" trademark. The Complainant also submitted evidence to prove that the disputed domain name reverts to a website related to the Complainants' business, and the Complainants confirmed that the anti-counterfeiting verification carried out on the web page to which the disputed domain name points is counterfeit.

The Respondent did not respond to the complaint or submitted any evidence within the required time.

Based on the evidence in this case, the Panel has reason to conclude that the Complainants' "LOST MARY" brand has a high reputation and is well-known. The Respondent should have prior knowledge of the Complainant's "LOST MARY" trademarks before its registration of the disputed domain name. The Respondent's act of simply adding two letters in the disputed domain name creates a likelihood of confusions with the Complainants' mark and indicates the Respondent's bad faith to misleading the internet users into believing the website is owned, sponsored, endorsed by or affiliated with the Complainants.

For these reasons, the Panel finds the Complaint has satisfied paragraph 4(a)(iii) of the Policy.

In addition, since both the two complainants in this case request the disputed domain name should be transferred to them, the Panel further finds that the disputed domain name may be transferred to Complainant 2, given that Complainant 2 is the wholly owned parent of Complainant 1 and that Complainant 2 also owns the prior WIPO international trademark.

## 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 "lost-marry.com" be transferred to the Complainant 2.



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XIE Guanbin  
Panelist

Dated: February 2, 2024